PUBLIC WORKS DEPARTMENT
Government of Uttar Pradesh, India

UTTAR PRADESH STATE ROADS PROJECT
Under IBRD Loan No. 4684-IN

Technical Assistance for Implementation of Institutional Reforms in the Road Sector of Uttar Pradesh

REPORT TO SUBMIT DRAFT LEGISLATION AND ASSOCIATED RECOMMENDATION TO GoUP (FINAL)

Report No. 26

June 2008

LEA International Ltd., Canada
in joint venture with
LEA Associates South Asia Pvt. Ltd., India
in association with
Ministry of Transportation of Ontario, Canada
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<tr>
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<th>Full Form</th>
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<tbody>
<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
</tr>
<tr>
<td>ADT</td>
<td>Average Daily Traffic</td>
</tr>
<tr>
<td>AE</td>
<td>Assistant Engineer</td>
</tr>
<tr>
<td>CE</td>
<td>Chief Engineer</td>
</tr>
<tr>
<td>CEO</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td>CRF</td>
<td>Central Road Fund</td>
</tr>
<tr>
<td>CRN</td>
<td>Core Road Network</td>
</tr>
<tr>
<td>DPR</td>
<td>Detailed Project Report</td>
</tr>
<tr>
<td>DRDA</td>
<td>District Rural Development Authority</td>
</tr>
<tr>
<td>EE</td>
<td>Executive Engineer</td>
</tr>
<tr>
<td>E-in-C</td>
<td>Engineer in Chief</td>
</tr>
<tr>
<td>GO</td>
<td>Government Order</td>
</tr>
<tr>
<td>GOI</td>
<td>Government of India</td>
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<tr>
<td>GoUP</td>
<td>Government of Uttar Pradesh</td>
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<tr>
<td>GSHP</td>
<td>Gross State Domestic Product</td>
</tr>
<tr>
<td>HDM</td>
<td>Highway Design Model</td>
</tr>
<tr>
<td>HQ</td>
<td>Head Quarter</td>
</tr>
<tr>
<td>HR</td>
<td>Human Resource</td>
</tr>
<tr>
<td>IDS</td>
<td>Institutional Development Strategy</td>
</tr>
<tr>
<td>IDSP</td>
<td>Institutional Development and Strengthening Plan</td>
</tr>
<tr>
<td>IRC</td>
<td>Indian Road Congress</td>
</tr>
<tr>
<td>IT</td>
<td>Information Technology</td>
</tr>
<tr>
<td>ISAP</td>
<td>Institutional Strengthening Action Plan</td>
</tr>
<tr>
<td>JE</td>
<td>Junior Engineer</td>
</tr>
<tr>
<td>MDR</td>
<td>Major District Roads</td>
</tr>
<tr>
<td>MLA</td>
<td>Member of Legislative Assembly</td>
</tr>
<tr>
<td>MIS</td>
<td>Management Information System</td>
</tr>
<tr>
<td>MOST</td>
<td>Ministry of Surface Transport</td>
</tr>
<tr>
<td>MoSRTH</td>
<td>Ministry of Shipping, Road Transport &amp; Highways</td>
</tr>
<tr>
<td>MoRTH</td>
<td>Ministry of Road Transport and Highways</td>
</tr>
<tr>
<td>M&amp;E</td>
<td>Monitoring and Evaluation</td>
</tr>
<tr>
<td>MIS</td>
<td>Management Information System</td>
</tr>
<tr>
<td>MMS</td>
<td>Maintenance Management System</td>
</tr>
<tr>
<td>NABARD</td>
<td>National Bank of Agricultural and Rural Development</td>
</tr>
<tr>
<td>NITHE</td>
<td>National Institute for Training of Highway Engineers</td>
</tr>
<tr>
<td>NH</td>
<td>National Highway</td>
</tr>
<tr>
<td>NHAI</td>
<td>National Highways Authority of India</td>
</tr>
<tr>
<td>NREP</td>
<td>National Rural Employment Programme</td>
</tr>
<tr>
<td>ODR</td>
<td>Other District Road</td>
</tr>
<tr>
<td>OD</td>
<td>Origin and Destination</td>
</tr>
<tr>
<td>O&amp;M</td>
<td>Operation and Maintenance</td>
</tr>
<tr>
<td>PCC</td>
<td>Project Coordinating Consultant</td>
</tr>
<tr>
<td>PMS</td>
<td>Pavement Management System</td>
</tr>
<tr>
<td>PSP</td>
<td>Private Sector Participation</td>
</tr>
<tr>
<td>PWD</td>
<td>Public Works Department</td>
</tr>
<tr>
<td>RES</td>
<td>Rural Engineering Services</td>
</tr>
<tr>
<td>RIDF</td>
<td>Rural Infrastructure Development Fund</td>
</tr>
<tr>
<td>RMMS</td>
<td>Road Maintenance Management System</td>
</tr>
<tr>
<td>SE</td>
<td>Superintending Engineer</td>
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<tr>
<td>SH</td>
<td>State Highway</td>
</tr>
<tr>
<td>SHA</td>
<td>State Highway Authority</td>
</tr>
<tr>
<td>SPV</td>
<td>Special Purpose Vehicle</td>
</tr>
<tr>
<td>SRF</td>
<td>State Road Fund</td>
</tr>
<tr>
<td>SRP</td>
<td>State Road Project</td>
</tr>
<tr>
<td>TA</td>
<td>Technical Assistance</td>
</tr>
<tr>
<td>ToR</td>
<td>Terms of Reference</td>
</tr>
<tr>
<td>UP</td>
<td>Uttar Pradesh</td>
</tr>
<tr>
<td>UPRNN</td>
<td>Uttar Pradesh Rajkiya Nirman Nigam</td>
</tr>
<tr>
<td>UPSBC</td>
<td>Uttar Pradesh State Bridge Corporation</td>
</tr>
<tr>
<td>UPSRP</td>
<td>Uttar Pradesh State Road Project</td>
</tr>
<tr>
<td>UPSHA</td>
<td>Uttar Pradesh State Highways Authority</td>
</tr>
<tr>
<td>VOC</td>
<td>Vehicle Operating Cost</td>
</tr>
<tr>
<td>VR</td>
<td>Village Roads</td>
</tr>
<tr>
<td>WB</td>
<td>World Bank</td>
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</tbody>
</table>
1. BACKGROUND

The Tata Consulting Engineers (TCE) carried out a Policy Support and Institutional Development study in 2000-2002. The Government of Uttar Pradesh endorsed the recommendation in the above study, and included in the present contract with the TA Consultants for Institutional Development and Strengthening Plan (IDSP). As per the understanding of the Description of Services1 Technical Assistance for Implementation of Institutional Reforms in State Road Sector of Uttar Pradesh, it was specifically stated that, ‘the TA services will be expected to build directly on the achievements and outputs of the 2000/2001 Institutional Development Study’2.

In the said Review Report of October 20003 it was mentioned under Legal framework that ‘roads as any other sector are governed by certain acts of legislation. These acts of legislation regulate and thus create the environment within which the sector players operate to deliver the services expected from them’4.

There were certain Legislation also listed that govern the road sector5. A telling comment universal to the field of applicability of the law with respect to enforceability also appears in the said report6. Thus the TA requirement of a modernized U.P. Road Legislation after a comprehensive review of the existing and applicable Statutes, and also based upon the existing Government policies would be met, while at the same time being alert to the ground realities.

There were certain observations also recorded that are culled out hereunder7:

The domain of the road network in UP is characterised by:

- Government's concern for roads is manifest in policy enunciation, fund allocation
- Road spend is high as a proportion of total plan outlay of the state, but inadequate for meeting the objectives of the state's road policy. There appears to be a resource pressure.
- Multiplicity of implementing agencies, road related laws and enforcement agencies, and funding agencies, which could lead to uncertainties in action and complexity in coordination8.

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1 Appendix A
2 Internal page 4; paragraph 4.1 Description of Services Technical Assistance for Implementation of Institutional Reforms in State Road Sector of Uttar Pradesh
3 Report of TCE Consulting Engineers Ltd; TATA Consultancy Services; Sir Owen Williams Innovestment Ltd. – October 2000.
4 Chapter-2 Page 14 of 15; Review Report of October 2000
5 Motor Vehicles Act, 1988; National Highway Act, 1956; Constitution of India, List-II of Schedule-7 (Land a State Subject) Roadside Land Control Act of Uttar Pradesh, 1964; Land Acquisition act of 1894; State Urban Development Authority Act of Uttar Pradesh;
6 Various Utility Acts such as: State Electricity Act; Department of Telecom - Rules & Regulations; Draft Highway Bill; Various Commercial Taxation Laws; Excise Rules & Regulations; State Government - Rules & Regulations for levy and collection of Tolls
7 Chapter-2 Page 15 of 15; Review Report of October 2000
8 Chapter-2 Page 15 of 15; Review Report of October 2000
As a follow up on the same and the Government of Uttar Pradesh’s endorsement of the above study recommendation and included in the present contract was, as a part of item 1C (Modernize UP roads management legislation) of Annex II, the following:

1. Initiate comprehensive review of UP roads management legislation, including sector and inter-departmental consultations *(The present Report No.26 constitutes the same)*

2. Submit draft legislation and associated recommendations to GoUP *(The Annexure to the present Report No.26 contains the same)*

Legislation is vital in establishing the framework by which the road network is to be managed in Uttar Pradesh. It should be as clear and as unambiguous as possible in assigning responsibilities for all aspects for road management, and for all roads. And it should empower the relevant institutions with the necessary powers for them to achieve their objectives and fulfil their responsibilities. Many institutions are involved in various road management functions and although consultations are therefore important in formulating appropriate legislation, it is essential that decisions are made subsequently, clarifying who is to do what. When this clarity is absent, confusion, duplication or omission of some functions and inefficiencies will result. This is therefore a high priority task. This also stems from Table 1: Insights and key concerns⁹, which is reproduced below:

<table>
<thead>
<tr>
<th>Insight</th>
<th>Key Concern</th>
</tr>
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<tbody>
<tr>
<td><strong>Institutional</strong></td>
<td></td>
</tr>
<tr>
<td>The institutional environment of the road sector has multiple agencies for implementation, with PWD, and to some extent RES, as key agencies. Multiplicity of agencies within a governmental set-up, in the absence of a formal and suitably empowered coordinating entity, is likely to lead to problems in task accomplishment.</td>
<td>Inadequate coordination amongst the agencies in the road sector.</td>
</tr>
<tr>
<td>Enforcement of property rights is weak to say the least. The fact that encroachments of roads are difficult to be remove, if not impossible, points towards a possibility of one or both of: improper mechanisms for attribution of rights and inadequate enforcement. This appears as a critical aspect of the institutional environment of the state of UP.</td>
<td>Weak property rights insofar as roads are concerned and lack of enforcement.</td>
</tr>
<tr>
<td>There is inadequate clarity in the area of ownership of roads in the state. Apart from creating problems for maintenance, lack of clear ownership also influences the various road related matters like road safety and encroachments.</td>
<td>Ambiguity in asset ownership. Maintenance of assets in mainly affected on account of lack of ownership clarity.</td>
</tr>
</tbody>
</table>

⁹ Chapter-5 Page 2 of 5; Review Report of October 2000
Insight | Key Concern
--- | ---
- The voice of the user, a key stakeholder, is hardly audible in the matters of road construction and quality. Although there are mechanisms at the district level for the elected representatives to have a say in the matters relating to roads and their conditions, the effectiveness of these in enabling the voice option of the user can be debatable. The concept of the elected representative representing the interests of the inadequate for the purposes of diversity of interests of different sub-groups of the population. Hence, district level committees may not be appropriate for the purpose of enabling the user voice to be heard. | - Likely neglect of the road user's interest.

The TA Consultants in this context have submitted two Reports, the same are as follows:

1. Report No. 8: Draft of Revised UP Road Policy to be submitted for GoUP Cabinet Endorsement

The contents and recommendations of the above reports have been briefly discussed in the following sections as they are of vital import to the present report.

The TA Consultants are required to draft a suitable legislation that would reflect not only the updated roads policies but which would in essentiality address issues with respect to development, management and maintenance of the roads. Further focus of the legislation would also be to eliminate multiple agencies for the maintenance of the roads although the role of the present agencies for the purpose of construction of the roads would remain unaltered. This is envisaged in order to avoid unnecessary additional financial burden upon the PWD when the same said objective is achieved presently by the other existing organizations involved in Road construction. It would also address and define the ownership of all roads in the State of Uttar Pradesh for the above purpose, which at present remains quite obtuse.

For the purpose of appreciating the need to submit a draft legislation, which has consistently been recommended by the TCE report both in the review as well as in the final version, and which is in addition to the reasons as already stated hereinabove, it is necessary that the background to the legislation and the foundation upon which this need is based is discussed briefly. Therefore, this report would briefly dwell on the Uttar Pradesh Road Development Policy 1998; the Draft of the revised UP Road Policy10; the Inter-agency Working Group (WG) study11 to facilitate GoUP decisions, legislation and other actions on an effective long-term 'ownership' and funding framework for 'non-core UP roads, addressing sustainable devolution of 'village roads' and orphan roads responsibilities and Gang Labour management; Uttar Pradesh Road Development Policy 2008, before reviewing the existing legislations operating in the State of

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10 Report No. 8
11 Report No. 3
Uttar Pradesh in the Road Sector. Thereafter the need for a new legislation for road sector of UP would be discussed. The Draft of the proposed new legislation tentatively named as UP Roads (Development, Management and Maintenance) Act, 2008 would be prepared.

The Terms of Reference applicable to Report 26 of the TA Institutional Development & Strengthening Plan [IDSP] as approved by the GoUP.

### INSTITUTIONAL DEVELOPMENT & STRENGTHENING PLAN [IDSP]

<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>DECISIONS ALREADY TAKEN</th>
<th>PROGRESS TO DATE</th>
<th>ACTION MILESTONES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1C. Modernised UP roads management legislation</td>
<td>Post-IDS endorsement of PWD role in road network management.</td>
<td>Post-IDS consensus on limits to GOUP 'ROW management' powers and responsibilities. GOUP approval to review of UP roads legislation</td>
<td>1. Initiate comprehensive review of UP roads management legislation, including sector and enter-departmental consultations - May 2003 2. Submit draft legislation and associated recommendations to GOUP - November 2003</td>
</tr>
</tbody>
</table>

This report is in sections as described below:

**Section 2:** Uttar Pradesh Road Development Policy 1998

**Section 3:** Report No. 8: Draft of the revised UP Road Policy

**Section 4:** Report No. 3: Inter-agency Working Group (WG) study to facilitate GOUP decisions, legislation and other actions on an effective long-term 'ownership' and funding framework for 'non-core UP roads, addressing sustainable devolution of 'village roads' and orphan roads responsibilities and Gang Labour management

**Section 5:** Uttar Pradesh Road Development Policy 2008

**Section 6:** Review of existing legislations

**Section 7:** Need for a new legislation for road sector of UP

**Section 8:** Draft of *UP Roads (Development, Management and Maintenance) Act, 2008* (as Annexure A)

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12 Subject to the various motions that a legislation is bound to go through before the same is made law, including that before the Legislative Assembly.

2. **U.P. ROAD DEVELOPMENT POLICY 1998**

The U.P. Road Development Policy 1998 adequately articulates the requisites for the all-round development of the state namely being the availability of infrastructural facilities and their constant upgradation which in the present case is referred to as the existence of a proper Road network an essential component of infrastructure.

It is now accepted that the absence of an adequate road network severely handicaps the movement of goods both inter and intra state.

This policy of 1998 was alert to the wide railway network in the State, but it was also noted that, that by itself cannot handle movement of goods beyond the railheads for which a good road network is required for the same to be undertaken by road transport.

The need to further develop and modernise the road network by widening and strengthening the existing roads and by constructing new roads, especially in the rural areas in a planned manner was recorded in the said Policy of 1998. This policy recognized the need for speedy construction of rural roads in the remaining villages that remained unconnected and modernization of the existing roads.

It was observed that there was no well-defined road policy of the state laying down the strategies to be adopted for the development of roads prior to this one. Though there were certain policies formulated by the Government of India such as the recommendations of Jayakar Committee (1927) to the effect that planned development of roads should be an essential objective; thereafter the Nagpur Road Development Plan of 1943 slated to be implemented during the following 20 years, which for the first time categorised roads as National Highways, State Highways, Major District Roads, Other District Roads and Village Roads. National Highways, State Highways. MDRs were considered as part of main arterial road network and ODRs and Village Roads were considered as feeder roads of the main road network. Thereafter came the, Bombay Plan in the year 1961 valid for 20 years (1961-81) on similar Lines as the Nagpur Plan.

Though efforts were made in the past to develop roads in accordance with the targets fixed under various schemes and programmes. To fulfil this objective, and keeping in view the need for an all round development of the State Government the Road Development Policy of 1998 was formulated.

The avowed objectives of the said policy were spelled out and the same are culled herein below for the sake of immediate reference.

1. To keep the roads free of potholes and patches all the time by continuously maintaining and repairing them.
2. To construct village roads under the minimum needs programme.
3. The maintain and modernise National Highways, State Highways, Major District Roads, Other District Roads and Village Roads in the state.
4. To construct and reconstruct bridges, Rail Overhead/Under Bridges and flyovers in the state.
5. To construct byepasses, ring roads and expressways in the state.
6. To develop urban roads.
7. To arrange financial resources for the road development works.
8. To promote participation of the private sector in road development projects.
9. To ensure quality in construction and maintenance of roads.
10. To ensure financial discipline, delivery and dovetailing in the road construction work.
11. To check ribbon development, encroachments and to ensure road safety.
12. To bring about organisational and procedural improvements in the Public Works Department.
13. To conserve environment.

In Report No. 10\textsuperscript{4} a review has been given for each statement mentioned in 1998 policy document of which the achievements till date has been detailed.

Based on discussions with PWD, it has been noted that no funds have been arranged through domestic market borrowings.

1. As part of the Road Policy a private sector participation was envisaged for the construction of roads and bridges for which they would be allowed to collect toll to recover the cost of the project and a reasonable return on investment on a BOT project format.

2. For the purpose of maintaining quality control in construction and maintenance works it was decided that the P.W.D would be the nodal department for all the work related to roads in the state. Construction of roads will be the responsibility of only Public Works Department and Rural Engineering Department. The P.W.D. specifications will be adopted for the construction works and further they will be entrusted with the work of maintenance of all the roads in the State. The Research Institute in the Public Works Department will be strengthened and this Institute will enter into a Memorandum of Understanding with the Central Road Research Institute. New Delhi to work more effectively to achieve the desired level of quality. Therefore, what it amply clear from the Road Policy of 1998 was the primacy given to the PWD in the road sector for almost all purposes of construction and maintenance works.

3. Another important aspect was with respect to the safety of traffic for which it is essential to check ribbon development and encroachments on the roads. The U.P. Roadside Land Control Premises Eviction Act and U.P. Urban Development (Amendment) Act, 1997 was decided to be implemented more effectively for this purpose.

4. As far as organisational and procedural reforms, only one point needs to be mentioned here, is that there was thinking at that point in time that the U.P. State Bridge Corporation will be the nodal agency for construction of projects under the Build-operate Transfer System. However, the same seems to have now undergone a change and the same is now to be read as PWD.

\textsuperscript{4} Review Report on implementation of GoUP decisions on statutory, managerial, and funding measures.
3. REPORT NO. 8: DRAFT OF THE REVISED UP ROAD POLICY

The UP Road Policy of 1998 was reviewed and areas which needed attention were identified keeping in view the draft National Road Transport Policy, and some of the state road policies. The updated road policy aims to facilitate an efficient road transport system, which is safe and meets the aspirations of citizens for improving the travel needs and quality and also aims to integrate transportation demands of other sectors.

In the need for Policy update it was recorded that the UP PWD had taken some major initiatives such as the following:

1. Establishment of the UP State Highway Authority under UP Act No. 19 of 2004
2. Establishment of Road Fund in 1998 (Annual Collection 2004-05 – Rs. 3500 mill)
3. Engaging private consultants in design, construction and supervision (UP State Road Project)
4. Introduction of toll roads / bridges on BOT basis
5. Ensuring sustainable fiscal framework by leveraging funds from external agencies such as NABARD, World Bank and other agencies
6. UPSRP and PMGSY programmes

Therefore there was a felt need to update the Road Policy in line with the initiatives outlined and to set the policy framework within which they were to function, resulting in the said report.

The proposed UP Road Policy was an updated version of the previous one, concentrating more on the weaknesses of the earlier policy, covering entire range of stakeholders and taking into account the recent developments in the transport sector to deliver quality and efficient road network for the travel needs of the people of Uttar Pradesh.

It set out the guidelines for decision-making by the various agencies involved in road transport sector including, inter alia, its implementation and management. Further the requirement to address a number of issues spelled out was also recorded.

The policy also considered the way in which the PWD can translate the Policy Framework into their Business Plan.

In future the preparation of the Policy Framework would, in the first place, be the concern of the Policy and Planning Unit. They would present their findings to the senior officers (Director General and Additional Director Generals) of the PWD for consideration and subsequent endorsement.

Following approval of the policy framework the Policy and Planning Unit could prepare a Business Plan for the PWD. This would be an Annual Business Plan updated at the end of each year when achievements would be set against the targets set at the beginning of the year.
The Business Plan should then form part of the Annual Report published by the PWD and made available to all. It should describe the work carried out and achievements and set out the plan for the following year.

**Figure 1: Translation of Policy Framework into Business Plan**

![Diagram](image)

The Policy Statements and commitment for achieving objectives to guide the PWD in the preparation of its short, medium and long term business plans as detailed herein below are of value and the same would also be reflected in the proposed new legislation of the Roads’ development, management and maintenance.

- a) Road Network Planning
- b) Road Development, Maintenance and Management Functions:
- c) Business Planning and Funding:
- d) Capacity Building Measures: Road Administration Organization and management
- e) Mitigate Environmental and Social Impacts.

This report recorded that 'an Inter-agency Working Group Study\(^{15}\) was established by GoUP dated 9\(^{th}\) April 2002 to facilitate GoUP decisions, legislation and other actions on an effective long-term ownership and funding framework for 'non-core' roads, addressing sustainable devolution of 'Village Roads' and 'Orphan Roads' responsibilities and gang labour management. However it recorded that it was not clear if the Working Group met, and in any event no report was ever published'.

In the absence of that Working Group Report, Report No.3 set out some of the issues involved with respect to facilitating "GoUP Decisions, Legislation and Other Actions on an effective Long-Term 'Ownership' and Funding Framework for 'Non-Core' UP Roads, addressing Sustainable Devolution of 'Village Roads' and 'Orphan Roads' Responsibilities, and Gang Labour Management".

Portions of the said report that should be recalled here include the agencies involved in road construction and maintenance. It is found that other than the PWD, several other departments are also engaged in the construction of roads within the State under different schemes launched by the State Government/Government of India. The other agencies involved in road construction (other than the UP PWD) are Rural Engineering Services (RES) that undertakes rural road construction, however they do not maintain any roads, not even what they build for the reason that they are short of funds. The exception being that maintenance is undertaken when funds are made available under PMGSY for a period of 5 years following the construction, as in this includes a maintenance guarantee.

The Rural Engineering Services (RES) was created as a Department by GoUP in 1972 to augment and execute rural construction works in UP. It is administratively under the Ministry of Rural Development. It does not have a budget of its own and undertakes works for different government agencies as 'deposit works'. Roads are constructed under different schemes like (RAGP). From the year 1980-1987 road construction was done under National Rural Employment Programme (NREP), Rural Landless Employment Generation Programme (RLEGP) and flood relief. From 1987 onwards roads were constructed under local development schemes like Purvanchal Vikas Nidhi and Bundhelkhand Vikas Nidhi. Under Pradhan Mantri Gram Sadak Yojana (PMGSY) scheme and Vidhayak Nidhi road construction was started from the year 2000.

\(^{15}\) In April 2002, a Government Order (GO) 856/23/12/02-10GI/96TC-3, established the Inter Agency Working Group to examine the issues of the ownership and maintenance of Village Roads (VR) and Other District Roads (ODR) constructed by other Departments in the State of Uttar Pradesh. These roads are not only constructed by Public Works Department (PWD) but also by other departmental agencies like Rural Engineering Services (RES), Mandi Parishad and DRDA. The Inter Agency Working Group was to submit a Report to the Government at the end of four months which would address the above issues and formulate a work plan for the same. As far as could be ascertained no such report was ever written.
There are many other agencies termed as Secondary Road Sector Agencies in UP involved in road construction but whose objectives vary and which include Urban Development Authorities and Nagar Nigams.

The urban development authorities of towns undertake various developmental works. The provision of urban infrastructure in these towns is the responsibility of these authorities and it includes planning and development of the road network. Therefore, construction of new roads and maintenance of the existing roads forms part of their responsibilities.

The Mandi Parishad was established in 1964. A Mandi Samiti is constituted for a group of villages and is headed by the District Magistrate who submits development proposals to the Mandi Parishad/Board. Depending on the money earned by the individual Mandi (agricultural markets) the projects are sanctioned after selection by a Committee.

The main activity of Mandi Parishad is construction and development, besides the operation and management, of the said agricultural markets or Mandis. This is achieved by constructing Mandis where required and, in some cases, constructing link roads from villages to these Mandis. In an attempt to ensure better rural connectivity to the Mandis, so that farm produce reaches the collection centres faster and so that farmers get the right price for their produce, State agricultural produce marketing committees (Mandi Parishad) are also involved in road construction.

The Mandi Parishad does not receive any financial assistance from the Government and operates on the collection of Mandi tax on the sale of agricultural produce in the markets. The Mandi tax levied is 2.5% on the sale value of the agricultural produce out of which 0.5% is Development Cess.

The road construction activities of the Mandis are funded by the revenue collected through sale of the agricultural produce at their marketing centres. From 2001 to 2006, 5,513 km of roads have been constructed by the Mandi Parishad. No information could be made available prior to 2001.

Mandi Parishads claim that they own the roads and are responsible for their maintenance. Thus, these roads are not orphan roads.

The Uttar Pradesh Awas Vikas Parishad works only in urban areas. They usually construct roads for linking colonies to the main roads. After construction they transfer same to the concerned local body like Nagar Nigam, Nagar Palika and Nagar Panchayat after approximately a third of the property has been sold off.

The local body then maintains the roads transferred to them. However, severe resource constraints facing the municipal agencies often force the Government to direct the Housing Board to undertake maintenance of these roads. Such maintenance activities are through private contractors. Funds for maintenance and upkeep are often channelled from the money received by the housing board as royalty towards property development. The royalty component is 1% of the property registration fees.
The Other Department Roads include Zila Parishad (Zila Panchayat), Village Panchayats (Village elected Committees), Municipal Authorities, Forest, and Irrigation Departments, Military Engineering Services (Border Roads), Cane Development Department and Railway Department.

Presently the Local Development Authority roads are not funded from PWD budget. If PWD were to undertake works and services of any kind on these roads the costs incurred would be charged to the Authority concerned.

Further Forest Department roads are constructed primarily for the purposes of creating and maintaining “managed forests” and their “command area” equipped with the means of irrigating the area concerned. There is a reasonable case made out to with respect to the ownership of the Forest Department roads to remain the responsibility of the Forest Departments in respect of both funding and maintenance. This is because though there might be a small element of public roads but access to the general public would not apply. The main access and use of these roads would be by the Department concerned and other users, authorized by the department. If and when there is a change in the nature of the road usage i.e., the same is made partly or totally open to the public, in that event there must be a provision for the said road to devolve upon the care of the PWD in terms of further maintaining it thereafter.

The Border Roads Organization also constructs and maintains roads, which are normally open to the public. The funds for border roads come from Central Government. There is no proposal to touch the jurisdiction of Border Roads Organization for two primary reasons, first that they constitute a miniscule portion of the entire road network, second, they are borne out of a completely different role. The history of this organization indicates the specialized purpose for which it was born. In fact portions of roads in the border areas that were hitherto under the jurisdiction of the PWD was placed under this organization.

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16 Role of the BRO (1) In peace
(a) Develop & Maintain The Operational Road Infrastructure Of General Staff In The Border Areas.
(b) Contribute To The Socio-Economic Development Of The Border States.

2. In war
(a) To Develop & Maintain Roads To Keep L Of C Through In Original Sectors And Re-Deployed Sectors.
(b) To Execute Addl Tasks As Laid Down By The Govt Contributing To The War Effort.

17 The early years post Independence saw India with a 15000 kilometers long border to be secured and a vast, remote and economically backward North and North Eastern Region, with an inadequate road communication network, to support its future development.

The 1950’s was one of consolidation and learning, politically and militarily. With the advent of the Five Year Plans from 1951, the Central and State Government stepped in. With the Constitution having declared road development as a State subject, the responsibility of road development continued in the North and North Eastern States to be entrusted to the PWD, even where defence strategy was involved.

However, what become apparently clear was that, the roads for the Border States were forbidding challenges, needing dedicated commitment, time and money, to open up the hinterland to the out side world, through a network of roads and air strips, as a committed National effort.

It was, therefore, in 1960, that the need for a single executive body for road development in the remote North and North Eastern Regions of the country was strongly felt. Thus, on 29 Mar 60, the Border Roads Development Board, as an inter-ministerial body was set up, under the Chairmanship of the then Prime Minister, Late Pandit Jawaharlal Nehru, to co-ordinate an economically viable Plan, for the expeditious execution of roads and other development projects, aimed at primarily enhancing the defence potential and at the same time accelerating the economic development of the North and North Eastern Border States.

Under the inspired leadership, visionary zeal, far sightedness and personal involvement of Late Pandit Jawaharlal Nehru was born the Border Roads Organisation (BRO) on 07 May 60, as a road construction executive force, partly integral to and in support of the Army and primarily conceived to meet its strategic requirements. (Source: http://bro.nic.in/about.asp).
Further Roads constructed by the Cane Development Department are for the use of that organisation to facilitate efficient transportation of sugarcane produce to sugarcane factories and their marketing yards. As the road owners concerned are commercial entities, and the roads are designed to provide access between crop land and processing plant for cane development and between station, engine shed, signal boxes etc (for railways), it is unlikely that the general public would use such roads on a regular basis. There is no proposal to burden this category of roads with the PWD as the roads constructed by this Department are owned by them. However, it is noted with interest that the budget for the construction of these roads comes from two sources, that is, 50% from government sponsored schemes and 50% from beneficiaries (Sugar Mills, Cane Growers and Cane Development Council). Therefore, really there is no reasonable case to burden the PWD with the entire cost.

It is also recorded that the roads constructed under these schemes are not maintained due to paucity of funds and sometimes they are reconstructed after 5 to 7 years. Since these roads are benefiting only a particular sector namely Sugar Mills, Cane Growers and Cane Development Council it is only appropriate that they are encouraged to meet their responsibilities.

The Uttar Pradesh State Bridge Corporation (UPSBC) was formed in the year 1973, with the prime objective of constructing bridges and other civil works. After a road or a bridge has been constructed the ownership is transferred to the PWD. UPSBC is not engaged in any maintenance activity.

Data regarding the ownership and maintenance of roads by other agencies was obtained from various sources for compiling report no.3, such as Institutional Development Study Review Report (by TCE), and GoUP website (http://upgov.up.nic.in/engspatrika/zspmenu.asp). But it was observed that data from these sources was at variance with each other. Therefore, it was concluded that it was difficult to arrive at a reliable data regarding the ownership and maintenance of roads by other agencies. The only definite information in this regard was from the RES, who construct roads and are able to give the total length constructed by them. It is also certain that RES does not own or maintain any road. Thus the roads they construct are truly orphan roads.

On of the objective of this Report was to suggest a definition of core and non-core road network, as there were previous attempts to define core road network. Therefore as a part of Report No. 3, the core road network was defined as the total length of State Highways (SH), Major District Roads (MDR) and Other District Roads (ODR). The total amounts to some 45,000 kms. It was appreciated that for various reasons, political, economic, military, and other, some of these roads would be more vital that others. By inference, the non-core road network are those roads not included in the core road network i.e. the village roads.
5. **U.P. ROAD DEVELOPMENT POLICY 2008**

The Mission Statement\(^{18}\) of the U.P. Road Development Policy 2008, should form the preamble of the legislation that intends to manage the road network in U.P. while the policy itself should form the background.

There are certain Objectives and Benefits of the stated policy and necessarily the same would also constitute the objects and reasons for proposing a new legislation by the name of U.P. Roads (Development, Management and Maintenance) Act, 2008, when there are other Statutes operating in the Road sector for the State of Uttar Pradesh. The proposed legislation must have to answer why the same is required at all, when the stated objectives were in any case hitherto achieved by the PWD. The answer to the same are found in the findings of the Policy Support and Institutional Development study in 2000-2002 carried out by the Tata Consulting Engineers (TCE) and which was subsequently endorsed and included in the present contract with the Government of Uttar Pradesh and further based upon the mandate in the Description of Services Technical Assistance for Implementation of Institutional Reforms in State Road Sector of Uttar Pradesh where in it was specifically stated that, **“the TA services will be expected to build directly on the achievements and outputs of the 2000/2001 Institutional Development Study”**\(^{19}\). Further, this aspect has also been dealt with in Chapter 7 dealing with ‘the need for a new legislation for road sector of UP’.

Objectives and Benefits of the stated U.P. Road Development Policy 2008 are as follows;

1. Lower transportation costs to increase competitiveness of trade sectors
2. Better connectivity of villages to the market centres and higher category of roads
3. Improved access to urban industrial consumption centres leading to increase in agriculture sector productivity and in rural income
4. Better integration of markets resulting in greater economic activity and employment opportunity
5. Value for money of public investment in the sector
6. Modernization of construction industry due to high standard civil works and maintenance contracts
7. Streamlined process and improved infrastructure will reduce delays and increase efficiency of road traffic operation
8. Reduction in traffic accidents fatalities and injuries

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\(^{18}\) Provide a high quality and efficient road transportation system (through adequate design, proper construction, and effective maintenance and management) to ensure a smooth, safe and uninterrupted / rapid flow of goods and passenger traffic both within the state and on the inter-state routes at all times for the benefit of road users, farmers, transporters, and other goods and service providers, through public and / or private investment.

\(^{19}\) Internal page 4; paragraph 4.1 Description of Services Technical Assistance for Implementation of Institutional Reforms in State Road Sector of Uttar Pradesh
6. REVIEW OF EXISTING LEGISLATIONS

Legislations as applicable in the road sector of Uttar Pradesh are reviewed in this section, bearing in mind their objective and applicability. The State legislation is reviewed before the Central legislation.

6.1 U.P. STATE HIGHWAYS AUTHORITY ACT, 2004

This Act is deemed to have come into force on June 21, 2004 although the same was passed by the Uttar Pradesh Legislature and assented to by the Governor on August 12, 2004.

The Preamble of the Act lays down that it is a law 'to provide for the constitution of a State Authority for the Development, maintenance and management of State Highways and for matters connected therewith or incidental thereto.'

The Statement of Objects and Reasons states that this law is enacted with a view towards motivating advancement and strengthening of the State Highways. It was decided to make a law to provide for the establishment of the Uttar Pradesh State Highways Authority on the lines to the National Highways Authority of India Act, 1988 (Act no. 68 of 1988). The main functions of the Authority would be to develop, maintain and manage the State Highways and any other highways vested in, or entrusted to, it by the State Government. The Authority should consist of the Governing Council which will be the highest policy making body of the said Authority. There should be an executive committee to assist the Governing Council in discharging the functions of the Authority.

This Act is exactly on the lines of the National Highways Authority of India Act, 1988, and the endeavour of the State seems to be to replicate the success of the National Highways Authority of India with respect to different stretches of State highways entrusted to it.

The Functions of the Authority\(^\text{21}\) are

- To Develop, Maintain and Manage the state highways and any other highways vested in, or entrusted to it, by the State Government. Required to carry out the following functions in relation thereto:
  - Prepare immediate and long-term plans for the maintenance and upgradation of the State Highways that are entrusted to it;
  - Develop a scientific Pavement Management System for systematizing the maintenance operations
  - Lay down the standards for design and construction of state highways;
  - Develop models for bringing in private and institutional, including international funding into the road sector.
  - Develop methods of performance based maintenance systems for maintenance of the state highways by quality private contractors;

\(^{20}\) State Government Notification issued on August 13, 2004; No. 1228 (2) / VII - V - 1 - 1 (ka) 17 - 2004

\(^{21}\) Section 19
Raise institutional resources for undertaking the maintenance and upgradation of these highways;

Maintain and Upgrade the highways as per approved plan while encouraging private partnership and resources for these purposes;

Regulate and Control and the plying of Vehicles on the highways vested in, or entrusted to, it for the proper management thereof;

Develop and Provide Consultancy and Construction Services in the State

Carry on Research Activities in relation to the development, maintenance and management of highways or any facilities there at;

Provide such facilities and amenities for the users of the highways vested in, or entrusted to it as necessary for the convenience and smooth flow of traffic on such highways;

Form one or more companies under the Companies Act, 1956 (Act no. 1 of 1956) to further the efficient discharge of the functions imposed on it by this Act;

Engage, or entrust any of its functions to, any person on such terms and conditions as may be prescribed;

Advise the State Government on matters relating to State Highways;

Collect Fees on behalf of the State Government on such terms and conditions as may be specified by the State Government;

POLICY MAKING BODY / GOVERNING BODY

To achieve these Functions the Authority has been established as a Body Corporate with a Governing Council as the highest policy making body of the Authority that is chaired by the Chief Minister of the State. The other members of the Council are

<table>
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<tr>
<th>Chief Minister</th>
<th>Chairperson</th>
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<tbody>
<tr>
<td>(a) Minister, Public Works Department, Uttar Pradesh</td>
<td>Vice-Chairperson</td>
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<tr>
<td>(b) Minister, Finance, Uttar Pradesh</td>
<td>Member</td>
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<tr>
<td>(c) Minister, Planning, Uttar Pradesh</td>
<td>Member</td>
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<tr>
<td>(d) Chief Secretary, Uttar Pradesh</td>
<td>Member</td>
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<td>(e) Principal Secretary, Finance, Uttar Pradesh</td>
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<td>(f) Principal Secretary, Planning, Uttar Pradesh</td>
<td>Member</td>
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<tr>
<td>(g) Principal Secretary, Public Works Department, Uttar Pradesh</td>
<td>Member</td>
</tr>
<tr>
<td>(h) Engineer-in-Chief, Public Works Department, Uttar Pradesh</td>
<td>Member</td>
</tr>
<tr>
<td>(i) Two experts to be nominated by the Governing Council</td>
<td>Expert Members</td>
</tr>
<tr>
<td>(j) The Chief Executive Officer of the Authority</td>
<td>Member Convener</td>
</tr>
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</table>

It is worth noting that all members of the Governing Council, other than expert-members, shall be ex-officio members. This high-powered Governing Council is the new and distinguishing feature.
setting it apart from the NHAI Act, 1988. This top heavy governing council may perhaps have resulted in the UPSHA not having taken off even after having been set up more than four years ago.

ADMINISTRATION

For the purpose of actually carrying out the functions of the Authority on a day-to-day basis there is the provision of an Executive Committee\textsuperscript{24} headed by the Chief-Executive Officer. The Committee shall report to the Governing Council.

The Executive Committee\textsuperscript{25} shall consist of:

- Chief-Executive Officer
- Member (Finance)
- Member (Technical)
- Member (Administration)
- Chairperson
- Member
- Member
- Member

It is of import to note that there is a provision for the delegation of powers\textsuperscript{26} of the Governing Council of certain powers deemed necessary, and this ensures the smooth administrative functioning of the Authority. There are however, certain functions that cannot be delegated, which include long term borrowing, appointment of officers and framing regulations\textsuperscript{27}.

a. to borrow long term funds from the market or financial institutions. This will not include arranging short-term funds and overdraft to meet the working capital requirements.

b. to appoint officers or employees whose basic pay exceeds a sum as prescribed in rules;

c. framing regulations for the working of the authority and, if required, amendments thereto.

d. any other matter, as may be prescribed.

Land Acquisition Act, 1894 applies for all cases of land acquisition for the Authority discharging functions under this Act\textsuperscript{28}.
FINANCE

The State Government would provide the capital required by the Authority. The Authority may receive the same as loans or grants as deemed fit by the State Government. A fund called the Uttar Pradesh State Highways Authority Fund would be created and amounts received whether as grant or aid, or loan or any borrowings made by it or any other sums received would be credited therein.

RULE MAKING POWER

The State Government has power to make rules for carrying out the purposes of the Act. The rules are meant to provide for the following:

(1) There shall be constituted a fund to be called the Uttar Pradesh State Highways Authority Fund and there shall be credited thereto;
   (a) any grant or aid received by the Authority;
   (b) any loan taken by the Authority or any borrowings made by it;
   (c) any other sums received by the Authority.

(2) The fund shall be utilized for meeting-
   (a) expenses of the Authority in the discharges of its functions having regard to the purposes for which such grants, loans or borrowings are received and for matters connected therewith or incidental thereto;
   (b) salary, allowances other remuneration and facilities provided to the members, officers and other employees of the Authority;
   (c) expenses on objects and for purposes authorized by this Act.
      (a) the terms of office and other conditions of service of the expert-members of the Governing Council Chief-Executive Officer and Member (Technical), Member (Finance and Member (Administration);
      (b) the powers and duties of the chairperson, Chief Executive Officer and other members of the Committee;
      (c) the terms and conditions subject to which the non recurring expenditure incurred by or for the State Government for or in connection with the purposes of any State highway shall be treated as capital provided by the State Government to the Authority under clause (b) of sub-section (1) of section;
      (d) the basic salary under clause (b) of section 28;
      (e) the terms and conditions subject to which the functions of the Authority may be entrusted to any person under clause (f) or sub-section (2) of section 19;
(f) the form in which and the time within which the Authority shall prepare its budget under section 22 and its annual report under section 25;

(g) the manner in which the Authority may invest its funds under section 23;

(h) the manner in which the accounts of the Authority shall be maintained and audited and the date before which the audited copy of the account together with the auditor's report thereon shall be furnished to the State Government under section 26;

(i) the conditions and restrictions with respect to the exercise of the power to enter under section 33;

(j) any other matter which is required to be, or may be prescribed.

In addition the Authority has the power to make regulations. The regulations at places seem similar to the Rule making power of the State Government, however, the essential difference lies in that this provision empowers the Authority to make the required regulations for its smooth functioning without the requirement of the State Government to exercise its authority for every matter.

The residual power to remove difficulties under the Act remains with the State Government.

(1) If any difficulty arises in giving effect to the provisions of this Act, the State Government, may by notification in the Gazette, make such order not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for the removal of the difficulty:

Provided that no such order shall be made after the expiration of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Legislature.
6.2 THE UTTAR PRADESH ROADSIDE LAND CONTROL ACT, 1945

The purpose of the Act is to exercise necessary control over the areas adjacent to main roads, except cantonment areas; and further to regulate the use of land for brick-fields and kilns, which if left unregulated would result in the creation of breeding places for malaria carrying mosquitoes due to excavations in connection with brick-fields and also render future development of the land for building purposes impossible without expensive levelling operations. This is clear from the Statement of object and reasons, and the Preamble to the Act reflects the same. This is a pre-Constitution Act and the same was amended in the year 2000.

‘Road’ is defined in this Act to mean ‘a metalled road maintained by the State Government, the Government of India or a local authority, or a route demarcated by the State Government, the Government of India or a local authority with a view to constructing along it a metalled road, and includes a national highway’.

As is the scheme of the Act, the State Government has the power to declare any area as controlled area in terms of the purpose of the Act, i.e. to exercise necessary control over the areas adjacent to main roads. Further there are provisions for the manner of making declarations and any objections received with respect to the same from the general public who may be affected by it, very similar to the provisions of the Land Acquisition Act, 1894 as applied to cases of acquisitions.

33 Received the assent of the Governor of the United Provinces on December 13 1945 and was published in the United Provinces Gazette on December 13: 1945.

34 "(1) There is a growing tendency to extend building along road round towns with the consequence that congestion on such road has become acute. Roads intended to enable thorough traffic to by-pass centres of dense population themselves become too crowded. Extra-Municipal areas adjoining main roads have obvious attraction as building sites; the occupants of buildings in such areas can enjoy many of the amenities of town life without sharing the burden of Municipal taxation or being subject to the control required to ensure good sanitation and well ordered development........The problem of ‘ribbon development’ is becoming more serious day by day, and with the large programme of post-war improvement of road communication that is now contemplated it is desirable that the evil should be tackled without further delay.

(2) The Bill also includes provision for the regulation of excavation and approach roads and for the control, by means of licences, of the use of land for brick-fields and kilns. Unregulated excavations in connection with brick-fields not only result in the creation of breeding places for malaria carrying mosquitoes but also frequently render future development of the land for building purposes impossible without expensive levelling operations.

(3) This Bill enables the necessary control to be exercised over areas adjacent to main roads in the United Provinces, except cantonment areas. It has been modelled on the similar measure introduced in 194 in Delhi Province, which has so far worked smoothly". U, P. Gazette, dated 1st September, 1945, Part VII, p. 27.


36 Section 2(6)

37 Section 3 – Declaration of controlled area-(1) The State Government may, by notification in the Official Gazette, declare any land within a distance of four hundred and forty yards from the centre line of any road to be a controlled area for the purposes of this Act:
It is a requirement under this Act that plans showing all lands declared to be controlled areas for the purposes of this Act, and setting forth the nature of restrictions applicable to the land in any such controlled area are to be made available to the public for inspection free of charge at all reasonable times.\(^{38}\)

An amendment in the year 2000\(^{39}\), brought about certain Restriction on building etc. in a controlled area. The restriction had an overriding effect on other laws and barred any person from erecting any building or excavating in the controlled area or layout any means of access to a road in a controlled area without the previous written permission of the Collector\(^{40}\). In fact it is worthy to note that there is no provision for construction therefore the reading of the Section as ‘Restriction on building’ is a misnomer, and the same is very clear from a conjoint reading of Sub-sections (a) and (b) of Section 5. It is clear that permission, if any, can be granted only with respect to an activity contemplated under sub-Section (b), i.e. for the purpose of laying out any means of access to a road in a controlled area. This position is also supported by Section 6\(^{41}\), which deals with ‘Application for permission to build etc., and the grant or refusal of such permission’ and which refers only to applications with respect to ‘means of access’ not for the construction of any building.

There is provided a right of appeal under Section 7\(^{42}\) to the State Government, and the order of the State Government is final in this respect.

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\(^{38}\)Section 4 - Plans of controlled areas to be deposited at certain offices. -(I) The Collector shall deposit at his office and at such other places as he considers necessary, plans showing all lands declared to be controlled areas for the purposes of this Act, and setting forth the nature of restrictions applicable to the land in any such controlled area.

\(^{39}\)Section 5 was substituted by U. P. Act 15 of 2000, Sec. 2 (w.e.f. 1.3.2001), vide Noti. No. 355jXXVIII-2-2001-61-86, dated 1st March 2001, published in V. P. Gazette (Extra.), Part IV, Sec. (Kha), dated 1.3.2001.

\(^{40}\)Section 5-Restriction on building etc. in a controlled area- Notwithstanding anything contained in any other law for the time being in force, (a) no person shall erect or re-erect any building or make or extend any excavation in a controlled area; and (b) no person shall, except with the previous permission of the Collector in writing, layout any means of access to a road in a controlled area.

\(^{41}\)Section 6 - Application for permission to build etc., and the grant or refusal of such permission-(I) Every person desiring to obtain the permission referred to in Section 5 shall make an application in writing to the Collector in such form and containing such information in respect of the 41\[* * *"] means of access to which the application relates as may be prescribed.

(2) On receipt of such application the Collector after making such enquiry as he considers necessary, shall by order in writing, either (a) grant the permission, subject to such conditions, if any, as may be specified in the order; or (b) refuse to grant such permission.

(3) When the Collector grants permission subject to conditions under clause (a) of sub-section (2) or refuses to grant permission under clause (b) of sub-section (2), the conditions imposed or the grounds of refusal shall be such as are reasonable having regard to the circumstances of each case.

\(^{42}\)Section 7 - Right of appeal- (I) Any person aggrieved by an order of the Collector under sub-section (2) of Section 6 granting permission subject to conditions refusing permission may within thirty days from the date of such order prefer an appeal to the State Government.
There is also provision for compensation under Section 8, but the claimant would have to make out a case that 'his interest in any land is injuriously affected' not that he has suffered 'any injury, damage or loss'.

It is worth noting that in case of Compulsory acquisition by the State Government under the Land Acquisition Act, 1894, then even proceedings under Section 5A of the Land Acquisition Act, 1894 dealing with the hearing of objections would not be required.

There are penalties for the contravention of Section 5, 6, 7 and 12 (1) with a fine of Rs.500/- in the first case and if the same is a continuing offence then at the rate of Rs.500/- for each

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43 Subs. by U. P. Act 15 of2000, Sec. 4 (w.e.f. 1.3.2001)

Section 8 - Compensation- [(1) Except as provided in sub-section (2), no person shall be entitled to claim compensation under this or any other Act, for any injury, damage or loss caused or alleged to have been caused,
(a) as a result of the restriction imposed by clause (a) of Section 5, or
(b) by an order refusing permission to layout a means of access to a road or granting such permission but imposing conditions on the grant.
(2) Any person may make to the State Government a claim for compensation on the ground that his interest in any land is injuriously affected,
(a) in a case referred to in clause (a) of sub-section (1), within one year from the date of declaration of the controlled area;
(b) in a case referred to in clause (b) of sub-section (1) within three months from the date of the order of the State Government under Section 7 where an order refusing permission to layout any means of access to a road has been made and the right of appeal under Section 7 has been exercised.]

(3) On receipt of a claim under sub-section (2) the State Government shall either proceed to acquire the land concerned under the Land Acquisition Act, 1894, or transfer the claim for disposal to an officer exercising the powers of a Collector under the said Act:
Provided that in case the State Government decides to acquire the land, (i) it shall not be necessary for land occupied by a place of worship, tomb, cenotaph, graveyard, grave or Marghat to be included, and (ii) the claimant shall be entitled to be repaid by the acquiring authority the amount of expense which he may have properly incurred in connexion with the preparation and submission of his claim for compensation under this section, and in default of agreement such an amount shall be determined by the authority deciding the value of the land in the proceedings under the Land Acquisition Act, 1894.

(4) Nothing in this section shall be deemed to preclude the settlement of a claim by mutual agreement.

44 Section 9 - Compulsory acquisition-If the State Government decides to acquire the land under the Land Acquisition Act, 1894, then notwithstanding anything contained in that Act,
(i) proceedings under Section 5-A of that Act shall not be required;
(ii) the notification under Section 6 of that Act shall be published within six months from the date of institution of the claim, failing which the claim shall be transferred for disposal to an officer exercising the powers of a Collector under that Act;
(iii) the market value of the land shall be assessed in accordance with the provisions of the Land Acquisition Act, 1894, which shall, for the purposes of this Act, be deemed to be modified as indicated in the Schedule annexed to this Act.

45 Section 5A - Land Acquisition Act, 1894 - Hearing of objections. (1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days from the date of the publication of the notification object to the acquisition of the land or of any land in the locality, as the case may be. (2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf] or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, make a report in respect of the land which has been notified under section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final. (3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.] Declaration of intended acquisition

46 Section 13 - Offence and penalties- (1) Any person who
(a) erects or re-erects any building or makes or extends any excavation or lays out any means of access to a road in contravention of the provisions of Section 5 or in contravention of any conditions imposed by an order under Section 6 or Section 7, or
(b) uses any land in contravention of the provisions of sub-section (1) of Section 12 shall be punishable with fine [which, on first conviction, may extend to] five hundred rupees, and in the case of a continuing contravention, with a further fine which may extend to [five hundred rupees for every day subject to a maximum of fifty thousand rupees] after the date of the first conviction during which he is proved to have persisted in the contravention.

(2) Without prejudice to the provisions of sub-section (1) the Collector may order any person who has committed a breach of the provisions of the said sub-section to restore to its original state or to bring into conformity with the conditions which have been violated, as the case may be, any building or land in respect of which a contravention, such as is described in the said sub-section.
succeeding day subject to a maximum of Rs. 50,000/-, and further the person contravening the provision may also be directed to restore the land to its original state, of course the same can only be levied after the same is proved in trial47.

There are certain exceptions48 to the applicability of this Act in the case such as, of erection or re-erection of buildings upon land included in the inhabited site of any village as entered and demarcated in the revenue records or upon sites in a municipal, notified, or town area that are already built up on the date of the issue of the notification under sub-section (2) of Section 3 of the Act, of the erection or re-erection of a place of worship or a tomb, cenotaph, grave, graveyard or Marghat or of a wall enclosing the said places or land which is, at the time a notification under sub-section (2) of Section 3 is published by the 49[State Government], occupied by or for the purposes of such place of worship, tomb, cenotaph, grave, graveyard, or Marghat, of excavations (including wells) made in the ordinary course of agricultural operations; and the construction of an unmetalled road intended to give access to land solely for agricultural purposes.

The State Government has the power to make rules50 to carry out the provisions of the Act, and in fact the said provision has been used to make the U. P. Roadside Land Control Rules, 1964 have been framed.

6.3 THE UTTAR PRADESH URBAN PLANNING AND DEVELOPMENT ACT, 1973

The purpose of examining the present Act is to ascertain whether this statute, which is essentially an urban planning and development law, governs the road sector in the State in any manner.

This Act applies to the whole of the State of Uttar Pradesh, excluding Cantonment areas and lands owned, requisitioned or taken on lease by the Central Government for the purpose of defence51.

Road is defined52 as an amenity in the said Act. The Act has a limited application to the Road sector in the State. Even in the definitions, development53 includes the construction of road, as well as development fee54 that can be levied for the same. The Act contemplates the setting up has been committed, and if such person fails to do so within three months of the order, may himself take such measures as may appear to him to be necessary to give effect to the order, and the cost of such measures shall be recoverable from such person as arrear of land revenue.

47 Section 14 - Trial of offences-No Court inferior to that of a Magistrate of the first class shall try any offence punishable under this Act.
48 Section 16 - Saving
49 Subs. by the A.O. 1950 for "Provincial Government".
50 Section 17 – Power to make rules.
51 Section 1 (2).
52 Section 2(a) - "amenity" includes road, water-supply, street lighting, drainage, sewerage, public works and such other convenience as the State Government may, by notification in the Gazette, specify to be an amenity for the purposes of this Act;
53 Section 1(e) - "development" with its grammatical variations, means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in any building or land, and includes re-development;
54 Section 1 (ggg) - "development fee" means the fee levied upon a person or body under Section 15 for construction of road, drain, sewer line, electric supply and water-supply lines in the development area by the Development Authority; (This was inserted by Section 2 of U.P. Act 3 of 1997.)
of a Development Authority, with a Chairman as the head, and the said authority shall be the Development Authority for the Notified Development Area. It is also contemplated that there be an advisory council to advise the Development Authority in the preparation of the master plan and for all other related matters with respect to planning and development. The avowed objects of the Development Authority are essentially to promote and secure the development of the notified development area and to maintain the services and amenities in the said area, which includes activities, related to roads.

What is of interest to note is that under this Act the State Government can compulsorily acquire land for the purpose of development under the Land Acquisition Act, 1894 and by a proviso to Section 17 of this Act, can hold on to the land for a period of five (5) years from the date of acquisition before the same can be claimed by the erstwhile owner to be restored, if the same was not utilised within the said period. No such provision for restoration of the land on expiry of

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55 Section 4 - The Development Authority – (1) The State Government may, by notification in the Gazette, constitute for the purposes of this Act, an Authority to be called the Development Authority for any development area.

(2) The Authority shall be a body corporate, by the name given to it in the said notification, having perpetual succession and a common seal with power to acquire, hold and dispose of property, both moveable and immovable and to contract and shall be the said name sue and be sued.

(3) The Authority in respect of a development area which includes the whole or any part of a city as defined in the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959, shall consist of the following members, namely:

(a) a Chairman to be appointed by the State Government

(b) a Vice-Chairman to be appointed by the State Government

(c) the Secretary to the State Government in charge of the department in which, for the time being, the business relating to the Development Authorities is transacted, ex-officio;

(d) the Secretary to the State Government, in charge of the Department of Finance, ex-officio;

(e) the Chief Town and Country Planner, Uttar Pradesh, ex-officio;

(f) The Managing Director of the Jal Nigam, established under the Uttar Pradesh Water-Supply and Sewerage Act, 1975, ex-officio;

(g) the Mukhya Nagar Adhikari, ex-officio;

(h) the District Magistrate of every district any part of which is included in the development area, ex-officio;

(i) four Members to be elected by Sabhasads of the Nagar Mahapalika for the said city from amongst themselves.

Provided that any such member shall cases to hold office as such as soon he ceases to be Sabhasad of the Nagar Mahapalika

(j) such other members not exceeding three as may be nominated by the State Government

(4) The appointment of the Vice-Chairman shall be whole-time.

56 Section 3 - Declaration of Development Areas- If in the opinion of the State Government any area within the State requires to be developed according to plan it may, by notification in the Gazette, declare the area to be a development area.

57 Section 7 - Objects of the Authority -The objects of the Authority shall be to promote and secure the development of the development area according to plan and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with the supply of water and electricity, to dispose of sewage and to provide and maintain other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto:

Provided that save as provided in this Act nothing contained in this Act shall be construed as authorising the disregard by the Authority of any law for the time being in force.

58 Section 17. Compulsory acquisition of land – (1) If in the opinion of the State Government, any land is required for the purpose of development, or for any other purpose, under this Act, the State Government may acquire such land under the provisions of the Land Acquisition Act, 1894:

Provided that any person, from whom any land is so acquired, may after the expiration of a period of five years from the date of such acquisition apply to the State Government for restoration of that land to him on the ground that the land has not been utilised within the period for the purpose, for which it was acquired and if the State Government is satisfied to that effect it shall order restoration of the land to him on re-payment of the charges which were incurred in connection with the acquisition together with interest at the rate of twelve per cent per annum and such development charges, if any, as may have been incurred after acquisition.

(2) Where any land has been acquired by the State Government that Government may, after it has taken possession of the land transfer the land to the Authority or any local authority for the purpose for which the land has been acquired on payment by Authority or the local Authority of the compensation awarded under that Act and of the charges incurred by the Government in connection with the acquisition.
any period of time exists under the Land Acquisition Act, 1894. Restoration of land may occur under the Land Acquisition Act, 1894, under Part VI – Temporary Occupation of Land, but that it is not strictly acquisition of land as is understood. Only one another place, where the Land Acquisition Act, 1894 speaks of some kind of reversal of the land to the original owner is under Section 48 where ‘the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken’. Therefore, here also restoration occurs by default in the event of the Government withdrawing from the acquisition, rather than a right accruing to the erstwhile owner on the lapse of any defined period of time to enforce restoration of the land.

The applicability of this Act to the Road sector is very limited, nevertheless, since Development includes ‘roads’ within the ‘development area’ therefore, it would be necessary to be alert to this statute as well, so as to avoid any conflict with the proposed legislation relating to the roads sector for the State of Uttar Pradesh.

6.4 MOTOR VEHICLES ACT, 1988

The Motor Vehicles Act was reviewed, however, it was not found fit to write a report on the same. This is due to the reason, that though all activities as stipulated under the said Act relate to roads, but nevertheless the said Act is not a Road Act and has no relevance to the present study and the report required under the TA.

6.5 LAND ACQUISITION ACT, 1894

REQUIREMENT FOR LAND

The requirement for land for the purpose of development projects is of utmost importance. The ownership of such land may vest with the Government or any private person. For linear pattern projects such as the construction of roads, canals, pipelines, etc., strip land acquisition is required. In such cases the amount of land required at any one site may not be substantial but the extent of the spread is considerable. The land acquisition may be spread over administrative boundaries of different districts. This necessitates co-ordination between the concerned administrative units. It is observed that in most cases private people have encroached upon Government land.

Projects funded by multilateral funding agencies require that the loses that occur to the illegal occupants should also be considered. The purpose of such provision is to ensure that the people who are adversely affected by such projects are able to at least maintain the pre-project level of livelihood. This necessitates that the impacts of loss to all illegal occupants should be assessed and proper mitigation measures be prepared for these people. The illegal occupants are

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60 Section 48 - Land Acquisition Act, 1894 - Completion of acquisition not compulsory, but compensation to be awarded when not completed - (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings there under, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provision of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.
however, not eligible for compensation for the land but are eligible for loss of livelihood or loss of
residence. Those who illegally occupy the land before the project is planned are only eligible for
the compensation. The cut-off date is usually considered as the date of enumeration of these
occupants, conducted at the time of preparation of the project.

The review of this statute is undertaken despite there being in existence of a State Government
Order for land acquisition called as LA on mutual understanding, as per GO No. 1718/1-13-2001-
20(124)/2001-Sa-13, dated 29-9-2001, for the reason that the present act is the parent act, and
would operate in all cases for the purpose of land acquisition which may not be covered by the
said Government Notification, or there is no possibility of following the said Government Order,
especially in cases where there may be recalcitrant owners of land, who would not readily agree
to any compensation figure by mutual understanding, knowing very well that the said consent
would not be open to appeal for enhancement of the compensation. This Act also needs to be
reviewed for the reason that any future Government Notification would also be issued under the
provisions of this Act, and in any case not in disharmony with its provisions.

ACQUISITION OF PRIVATE LAND

Acquisition of the land in cases of legal private property holders would fall under the provisions of
the Land Acquisition Act, 1894. The Land Acquisition Act, 1894 is applicable to the whole of India
except for the state of Jammu & Kashmir. Under the provisions of this Act, the Government can
acquire land from the people for public purpose. The Act also states that all land and any other
property which is fixed on the private land would be considered for the purpose of acquisition.

PRELIMINARY NOTIFICATION FOR ACQUISITION & SURVEY OF LAND

Under the provisions of the Act the Government if interested to acquire any piece of land has to
begin with the publication of preliminary notification in the Official Gazette and two local
newspapers having circulation in the area, at least one of which shall be in the regional
language.

After publication of the Notification u/s 4(1) of the Act, the authorized officers by the
Government would be entitled to:

- Enter the land
- Dig or bore into the Soil
- Set out boundaries for Acquisition
- Take levels, mark boundaries and lines by placing marks and cutting trenches.

This is the initiation of the proceedings of acquisition under Section 461 of the said Act. The
authorized officers can thereafter enter the land to conduct preliminary survey, take and mark

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61 Section 4 - Land Acquisition Act, 1894 - Publication of preliminary notification and power of officers thereupon. -
(1) Whenever it appears to the [appropriate Government] the land in any locality [is needed or] is likely to be needed for any public
purpose [or for a company], a notification to that effect shall be published in the Official Gazette [and in two daily newspapers
circulating in that locality of which at least one shall be in the regional language], and the Collector shall cause public notice of the
substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the
giving of such public notice , being hereinafter referred to as the date of the publication of the notification)].
levels of the land to ascertain whether the land is actually fit to be acquired for the purpose of the proposed acquisition. The department would also be required to procure the Records of Revenue Department, village maps showing the particular plot, which needs to be acquired. Compensation for damage that may occur for the purpose of conducting the preliminary survey would be paid for by the authorized officer at the time of entry into the premises. In case of dispute regarding the compensation for the damage to the property during the preliminary survey the decision of the Collector shall be final and binding.

OBJECTION TO PRELIMINARY NOTIFICATION

On publication of the notification under Section 4(1) of the Act, any person who is interested in that land/property can file an objection under Section 5A(1) of the Act. The objection needs to be filed within 30 days of the publication of the notice under Section 4(1) of the Act before the Collector in writing. The objector can, either by person or by an authorized representative, plead before the Collector. On hearing the objection the Collector may make certain investigation as he may feel necessary and present the report under Section 5A(2) of the Land Acquisition Act, 1894 to the Government along with the record of the proceedings held by him.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workman, -

to enter upon and survey and take levels of any land in such locality;
to dig or bore into the sub-soil;
to do all other acts necessary to ascertain whether the land is adapted for such purpose;
to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;
to mark such levels, boundaries and line by placing marks and cutting trenches;
and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle;
Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days’ notice in writing of his intention to do so.

62 Section 5 - Payment for damage - The officer so authorized shall at the time of such entry pay or tender payment for all necessary damaged to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue officer of the district, and such decision shall be final.

63 Section 5A Hearing of objections - (1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, [within thirty days from the date of the publication of the notification], object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard [in person or by any person authorized by him in this behalf] or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, [either make a report in respect of the land which has been notified under section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government]. The decision of the [appropriate Government] on the objections shall be final.

(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

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FINALISATION OF LAND REQUIREMENT

The Government after considering the report of the Collector would take a further decision on the land, which would be required for the stated public purpose. The decision of the Government would be binding and final. Once the Government is satisfied regarding the requirement of the land it would issue a notification being a declaration of intended acquisition under Section 6(1) of Land Acquisition Act, 1894 in the Official Gazette intimating that the land would be required by the Government for public purpose. The notification has to be published in two locally circulated newspapers and at least one of them should be a regional newspaper. The Notification shall however be made under the Signature of the Secretary to the department or any other officer duly appointed by the government for the purpose. The total time taken from the time of the notification under Section 4 to the further declaration under Section 6 has to be within one year.

MEASUREMENT OF LAND

After the declaration under Section 6(1) of the Act, the authorized officer of the appropriate Government shall direct the Collector to take order for the acquisition of the land. The collector subsequently shall also get the land measured under Section 8 of the Act of 1894 unless it has already been done previously under Section 4 of the Act.

64 Declaration of intended acquisition 6. Declaration that land is required for a public purpose - (1) Subject to the provision of Part VII of this Act, [appropriate Government] is satisfied, after considering the report, if any, made under section 5A, sub-section (2)], that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders [and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1) irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2)];

[Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1)-

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), shall be made after the expiry of one year from the date of the publication of the notification:]

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

[Explanation 1. - In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2. - Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.]

(2) [Every declaration] shall be published in the Official Gazette [and in two daily newspapers circulating in the locality in which the land is situated of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state] the district or other territorial division in which the land is situated, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration, the [appropriate Government] may acquire the land in manner hereinafter appearing.

65 Section 7. After declaration, Collector to take order for acquisition. - Whenever any land shall have been so declared to be needed for public purpose, or for a Company, the [appropriate Government], or some officer authorized by the [appropriate Government] in this behalf, shall direct the Collector to take order for the acquisition of the land.

66 Section 8 – Land to be marked out, measured and planned – The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be market out. He shall also cause it to be measured, and (if no plan has been made thereof), a plan to be made of the same.
OBJECTIONS OR CLAIMS FOR COMPENSATION

On the completion of the measurement of the land the collector shall issue a public notice under Section 9(1) of the Act to be displayed at all convenient places on or near the land stating the government intends to take possession of the land and that claims to compensation and all other interest may be made to him. The notice shall site the particulars of the land being acquired. The Collector would also issue individual notices to all the interested persons or their authorized agents. In case when the person resides elsewhere and has no representative/agent in the revenue district the notice may be sent to his last known residence, address by registered post (under Sections 28 & 29 of the Indian Post Office Act, 1898).

The collector may also direct any person to deliver to him names of all persons who have interest in the land, co-proprietorship, mortgagee, tenant and nature of such interest and also rents and profits receivable from such property under Section 10 of the Act.

In case of grievance, the persons interested in the land can appear before the Collector at a stipulated time to state their interests and also the claims for compensation and all other interest.

AWARD OF COMPENSATION

The collector shall inquire into the objections in pursuant of the notices under Section 9 and the measurements made under Section 8 of the Act to make an award on the land under Section 11 of the Land Acquisition Act, 1894. For the purpose of the award of compensation, the Collector would take into consideration the

- True value of the land
- Compensation for the land
- The apportionment for the compensation

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67 Section 11 – Enquiry and award by Collector - [(1)] On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objection (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land [at the date of the publication of the notification under section 4, sub-section (1)], and into the respective interests of the persons claiming the compensation and shall make an award under his hand of-

(i) the true area of the land;
(ii) the compensation which in his opinion should be allowed for the land; and
(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

[Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

[(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act.]
The award of the compensation however shall be made only with the previous approval of the Department.

For the purpose of decision of the amount of compensation, the Collector shall take into consideration the following:

(i) The market value of the land at the date of publication of the notification u/s 4(1) of L.A Act. For determining the market value of the land the prices in the contemporary sale deeds of similar land should be considered. Factors like size, shape of land location and situation would also be determining factors. However, for determining the market value of large property on the basis of sale of a smaller property, a deduction should also be given.

(ii) The damage sustained to the standing crops.

(iii) The severance caused to the land at the rate of 5% of the total compensation payable to these claimants.

(iv) The loss of his earnings due to the acquisition of the movable or immovable property.

(v) The reasonable expenses incurred if the person is compelled to change his place of residence or business.

(vi) The damages the person incurs due to the diminution of the profits from the land between the time of the publication of the declaration under Section 6 of the Act and the possession of land.

The award of compensation under Section 11 of the Act shall be made within two years of the date of the publication of the declaration under Section 6(1) of the Act, otherwise the entire proceeding for the acquisition of the land would lapse68. Therefore, the total time taken from the date of the notification to the award is three (3) years, i.e. one (1) year to issue the declaration under Section 6 after the notification under Section 4, and thereafter two (2) years to make the award.

POSSESSION OF LAND

On award of compensation by the collector under Section 11 of the Act, the collector will take possession of the land. However, no time frame has been specified for the purpose. Thereafter, the land would vest with the Government and would be free of all encumbrances69.

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68 Section11A. Period within which an award shall be made - The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse:
Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the award shall be made within a period of two years from such commencement.
Explanation - In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

69 Section 16 Power to take possession - When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon [vest absolutely in the [Government]], free from all encumbrances.
PROVISION FOR EMERGENCY ACQUISITION

In case of emergency arising due to the sudden change in channel of any navigable river in which the department considers it necessary to acquire land immediately to maintain the services, the Collector may on expiration of 15 days after the publication of notice u/s 9(1) take possession of the land. Before taking possession of the land the Collector shall tender 80% of the compensation for such land as estimated by him to the persons interested\textsuperscript{70}.

The process of land acquisition under the provisions of the Land Acquisition Act, 1894 and the roles and responsibilities of the concerned department under the appropriate Government and the Collector are represented in Figure 2.

\textsuperscript{70} Section 17.
Figure 2: Process of Land Acquisition

**ACTIVITIES OF THE APPROPRIATE GOVERNMENT ACQUIRING LAND**

1. Preliminary notification in official gazette and local (Section 4) newspaper
2. Preliminary Survey of Land (Section 4)
3. Scrutiny of report of the Collector by the Government
4. Finalization of acquisition of land and issue of deduction by the Secretary to the Government any officer (Section 6) Authorized for the purpose

**ACTIVITIES OF THE DISTRICT COLLECTOR UNDER THE LAND ACQUISITION ACT. 1984**

1. Objections by Collector hearing of individual after notification (Section 5A)
2. Preparation of report by collector on the objections
3. Submission of report by collector containing his recommendation for discussion of the Government (Section 5A)
4. Declaration published in official gazette of local details
5. Measurement of land by a representative of the collector if land has not been measured during the preliminary surveys (Section 8)
6. Display of notification and serving of notice to individuals by collector (Section 9)
7. Claims by individuals on compensation to the Collector (Section 10)
8. Enquiry into the Claims of compensation by the Collector (if necessary) (Section 11)
9. Award of compensation by the Collector (Section 11A)
10. Possession of Land by Collector free of all encumbrances (Section 16)
11. Possession of Land by Government

The Government of the State of Uttar Pradesh issued a Government order dated September 29, 2001 for the purpose of Acquisition of Land based on negotiations or mutual understanding with the land owners.

This Government Order was purportedly issued in view of the extensive acquisitions of stretches of land by NOIDA, Greater NOIDA and the Development Authorities. It was often found that the compensation amount fixed under the Land Acquisition Act, 1894 was challenged before the courts for seeking enhanced compensation, which unnecessarily clogged up the judicial process and also delayed the acquisitions of the stretches of land. Further there were protests from the farmers and land owners with respect to the same, and therefore, with a view to avoid such protests as well as to acquire the land in a smooth, swift and efficient manner, it was decided by the State Government to issue the said Government Order to acquire land after arriving at a mutually agreeable price / compensation for the land. This process was also beneficial for the reason that the land owners having participated and consented to the fixation of the price/compensation for their land were thereafter barred from challenging the compensation amount before any Court for the enhancement of the same.

The said Government Order was issued in exercise of powers under Section 11 and Section 55 of the Land Acquisition Act, 1894. Section 11 deals with the powers of the Collector with respect to enquiry and award. Under sub-section (2) of Section 11 the Collector if satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement. While Section 55 deals with the Rule Making power of the appropriate Government.

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71 Section 11 Land Acquisition Act, 1894 - Enquiry and award by Collector. On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land at the date of the publication of the notification under section 4, sub-section (1)], and into the respective interests of the persons claiming the compensation and shall make an award under his hand of— (i) the true area of the land; (ii) the compensation which in his opinion should be allowed for the land; and (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him. Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf. Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

72 Section 55 Land Acquisition Act, 1894 - Power to make rules. The appropriate Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made: Provided that the power to make rules for carrying out the purposes of Part VII of this Act shall be exercisable by the Central Government and such rules may be made for the guidance of the State Governments and the officers of the Central Government and of the State Governments: Provided further that every such rule made by the Central Government shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or two or more successive sessions, and if 3[before the expiry of the session immediately following
6.7 NATIONAL HIGHWAY AUTHORITY OF INDIA ACT, 1988

The National Highways Authority of India was constituted by an act of Parliament, the National Highways Authority of India Act, 1988. It is responsible for the development, maintenance and management of National Highways entrusted to it and for matters connected or incidental thereto. The Authority was operationalised in February, 1995. The National Highways have a total length of 66,590 km to serve as the arterial network of the country. The development of National Highways is the responsibility of the Government of India.

The Preamble to the Act declares it to be an Act to provide for the constitution of an Authority for the development, maintenance and management of national highways and for matters connected therewith or incidental thereto.

The success of this organisation probably lies in the lean organisational structure:

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**ORGANISATIONAL STRUCTURE OF NHAI**

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The session or the successive sessions aforesaid) both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule; 4*[(Provided also that every such rule made by the State Government shall be laid, as soon as may be after it is made, before the State Legislature.) (2) The power to make, alter and add to rules under sub-section (1) shall be subject to the condition of the rules being made, altered or added to after previous publication. (3) All such rules, alterations and additions shall 5*** be published in the Official Gazette, and shall thereupon have the force of law. ------------------------------------------------- --------------------- 1

*The words "subject to the control of the G. G. in C." were rep. by Act 38 of 1920, s. 2 and Sch. I. 2 Ins. by Act 31 of 1962, s. 6. The former proviso was rep. by the A. O. 1937. 3 Subs. by Act 68 of 1984, s. 29. 4 Ins. by s. 29, ibid. 5 The words "when sanctioned by the G. G. in C." were rep. by Act 4 of 1914, s. 2 and Sch. Pt. I.

73 Official Website of NHAI – http://nhai.org/

74 Section 3 (c) - Constitution of the Authority - The Authority shall consist of

(i) a Chairman;
(ii) not more than five full-time members; and
(iii) not more than four part-time members, to be appointed by the Central Government by notification in the Official Gazette

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June 2008
The NHAI works on the principle that stretches of National Highway are vested in the Authority from time to time by Notification in the Official Gazette for the purpose of development, improvement, etc. Once the said stretches have been so vested by the Notification process, there is complete transfer of all debts and liabilities of the Central Government to the Authority.

It is worth noting that acquisition of land for the Authority to discharge any of its functions are deemed to be required for public purpose and the same is liable to be acquired under the provisions of the National Highways Act, 1956. There is a particular procedure followed for the

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75 Section 11 Power of the Central Government to vest or entrust any national highway in the Authority.

The Central Government may, from time to time, by notification in the Official Gazette, vest in, or entrust to, the Authority, such national highway or any stretch thereof as may be specified in such notification.

76 Section 12 - Transfer of assets and liabilities of the Central Government to the Authority.

(1) On and from the date of publication of the notification under section 11,

(a) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with, or for, the Central Government, immediately before such date for or in connection with the purposes of any national highway or any stretch thereof vested in, or entrusted to, the Authority under that section, shall be deemed to have been incurred, entered into and engaged to be done by, with, or for, the Authority,

(b) all non-recurring expenditure incurred by or for the Central Government for or in connection with the purposes of any national highway or any stretch thereof, so vested in, or entrusted to, the Authority, up to such date and declared to be capital expenditure by the Central Government shall, subject to such terms and conditions as may be prescribed, be treated as capital provided by the Central Government to the Authority,

(c) all sums of money due to the Central Government in relation to any national highway or any stretch thereof, so vested in, or entrusted to, the Authority immediately before such date shall be deemed to be due to the Authority;

(d) immediately before such date for any matter in relation to such national highway or any stretch there or instituted by or against the authority.

(2) If any dispute arises as to which of the assets, rights or liabilities of the Central Government have been transferred to the Authority, such dispute shall be decided by the Central Government

77 Section 13 - Compulsory acquisition of land for the Authority.

Any land required by the Authority for discharging its functions under this Act shall be deemed to be land needed for a public purpose and such land may be acquired for the Authority under the provisions of the National Highways Act, 1956 (48 of 1956).
purpose of acquisition of land under Sections 3A to 3I of the National Highways Act, 1956. It is specifically provided under Section 3J of the National Highways Act, 1956, that the provisions

3A. Power to acquire land, etc.
(1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.
(2) Every notification under sub-section (1) shall give a brief description of the land.
(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.

3B. Power to enter for survey, etc
On the issue of a notification under subsection (1) of section 3A, it shall be lawful for any person, authorised by the Central Government in this behalf, to
(a) make any inspection, survey, measurement, valuation or enquiry;
(b) take levels;
(c) dig or bore into sub-soil;
(d) set out boundaries and intended lines of work;
(e) mark such levels, boundaries and lines placing marks and cutting trenches; or do such other acts or things as may be laid down by rules made in this behalf by that Government.

3C. Hearing of objections.
(1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section.
(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections. Explanation. For the purposes of this sub-section, legal practitioner has the same meaning as in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961).

3D. Declaration of acquisition.
(1) Any order made by the competent authority under sub-section (2) shall be final.
(2) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.

3E. Power to take possession.
(1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.

3F. Right to enter into the land where land has vested in the Central Government.
Where the land has vested in the Central Government under section 3D, it shall be lawful for any person authorised by the Central Government in this behalf, to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of a national highway or a part thereof, or any other work connected therewith.

3G. Determination of amount payable as compensation.
of the Land Acquisition Act, 1894 would not apply. Although the procedure laid down under the National Highways Act, 1956 seems similar to the one under the Land Acquisition Act, 1894, the fundamental differences are two. First, that time is of essence in acquisition under this Act\(^{80}\), and second, there is finality in the procedure of the land vesting in the Central Government, free of all

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1. Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

2. Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent. of the amount determined under sub-section (1), for that land.

3. Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

4. Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

5. If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

6. Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

7. The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequence of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

3H. Deposit and payment of amount

(1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall, on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under subsection (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent. per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.

3-I. Competent authority to have certain powers of civil court.

The competent authority shall have, for the purposes of this Act, all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) reception of evidence on affidavits;

(d) requisitioning any public record from any court or office;

(e) issuing commission for examination of witnesses

\(^{79}\) Section 3J. Land Acquisition Act 1 of 1894 not to apply - Nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act.

\(^{80}\) Under Section 3C the objectors have to object within 21 days from the date of the publication of the Notification.
encumbrances, on the declaration of the acquisition\textsuperscript{81}, whereas under the Land Acquisition Act, 1894, this stage would have been reached much more slowly and much later after the entire process before the Collector of filing objections, hearings and the making of the award were over.

The functions of the Authority under the statute would essentially be to develop, maintain and manage the national highways and any other highways vested or entrusted to it by the Government, and all other ancillary works connected thereto\textsuperscript{82}.

Apart from the functional aspects of the Authority, the intent and purpose of its creation, there are other aspects as also stipulated in the said Act, with respect to Finance, Accounts and Audit\textsuperscript{83} and the same provides for the management and investment of the fund of the Authority, as well as its borrowing powers. Lastly, there are miscellaneous provisions, that deal with the delegation of powers\textsuperscript{84}, protection of employees of action taken in good faith\textsuperscript{85}, the power of the Central Government being supreme\textsuperscript{86}, the Authority retains the power to make regulations\textsuperscript{87}.

6.8 THE NATIONAL HIGHWAYS ACT, 1956

\textsuperscript{81} Under Section 3D.
\textsuperscript{82} Section 16. Functions of the Authority.
\textsuperscript{83} Chapter 5 - Sections 17 to 24.
\textsuperscript{84} Section 25.
\textsuperscript{85} Section 28.
\textsuperscript{86} Section 31 - Power of the Central Government to temporarily divest the Authority of the management of any National Highway.
\textsuperscript{87} Section 35.
The Preamble of the Act declares it to provide for the declaration of certain highways to be national highways and for matters connected therewith.

Meaning thereby, that certain highways hitherto unclassified came to be classified as national highways. Similarly certain major roads also thereafter got added as national highways. It is a very short and crisp Statute applicable to the whole of India. The intent and purpose of the Act, i.e., ‘the declaration of certain highways to be national highways’ is dealt with straight away, even before the ‘definitions’. Stretches specified in the Schedule to the Act were declared to be national highways.

Government’s power to acquire land for the purpose of building, maintenance, management or operation of a national highway was made very unambiguous. There is a complete procedure laid down for the acquisition of land for the said purpose and it is unequivocally stipulated therein that the provisions of the Land Acquisition Act, 1894 would not apply.

Needless to state that the national highways vest in the Union Government, but what constitutes highways is defined in detail to include all lands appurtenant thereto, all bridges, culverts, tunnels, causeways, carriageways and other structures constructed on or across such highways; and all fences, trees, posts and boundary, furlong and mile stones of such highways or any land appurtenant to such highways.

It is the prime responsibility of the Central Government to maintain the national highways, however the same could also be delegated to the State Governments by way of a Notification in the Official Gazette. By this it is also clear that the Central Government, as is wont in a Federal Structure, retains the supremacy, including the power to issue directions to the States.

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88 Section 2 - Declaration of certain highways to be national highways.
1. Each of the highways specified in the Schedule is hereby declared to be a national highway.
2. The Central Government may, by notification in the Official Gazette, declare any other highway to be a national highway and on the publication of such notification such highway shall be deemed to be specified in the Schedule.
3. The Central Government may, by like notification, omit any highway from the Schedule and, on the publication of such notification, the highway so omitted shall cease to be a national highway.

89 Sections 3A to 3I
Section 3A. - Power to acquire land, etc.
Section 3 B - Power to enter for survey, etc
Section 3C - Hearing of objections.
Section 3D - Declaration of acquisition.
Section 3E - Power to take possession.
Section 3F - Right to enter into the land where land has vested in the Central Government.
Section 3G - Determination of amount payable as compensation.
Section 3H - Deposit and payment of amount
Section 3I - Competent authority to have certain powers of civil court.

90 Section 3J - Land Acquisition Act 1 of 1894 not to apply - Nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act.

91 Section 4 - National highways to vest in the Union.
All national highways shall vest in the Union, and for the purposes of this Act "highways" include
(i) all lands appurtenant thereto, whether demarcated or not;
(ii) all bridges, culverts, tunnels, causeways, carriageways and other structures constructed on or across such highways; and
(iii) all fences, trees, posts and boundary, furlong and mile stones of such highways or any land appurtenant to such highways.

92 Section 5 - Responsibility for development and maintenance of national highways - It shall be the responsibility of the Central Government to develop and maintain in proper repair all national highways; but the Central Government may, by notification in the
The seeds for levying Toll\textsuperscript{94} for the services or benefits rendered\textsuperscript{95} and Public Sector Participation\textsuperscript{96} on the national highway are found in this Act. The act also provides for punishment of imprisonment of a term, which may extend to five years, or with a fine, or with both, for mischief by injury to national highway by rendering it either impassable or less safe for travelling or conveying property\textsuperscript{97}. The Central Government retains the power to make rules\textsuperscript{98} for carrying out the purposes under this Act, and the same are required to be tabled before the Parliament\textsuperscript{99}.

6.9 THE CENTRAL ROAD FUND ACT, 2000\textsuperscript{100}

The Preamble of the Act declares it to be an Act to give statutory status to the then existing Central Road Fund governed by the Resolution of Parliament passed in 1988, for development and maintenance of national highways and improvement of safety at railway crossings, and for these purposes to levy and collect by way of cess, a duty of excise and duty of customs on motor spirit commonly known as petrol, high speed diesel oil and for other matters connected therewith. The preamble of the Act therefore, clearly spells out the entire purpose of the said legislation as exhaustively as it was possible.

The Central Road Fund has been in existence since the late 1920’s with the revenue for the fund being generated through a levy exclusively on petrol. This remained the case until 1998 whereupon Government levied an additional excise duty of one Rupee per litre\textsuperscript{101} on petrol and dedicate the proceeds to the road sector, with high-speed diesel also becoming subject to this duty in the following year\textsuperscript{102}. This Road Fund was thereafter revamped and was replaced by the provisions of the Central Road Fund Act, 2000 which included the previous description as well as added the management of the fund.
Under this Act, the distribution of the revenues accruing to the fund are as specified below:\footnote{103}{\textsection\ 10 – Functions of the Central Government – The Central Government shall be responsible for the – (viii) the allocation of …………}

(a) 50 per cent of the cess on high-speed diesel is to be dedicated for the development of rural roads;

(b) The remaining 50 per cent of the cess on high-speed diesel and the entire cess from petrol to is to be distributed as follows:

(i) 57.5 per cent for development and maintenance of national highways;

(ii) 12.5 per cent for construction of bridges for road over/under railways and, the provision of safety measures at unmanned rail crossings;

(iii) 30 per cent for the development and maintenance of State roads with 10 per cent of this amount being kept as a reserve for the implementation of road schemes that have interstate and/or economic importance.

The figure herein below details out the operation of the Road Fund from collection to its utilisation.
OPERATION OF ROAD FUND
FROM COLLECTION TO UTILISATION

CESS
Levy of & collection of
(Section 3)

CONSOLIDATED FUND OF INDIA
(Section 4)

Credit proceeds by appropriation law made by Parliament
Formula: Amount collected - Expenses of Collection = Amount Credited
(Section 4)

Grants of Loans by the Central Government

Road Fund
Section 6 (1)

UTILIZATION:
- Development and Maintenance of National Highways
- Development of Fund Roads
- Development and Maintenance of Other State Roads including roads of into state and economic importance
- Construction of roads either under or over the railways by means of a bridge and execution of safety works at unnamed rail road crossings
- Disbursements in report of such projects as may be prescribed
The Management of the Central Road Fund is illustrated herein below:

### MANAGEMENT OF CENTRAL ROAD FUND

**CHAPTER III**
THE CENTRAL ROAD FUND ACT, 2000

<table>
<thead>
<tr>
<th>CENTRAL GOVERNMENT TO ADMINISTER THE FUND, and</th>
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<tbody>
<tr>
<td>• Decide regarding investment on projects of</td>
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<tr>
<td>➢ National Highways and</td>
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<tr>
<td>➢ Expressways</td>
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<tr>
<td>• Raise funds for the development and maintenance of the national highways</td>
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<tr>
<td>• Allocate and disburse sums to the departments responsible for the development and maintenance of</td>
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<tr>
<td>➢ National Highways</td>
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<tr>
<td>➢ Rural Roads</td>
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<td>➢ State Roads</td>
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<tr>
<td>➢ Construction of roads either under or over the railways by means of a bridge and</td>
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<tr>
<td>➢ Erect suitable safety works at unmanned rail-road level crossings.</td>
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<tr>
<td>(Section 9)</td>
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Additionally there are enumerated certain functions of the Central Government, with respect to the Road Fund:

### FUNCTIONS OF THE CENTRAL GOVERNMENT

| • Administration and management of the Fund allocated to the development and maintenance of the national highways; |
| • Co-ordination and complete and timely utilisation of all sums allocated out of the Fund |
| • Sanction of schemes for State roads of inter-State and economic importance |
| • Formulation of criteria for approval of specific projects of State roads of inter-State and economic importance to be financed out of share of State roads |
| • Release of funds to the States for specific projects |
| • Monitoring of such projects and expenditure incurred thereon |
| • Formulation of the criteria for allocation of the funds for projects required to be implemented by the National Highways Authority of India |
| • Formulation of the criteria for allocation of the funds for projects for the development and maintenance of the national highways |
| • Allocation of share of funds to each State and Union territory |

As per the allocation of the funds as stated under Section 10(viii) there is a share of the Fund to be spent on development and maintenance of roads, other than national highways, which

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104 Section 10 - Functions of the Central Government.
stipulates, ‘after deducting the reserve kept by the Central Government for State road schemes of inter-State and economic importance, shall be allocated to various States and Union territories in such manner as may be decided by the Central Government’.  

Under the Act the Central Government retains the power to make Rules by notification in the Official Gazette, for carrying out the purposes of this Act.

The Rules made under this provision of the Act would include the following:

- Specify the projects in respect of which the funds may be disbursed
- The manner in which the accounts are to be maintained
- The annual statement of accounts to be prepared that includes the profit and loss account and the balance-sheet
- The manner in which the schemes for development and maintenance of State roads of inter-State and economic importance are to be formulated and sanctioned
- Any other matter for which rule is to be made, or may be, prescribed

It is a requirement under the Act that as all Rules made have to be laid before Parliament for ratification.

The Road Fund though in existence since 1998 in the State of Uttar Pradesh, pursuant to the 1998 UP Road Development Policy wherein it is stated that the Fund should be ‘utilised for road maintenance works within the State’, nevertheless, the same came to be officially established only in 2000 by way of a Notification.

6.10 THE CONTROL OF NATIONAL HIGHWAYS (LAND AND TRAFFIC) ACT, 2002

The Preamble of the Act declares it to provide for control of land within the National Highways, right of way and traffic moving on the National Highways and also for removal of unauthorized occupation thereon.

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105 Section 11 (1) - Administration of States’ share of the Fund.
106 Section 12 - Power to make rules.
107 Section 13 - Rules made under this Act to be laid before Parliament. - Rules made under this Act to be laid before Parliament. - Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
It is a Central Act, and is applicable only to the National Highways. The essential purpose of this legislation is to keep the National Highways, clean, free of encroachment of any kind, ensure the free and rapid movement of motorised traffic. It envisages the Establishment of Highway Administrations\textsuperscript{110} by means of a notification in the Official Gazette. The said Highway Administration may comprise of officers of the Central as well as the State Governments. The Notification would also define the limits of the jurisdiction of the said Highway Administration.

It is a most un-schematic piece of legislation. The Act has 50 Sections divided in 8 chapters\textsuperscript{111}, with no clear intent and purpose for each chapter. The jurisdiction, powers and authority of the Highway Administration are not spelled out in any one place, and the same has to be culled out over various chapters. However the following Figure elucidates the functions and the sum and substance of the said Act. The penalty for reoccupying highway land unauthorisedly after having been evicted once earlier is punishment with imprisonment upto one year and/or fine at the rate of one thousand rupees per square metre of occupied land, but which shall not exceed two times the cost of such highway land\textsuperscript{112}. The Central Government retains the power to make rules\textsuperscript{113} and to give effect to the provisions of the Act.

\begin{itemize}
  \item \textsuperscript{110} Section 3 - Establishment of Highway Administrations.
  \item 1. Establishment of Highway Administrations.- (1) The Central Government shall, by notification in the Official Gazette,-
    \begin{enumerate}
      \item[(a)] establish, for the purposes of this Act, a body or authority consisting of one or more officers of the Central Government or
      the State Government to be known as Highway Administration to exercise powers and discharge functions conferred on it under this Act; and
      \item[(b)] define the limits of the Highway within which, or the length of Highway on which, a Highway Administration shall have jurisdiction:
    \end{enumerate}
    Provided that the Central Government may, in the notification issued under this sub-section or by any general or special order, impose any condition or limitation subject to which a Highway Administration shall exercise powers and discharge functions conferred on it under this Act.

  \item (2) The Central Government may establish one or more Highway Administrations for a State or Union territory or for a Highway under sub-section (1).

  \item (3) Subject to the provisions of this Act, the Highway Administration shall exercise powers and discharge functions conferred on it under this Act in such manner as may be prescribed.
\end{itemize}

\begin{itemize}
  \item \textsuperscript{111} CHAPTER I - Preliminary
  \item Chapter II - Establishment of Highway Administrations and Tribunals, etc.
  \item Chapter III - Prevention of Unauthorised Occupation of Highway Land and their Removal
  \item Chapter IV - Control of Access to The National Highways
  \item Chapter V - Regulation of Different Types of Traffic on National Highways
  \item Chapter VI - Regulation of Construction on Highway Land for Public Utilities, Drains, etc.
  \item Chapter VII - Offence and Penalty
  \item Chapter VIII - Miscellaneous
\end{itemize}

\textsuperscript{112} Section 39 - Offence and penalty.- (1) If any person, who has been evicted from any unauthorised occupation on a highway land under this Act, again occupies any highway land without permission for such occupation under this Act, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which shall not be less than one thousand rupees per square metre of so occupied highway land but which shall not exceed two times the cost of such highway land, or with both.

\textsuperscript{113} Section 50 - Power to make rules. The Rules were notified vide Notification No.GSR 688(E) dated 26th August, 2003.
STRUCTURE OF ENFORCEMENT OF
THE CONTROL OF NATIONAL HIGHWAYS (LAND & TRAFFIC) ACT, 2002

NATIONAL HIGHWAYS TRIBUNAL
(Section 5)

JURISDICTION
- To entertain appeals from orders passed by the Highway Administration
- No power to pass ad-interim ex-parte order in the ordinary course
  (Section 17)

APPEAL
(Section 14)
To be filed within 60 days
(Section 19)

HIGHWAY ADMINISTRATION
(Section 3)

JURISDICTION
- Confined within the stated length on the Highway.

FUNCTIONS
- Removal of unauthorised occupation
  (Section 26)
- Recovery of cost for such removal
  (Section 27)
- Control Right of Access
  (Section 28)
- Prevention of damage
  (Section 36)
- Repair of damage
  (Section 36)
- Removal of obstruction of Vehicles and Animals
  (Section 37)
- Carry out construction any sort
  (Section 38)
- Removal of illegal construction
  (Section 38)
7. NEED FOR A NEW LEGISLATION FOR ROAD SECTOR OF UP

Keeping in view the mandate of the TA Consultants for Institutional Development and Strengthening Plan (IDSP) based upon the Policy Support and Institutional Development study in 2000-2002 carried out by the Tata Consulting Engineers (TCE) and which was subsequently endorsed and included in the present contract with the Government of Uttar Pradesh. And further based upon the mandate in the Description of Services Technical Assistance for Implementation of Institutional Reforms in State Road Sector of Uttar Pradesh where in it was specifically stated that, ‘the TA services will be expected to build directly on the achievements and outputs of the 2000/2001 Institutional Development Study’114.

Further in terms of the requirement as spelled out in the Terms of Reference to the Consultants in the present TA, it was envisaged that there would be drafted a new legislation for the Road Sector in the State of Uttar Pradesh. In terms of objective 1C115. The same was as follows:

UTTAR PRADESH STATE ROADS PROJECT [UPSRP] – ANNEX II

<table>
<thead>
<tr>
<th>INSTITUTIONAL DEVELOPMENT &amp; STRENGTHENING PLAN [IDSP]</th>
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<tbody>
<tr>
<td>OBJECTIVE</td>
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<tr>
<td>1. Regulatory &amp; Strategic Context</td>
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<tr>
<td>1C. Modernised UP roads management legislation</td>
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From the above it is clear that the consultants for the Policy Support and Institutional Development study 2000-2002 envisaged a modern road management legislation for the State of Uttar Pradesh, which was required to be drafted incorporating the recommendations as, approved by the GoUP. Therefore, there is a clear need for a comprehensive road legislation for the State of Uttar Pradesh, and the only question that requires to be addressed in the present case is what form and substance is the new legislation required to take, keeping in view the other Statutes already existing in the same field. The answer to the same is found on a conjoint reading of the following, which have already been discussed in detail in the previous sections of this report:

1. U.P. Road Development Policy 1998

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114 Internal page 4; paragraph 4.1 Description of Services Technical Assistance for Implementation of Institutional Reforms in State Road Sector of Uttar Pradesh
115 Uttar Pradesh State Roads Project [UPSRP]; Institutional Development & Strengthening Plan [IDSP] – ANNEX II
2. U.P. Road Development Policy 2008
4. Report No. 3: Inter-agency Working Group (WG) study to facilitate GOUP decisions, legislation and other actions on an effective long-term ‘ownership’ and funding framework for ‘non-core UP roads etc.

The previous reports and the previous studies including the numerous discussions on the subject have made it clear the need of the modern road legislation must include mainly three essential ingredients:

a) Development
b) Management, and
c) Maintenance.

Therefore, it is proposed that the draft of the new legislation shall be tentatively titled as the

_U.P. Roads (Development, Management and Maintenance) Act, 2008._

In this context, it must be recorded that another aspect that was also examined was the recommendation for the creation of separate Road Construction and Maintenance Corporation in the State i.e. UPRCMC, which formed as part of the Intermediate recommendation\(^{116}\) of the consultant\(^{117}\) in the Policy Support and Institutional Development Study (2000-2002).

The incorporation of a Company under the Companies Act, 1956 as a wholly owned State Government Company is a well-established method for the corporatisation of certain functions along with the added benefit to bid for similar works beyond the State of Uttar Pradesh. There are plenty of precedents for the same and it can even be found in the State of Uttar Pradesh itself, such as the U.P. State Bridge Corporation Ltd.

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\(^{116}\) Appendix A Description of Services; ANNEX I; Intermediate (04-06 Years);
(B) INTERMEDIATE (04-06 Years)

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Recommendation of the Consultant</th>
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<tr>
<td>1.</td>
<td>XXXXXXXXXXXXXXXX</td>
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<td></td>
<td>Separation of Building cadre and creation of New Department for Buildings under the Secretary PWD Building to be looked after by a separate Chief Engineer in Short Term. It needs to be made into a separate department under the PWD secretary with its own cadre in medium term to maintain PWD focus on roads. The Architect wing will be the part of the new building department. In case the strength in more than the requirement then the same be absorbed in other departments like Country &amp; Town Planning.</td>
</tr>
<tr>
<td></td>
<td>Creation of a separate Road Construction and Maintenance Corporation in the state i.e. \textbf{UPRCMC.}</td>
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</tbody>
</table>

\(^{117}\) Tata Consulting Engineers (TCE)
On a brief review of the U.P. State Bridge Corporation Ltd., the following emerged.

The Uttar Pradesh State Bridge Corporation Limited (Company) was incorporated on 18 October 1972 as a wholly owned State Government company.

The main objectives of the Company, *inter alia*, include construction, development and maintenance of all type of bridges and approach roads, raise loans to carry out the projects and also undertake civil/mechanical/electrical works.

The pattern of working in the Company is broadly known as “Departmental Construction System”. The construction works are normally done departmentally by technical and other staff of the Company. The necessary machines and equipment, tools and plant, centering and shuttering and material like steel, cement, coarse and fine aggregates, etc. are procured by the Company. The work is executed directly and by engaging required labour on piece rate working system. Thus, the Company has been established with a view to eliminate the middlemen and contractors in execution of works.

At present, the Company is engaged in construction of bridges of the State Government and other Government agencies within India. During the last five years ending 31 March 2002, the Company executed works worth Rs.1169.30 crore (contract/tender works valuing Rs.652.86 crore and deposit works valuing Rs.516.44 crore).

The Organisational set-up:

The management of the Company is vested in a Board of Directors consisting of not less than three and not more than twelve directors nominated by the State Government. The Principal Secretary, Uttar Pradesh Public Works Department (UPPWD) is the ex-officio Chairman of the Company. The Managing Director (MD), a professional engineer of the rank of Chief Engineer from UPPWD, is the Chief Executive, who is assisted by a Joint Managing Director, four General Managers (GMs) - GM (Planning), GM (Design), GM (Mechanical) and GM (Development), a Finance Controller (from Uttar Pradesh Finance and Accounts Services) and a Financial Advisor (Chartered Accountants)\(^\text{118}\).

Therefore, the recommendation for the creation of a separate Road Construction and Maintenance Corporation in the State i.e. UPRCMC, was attractive at first glance for the following reasons:

- There is already a familiarity with a corporate concept.
- The earlier examples of successful State Government Corporations are:
  - Uttar Pradesh State Bridge Corporation
  - Uttar Pradesh State Industrial Development Corporation
  - Uttar Pradesh State Road Transport Corporation
  - UPRTRON
- The organisation structure of the U.P. State Bridge Corporation could be replicated.

\(^{118}\) Audit Report (Commercial) for the year ended 31 March 2003; Chapter-II - Reviews relating to Government companies.
• The organisational structure could retain an overwhelming presence of the PWD
• Could easily be established by
  ➢ Resolution of the State Government
  ➢ Incorporation of a Company under the Companies Act, 1956

The said recommendation after due examination was found unfit for the following reasons:
• Results in the setting up of a corporation with its accompanying ethos
  ➢ Profit motivation
  ➢ Non-ownership of the roads on the culmination of the contract, or beyond the terms of the contract.
  ➢ Shopkeeper mentality
  ➢ Does not reduced State Government’s responsibility in the Road sector
  ➢ Does not replace the PWD in the works undertaken
  ➢ Additional burden on the State exchequer for maintenance
• PWD personnel transferred to the newly set up corporation will represent the corporation
• Does not serve the purpose of setting up the corporation for the following reason:
  ➢ Does not streamline the work of the PWD
  ➢ Does not reduce the work of the PWD
  ➢ Does not own any Roads.
  ➢ Ownership of Roads by the PWD remains unaffected.
  ➢ Issue of Orphan Roads etc. remain unresolved.
• Replicates in many ways the outcome of UPSHA.
• The recommendation was rejected by GoUP\textsuperscript{119}.

For the reasons as discussed hereinabove and as per the mandate of the TA Consultants for the Institutional Development and Strengthening Plan (IDSP) based upon the Policy Support and Institutional Development study in 2000-2002 carried out by the Tata Consulting Engineers (TCE) and which was subsequently endorsed and included in the present contract with the Government of Uttar Pradesh, it was recommended that there is a felt need for a new proposed \textit{U.P. Roads (Development, Management and Maintenance) Act, 2008}.

A draft of the new proposed \textit{U.P. Roads (Development, Management and Maintenance) Act, 2008} is included as part of this report as Annexure A.

8. FOCUS GROUP MEETING

8.1 MEETING HELD ON 28\textsuperscript{TH} MAY 2008

\textsuperscript{119} PS & IDS Study for Public Works Department, Govt. of Uttar Pradesh; Final Report June 2002; TCE, TCS, Sir Owen Williams Innvestment Ltd.; Chapter 2.2 at Page 8 of 8. – The proposal is recorded to have been rejected after two discussions at the Steering Committee level and later by the Committee formed to review the study recommendation (DFR).
A meeting of Focus Group A was held on Wednesday 28th May 2008 to discuss the way forward towards drafting legislation as stated in the Terms of Reference (ToR) of TA Consultants.

Mr. S. S. Ray presented the background. He referred to the ‘Policy Support and Institutional Development Study’ of June 2002 by TCE, where there were several recommendations which were endorsed by GoUP and which formed the basis of the Terms of Reference for this TA Project. The action milestone is to ‘submit a draft legislation and associated recommendations to GoUP’ towards attaining the objective of a modernized UP roads management legislation.

The TCE Report recommended setting up of a ‘Road Authority’ and ‘Road Construction and Maintenance Corporation’ (RCMC). However the report also documents the views of the Steering Committee. Where it mentions that GoUP has not agreed on the setting up of the Road Authority nor to set up a RCMC. Although negated by GoUP on setting up a RCMC, the ToR for the TA Project mentions the reformation. Hence in this Report merits and demerits for setting up a corporate set up has been discussed. The recommendation for the creation of a separate Road Construction and Maintenance Corporation in the State i.e. UPRCMC, was attractive at first glance for the following reasons:

- There is already a familiarity with a corporate concept.
- The earlier examples of successful State Government Corporations are:
  - Uttar Pradesh State Bridge Corporation
  - Uttar Pradesh State Industrial Development Corporation
  - Uttar Pradesh State Road Transport Corporation
  - UPTRON
- The organization structure of the U.P. State Bridge Corporation could be replicated.
- The organizational structure could retain an overwhelming presence of the PWD
- Could easily be established by
  - Resolution of the State Government
  - Incorporation of a Company under the Companies Act, 1956

The said recommendation after due examination was found unfit for the following reasons:

- Results in the setting up of a corporation with its accompanying ethos
  - Profit motivation
  - Non-ownership of the roads on the culmination of the contract, or beyond the terms of the contract
  - Shopkeeper mentality
  - Does not reduced State Government’s responsibility in the Road sector
  - Does not replace the PWD in the works undertaken
  - Additional burden on the State exchequer for maintenance
- PWD personnel transferred to the newly set up corporation will represent the corporation
• Does not serve the purpose of setting up the corporation for the following reason:
  ➢ Does not streamline the work of the PWD
  ➢ Does not reduce the work of the PWD
  ➢ Does not own any Roads
  ➢ Ownership of Roads by the PWD remains unaffected
  ➢ Issue of Orphan Roads etc. remain unresolved
• Replicates in many ways the outcome of UPSHA

Apart from PWD several other agencies are also involved in road construction, and leave them in an orphan stage because they neither maintain nor own them. In this context Mr. Ray put forward a question to the Focus Group members as to what they think about the status of the orphan roads after all this is a State / Government property. The members mentioned that these roads do not belong to PWD as these do not conform to the design standards, nor there has been any regulation mentioning the ownership of roads.

Existing legislations as applicable in the road sector of Uttar Pradesh have also been reviewed, bearing in mind their objective and applicability. The State Legislation is reviewed first followed by the Central Legislation, which are as follows:

• U.P. State Highways Authority (UPSHA) Act, 2004
• The Uttar Pradesh Roadside Land Control Act, 1945
• The Uttar Pradesh Urban Planning and Development Act, 1973
• Land Acquisition Act, 1894
• LA on Mutual Understanding, Dated 29-9-2001
• National Highway Authority of India Act, 1988
• The National Highways Act, 1956
• The Central Road Fund Act, 2000
• The Control of National Highways (Land and Traffic) Act, 2002

Focus Group members in this context queried whether the UPSHA Act has been critically reviewed because the Authority has not been functioning properly right from its set up, due to many reasons, one of them being a top heavy organization structure. To this Mr. Ray clarified that the mandate is to undertake a clinical review rather than comment on the legislation in favour or against. However a comment as desired shall be included.
After setting up the background Mr. S. S. Ray requested members of the Focus Group to fill up a questionnaire (Annexure B) sent to the PWD on May 23, 2008, with a view to seek clarity on many aspects for the purpose of drafting the proposed legislation. The distribution of questionnaire was to get the valuable comments and guidance from the Focus Group members and understand what exactly can be incorporated in the legislation.

Focus Group members expressed their concern, whether at all there is a necessity to draft legislation. To which Mr. Ray mentioned that there are several legislations in the country all of which are not duly implemented, and legislation by itself is a very cumbersome process. But since the ToR of the TA Project demands a draft legislation, so it has become a necessity to draft one.

It was pointed out that not all legislations have penal provisions. This proposed legislation will only define the development management and maintenance of the Road Sector in the State of Uttar Pradesh.

In this context a member of the IDS Cell requested Mr. Ray to go through the Australian Road Maintenance (Contribution) Act 1963. To this the TA Consultants observation is that the said Act has no resemblance with the kind of maintenance contemplated under the proposed legislation. This Australian Act contemplates a contribution from the road users by way of certain charges that would be used for the maintenance of the roads. The Preamble of the Act is as follows:

"An Act to impose a charge on the owners of certain motor vehicles as a contribution to the maintenance of public roads, to amend the Road and Railway Transport Act, 1930-1957 and for other purposes."

This is analogous to the 'Road Tax' paid by vehicle owners under the Motor Vehicle Act in India.

The Chief Engineer was pleased to observe that in any case the circumstance that relates to Australia where there may be different from these in the Indian context.

At the end of the discussion it was decided that a legislation will be prepared to suffice the need of the ToR.

8.2 MEETING HELD ON 18TH JUNE 2008

1. A meeting of Focus Group A was held on Wednesday 18th June 2008 to discuss Report No. 26 submitted as draft. The said report also includes the draft legislation as required under the Terms of Reference for this TA Project.

2. Mr. S. S. Ray gave a brief introduction referring to the previous meeting held with the Focus Group members on 28th May 2008, when a questionnaire had been circulated with a view to seek clarity on many aspects for the purpose of drafting the proposed legislation ‘U.P. Roads (Development, Management and Maintenance) Act, 2008’. The questionnaires aimed at receiving valuable comments and guidance from the Focus Group members and understand what all should be / desired to be incorporated in the legislation. However the TA Consultants received only 3 responses out of 12 questionnaires.
3. Mr. Ray also mentioned that this said draft legislation is one of its kind in India and any valuable comments from the Focus Group will be fully appreciated and incorporated in the Final Report.

4. CE, IDS, Computerization and IT Management suggested that the ‘Statement of Object and Reasons’ for the proposed legislation should be reframed bringing out further clarity for the need for the legislation. It was suggested that a possible introduction could be that in order to run road construction activities in an organised manner an enactment was essential. It was observed and desired that the PWD Road Development Board to be established after commencement of the U.P. Roads (Development, Management and Maintenance) Act, 2008, should be an organised body which shall formulate guidelines with the objective of prioritisation of roads.

CE opined that somewhere in the beginning of the Act it should be mentioned that the PWD Road Development Board would be required to perform its functions in conformity with policies as laid down by the Government. Mr. Ray responded that, it is both explicit and implicit that the Board have to act in conformity with the existing Government policies and this has been addressed in the draft legislation under Section 13.

5. Both CE and a member of the IDS Cell queried whether the draft legislation has dealt with the problem of multiple agencies in road sector and a possible solution to it. Mr. Ray clarified that the query has been taken care in the definition clauses of the draft legislation where it specifies that the PWD is an umbrella body and by PWD roads it means all State Highways, Major District Roads, Other District Roads and Rural Core Road Network. It was also pointed out that there was variance on the answers that were received as part of the questionnaires on the issue of ownership of roads.

6. CE, IDS, Computerization and IT Management observed that the establishment of the PWD Road Development Board is seemingly, the main crux of the legislation. To which Mr. Ray replied that the Board is a means to an end. Ownership is an issue, therefore the focus over here is to have clearly defined PWD roads and autonomy of functioning. The Board is a nomenclature used for administrative exigency and to cut bureaucratic red tape.

7. Both CE and a member of the IDS Cell opined that in the constitution of the PWD Road Development Board, there should be members from other agencies. To which Mr. Ray mentioned that there was no unison in the feedback that the TA Consultants have received from the questionnaires circulated, hence it would be worthwhile if the PWD themselves suggest a structure as to what it should look like, then it will be incorporated accordingly. Mr. Ray also pointed out that the PWD Road Development Board has been visualized as a lean organization. Otherwise if it is made into a top-heavy organization structure like UPSHA, there is a probability that it would be a non-starter.

8. With respect to Chapter IV of the legislation dealing with private sector participation. CE, IDS, Computerization and IT Management, queried whether the TA Consultants had the benefit of going through the Reports of Infrastructure Development Department (IDD) because guidelines issued there under in existence should not overlap / contradict with the suggested PPP/PSP framework in the legislation. A request was made by the
Consultant to be supplied with a copy of the same, so as to ensure there is harmony with respect to the same.

CE, IDS, Computerization and IT Management, desired that the UPSHA Act should be stated to be repealed. To this the response was that a very strong case needs to be built to repeal an act and the present legislation does not contemplate the same, neither it is their mandate.

9. A member of the IDS Cell queried whether the road network master plan can be included in the legislation to which the TA Consultants mentioned that PWD roads was defined in the draft Act. Further that the PWD Road Development Board should together work in close coordination with Policy and Planning Unit (PPU) formed through a Government Order (GO) in the organisation structure of PWD to create the road network master plan which is covered under the definition of PWD roads in the draft legislation.

10. Focus Group members observed that the rule making powers are with the State. Therefore any difficulty which may be faced during implementation needs to be taken into account and only the policy at the State Government level would be implemented. A policy is an essential pre-requisite before any enforcement or enactment. Legislation is an instrument to enforce the policy. In this context the Focus group members gave an example of the Pradhan Mantri Gram Sadak Yojana (PMGSY) a centrally sponsored scheme. For PMGSY there are central guidelines which all State Governments have to follow. Fund is being given to PWD for constructing roads but in the meantime it may be discovered that any of the other agencies such as Mandi Parishad or Cane Development, etc have already constructed the road.

11. Focus Group members also mentioned that the State Government’s budgetary allocation is given only to PWD and not to any other agency as the others are only construction agencies and not a Government Department. However this time budget has been provided to Panchayati Raj.

12. A member of the IDS Cell queried regarding providing for transparency and the stakeholder’s involvement in functioning of the Board. The response was threefold:
   a) First, as an executive body its functioning cannot be that of a democratic set up, therefore transparency to that context is ruled out.
   b) Second, an organization can be as transparent as contemplated under the Right to Information (RTI Act).
   c) Third, transparency has been factored into the legislation under Section 30, where there is a requirement to prepare and lay the Annual report before the State Legislature.

13. It was lastly requested of the Focus Group, that any specific amendments that they desired in the draft legislation may be conveyed to the TA Consultants in writing within a reasonable period.
9. **FINAL COMMENTS**

1. The Draft Statute was comprehensively re-looked at in view of the comments / observations of the members of the Focus Group and IDS Cell, pursuant to the meeting of June 18, 2008.

2. Apropos to the observations of the members of the Focus Group and IDS Cell at paragraphs 4 and 8 above, the brief response to the same are as follows.

3. The ‘Statement of Object and Reasons’ for the proposed legislation was requested to be reframed bringing out further clarity for the need for the legislation. This has been done.

The same now reads as under:

"The Road Sector in the State of Uttar Pradesh is in need of immediate attention for an all round, appropriate and proper Development of the State. The Road sector has till date been largely developed by the State Public Works Department, and certain other departments of the Government, such as the Rural Engineering Services, Railway Department, Municipal Authorities, Forest & Irrigation Departments and other Local Development Authorities, apart from certain other bodies such as the Mandi Parishads, Cane Development Department, etc.

Although one of the primary functions of PWD is to develop, maintain and manage the state road network, but a lot remains to be desired in the context of clarity of road network jurisdictions with respect to construction and maintenance thereafter, especially in view of the other aforementioned agencies. Further there is a need to maintain certain standards of road construction and maintenance, which should be followed by all the agencies involved. There is also a felt need to create an umbrella organization, a nodal body that shall be informed of all road construction activity in the State as well as be equipped to ensure the compliance of the necessary standards of road construction and maintenance as applicable to the different categories of roads, all of which essentially translates into a need to ensure all road construction activity to be undertaken in an organized and institutional manner. This is especially relevant in the context of various sources of available funding for the construction of roads presently, such as, the Member of Parliament Local Area Development Fund (MPLAD Fund), the Member of Legislative Assembly Local Area Development Fund (MLALAD Fund), the Pradhan Mantri Gram Sadak Yojna (PMGSY) etc. Further in the context of increasing policy of private sector participation in infrastructure development with respect to roads, there is a felt need to ensure a methodology for selection of the private sector participant in a proper and transparent manner, which also this legislation seeks to address.

With coming into effect the Uttar Pradesh Road Development Policy 2008, there is a felt need for a new legislation focusing solely on the Roads sector, not only, for the aforementioned reason of an all round Development of the State but also to give effect to the Road Development Policy or any other Road Policy laid down by the Government by way of an appropriate legislation."
4. The TA Consultants also had the benefit of examining the ‘Guidelines for Selection of Consultants / Advisors. Developers for PPP Projects & Private Partners for Disinvestments in Uttar Pradesh’, as issued by the Department of Infrastructure Development Government of Uttar Pradesh. This was done to ensure there is no disharmony or contradiction in the manner of selection of persons for road projects by private sector participation as envisaged in the new draft statute. It is recorded that the provisions in the new draft statute is not only, not in disharmony but also does not contradict any portion of the ‘Guidelines for Selection of Consultants / Advisors. Developers for PPP Projects & Private Partners for Disinvestments in Uttar Pradesh’, as issued by the Department of Infrastructure Development Government of Uttar Pradesh. It is further recorded that it is possible to include the ‘Guidelines for Selection of Consultants / Advisors. Developers for PPP Projects & Private Partners for Disinvestments in Uttar Pradesh’, as issued by the Department of Infrastructure Development Government of Uttar Pradesh, if deemed fit, by the rule making power provided under the new draft statute under Section 34 (2)(b) read with Section 19 (2).

5. It is recorded that no request for any specific amendments to the draft legislation was conveyed to the TA Consultants since the meeting of the Focus Group on June 18, 2008.
10. PRESENTATION TO PROJECT STEERING COMMITTEE
Report No. 26: Report to submit draft legislation and associated recommendation to GOUP

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<thead>
<tr>
<th>PWD Focus Group - A</th>
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<tbody>
<tr>
<td>Sri S.K. Gunu</td>
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<tr>
<td>Sri Govind Prasad Sharma</td>
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<tr>
<td>Sri Vinod Kumar Bansal</td>
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<td>Sri Vasudev T Gulwani</td>
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<td>Sri Sanjay Gupta</td>
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<td>Sri R.P Yadav</td>
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<td>Sri Yogesh Mathur</td>
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<td>Sri Anay Kumar Srivastava</td>
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**LEA International Ltd. and LEA Associates South Asia Pvt. Ltd.**

| Mr. S. S. Ray                      | Legal Specialist                |
BACKGROUND

The Terms of Reference (ToR) of the IDS Action Plan (Serial 1 C) objective states (Annex II):

“Modernised UP Roads Management legislation.”

The Action milestones to be achieved in this regard are:

1. Initiate comprehensive review of UP roads management legislation, including sector and inter-departmental consultations
2. Submit draft legislation and associated recommendations to GOUP

Translated into the following action for Technical Assistance (TA) input:

Report No. 26: Report to submit draft legislation and associated recommendation to GoUP
The Report covers the following:

Section 2: Uttar Pradesh Road Development Policy 1998

Section 3: Report No. 8: Draft of the revised UP Road Policy

Section 4: Report No. 3: Inter-agency Working Group (WG) study to facilitate GoUP decisions, legislation and other actions on an effective long-term 'ownership' and funding framework for 'non-core UP roads, addressing sustainable devolution of 'village roads' and orphan roads responsibilities and Gang Labour management

Section 5: Uttar Pradesh Road Development Policy 2008

Section 6: Review of existing legislations

Section 7: Need for a new legislation for road sector of UP

Section 8: Draft of UP Roads (Development, Management and Maintenance) Act, 2008 (as Annexure)
U.P. Road Development Policy 1998

Road Policy envisaged

- Private sector participation for construction of roads and bridges on BOT format.
- Would be allowed to collect toll:
  - To recover the cost of the project
  - A reasonable return on investment
- For maintaining quality control in construction and maintenance works related to roads
- P.W.D would be the nodal department

Construction of roads will be the responsibility of

- Public Works Department
- Rural Engineering Department
- The PWD specifications will be adopted for the construction works
U.P. Road Development Policy 1998

Recommended effective implementation of

- The U.P. Roadside Land Control Premises Eviction Act
- U.P. Urban Development (Amendment) Act, 1997

With respect to:

- To ensure ribbon development
- To check encroachments on the roads
Report No. 8: Draft of the Revised UP Road Policy

Director General (DG) Works

Additional Director General (ADG) Works

Prepare Draft Policy Framework and present findings

Policy and Planning Unit (PPU)

Approval of Policy Framework

If, Yes then continue to prepare the following

Prepare Annual Business Plan

Prepare Annual Report
Report No. 8: Draft of the Revised UP Road Policy (Contd…)

The Policy Statement has been reflected in the Draft Legislation.

a) Road Network Planning
b) Road Development, Maintenance and Management Functions:
c) Business Planning and Funding:
d) Capacity Building Measures: Road Administration Organization and Management
Report No. 3: Inter-Agency Working Group (WG) Study to facilitate GOUP decisions, legislation and other actions on an effective long-term 'Ownership' and funding framework for 'Non-Core UP Roads, addressing sustainable devolution of 'Village Roads' and Orphan Roads responsibilities and Gang Labour Management.

Parameters were developed for identifying the core road network

Was used to form the basis of the definition of the roads for the purpose of development and maintenance.
U.P. Road Development Policy 2008

The Mission Statement of the U.P. Road Development Policy 2008 translated into the Preamble of the legislation

*Provide a high quality and efficient road transportation system (through adequate design, proper construction, and effective maintenance and management) to ensure a smooth, safe and uninterrupted / rapid flow of goods and passenger traffic both within the state and on the inter-state routes at all times for the benefit of road users, farmers, transporters, and other goods and service providers, through public and / or private investment*

Certain Objectives and Benefits of the policy reflected in

Review of Existing Legislations

Legislations as applicable in the road sector of Uttar Pradesh are reviewed in this section, bearing in mind their objective and applicability.

The State Legislation is reviewed before the Central Legislation.

3 Central Acts

6 State Acts

1 State Government Order.
Review of Existing Legislations (Contd..)

- U.P. State Highways Authority Act, 2004
- The Uttar Pradesh Roadside Land Control Act, 1945
- The Uttar Pradesh Urban Planning and Development Act, 1973
- Land Acquisition Act, 1894
- LA on Mutual Understanding, Dated 29-9-2001
- Motor Vehicles Act.
- National Highway Authority of India Act, 1988
- The National Highways Act, 1956
- The Central Road Fund Act, 2000
- The Control of National Highways (Land and Traffic) Act, 2002
ACTIVITIES OF THE APPROPRIATE GOVERNMENT ACQUiring LAND

Preliminary notification in official gazette and local newspaper (Section 4)

Preliminary Survey of Land (Section 4)

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OPERATION OF ROAD FUND
FROM COLLECTION TO UTILISATION

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Road Fund
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UTILIZATION:
- Development and Maintenance of National Highways
- Development of Fund Roads
- Development and Maintenance of Other State Roads including roads of into state and economic importance
- Construction of roads either under or over the railways by means of a bridge and execution of safety works at unnamed rail road crossings
- Disbursements in report of such projects as may be prescribed
Need for a new legislation for Road Sector of UP

Discussed the merits and demerits of a corporate set up as well

The recommendation for the creation of a separate Road Construction and Maintenance Corporation in the State i.e. UPRCMC, was attractive at first glance for the following reasons:

• There is already a familiarity with a corporate concept.
• The earlier examples of successful State Government Corporations are:
  ➢ Uttar Pradesh State Bridge Corporation
  ➢ Uttar Pradesh State Industrial Development Corporation
  ➢ Uttar Pradesh State Road Transport Corporation
  ➢ UPTRON
• The organization structure of the U.P. State Bridge Corporation could be replicated.
• The organizational structure could retain an overwhelming presence of the PWD
• Could easily be established by
  ➢ Resolution of the State Government
  ➢ Incorporation of a Company under the Companies Act, 1956
The recommendation after due examination was found unfit for the following reasons:

• Results in the setting up of a corporation with its accompanying ethos
  - Profit motivation
  - Non-ownership of the roads on
    - the culmination of the contract or
    - beyond the terms of the contract
  - Shopkeeper mentality
  - Does not reduced State Government’s responsibility in the Road sector
  - Does not replace the PWD in the works undertaken
  - Additional burden on the State exchequer for maintenance

• PWD personnel transferred to the newly set up corporation will represent the corporation

• Does not serve the purpose of setting up the corporation for the following reason:
  - Does not streamline the work of the PWD
  - Does not reduce the work of the PWD
  - Does not own any Roads
  - Ownership of Roads by the PWD remains unaffected
  - Issue of Orphan Roads etc. remain unresolved

• Replicates in many ways the outcome of UPSHA
U.P. ROADS (DEVELOPMENT, MANAGEMENT AND MAINTENANCE) ACT, 2008
CHAPTER I

Preliminary

1. Short title, extent and commencement-
   • This Act may be called the U.P. Roads (Development, Management and Maintenance) Act, 2008.
   • It extends to the whole of Uttar Pradesh, except cantonment areas.
   • It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions
   • 26 definitions
CHAPTER II

Establishment and Constitution of Board

3. Establishment of Board
4. Head Quarter of the Board - Lucknow
5. Constitution of Board -
   The Board shall consist of the Engineer-in-Chief as Chairman
   All Chief Engineers of the PWD Zones as members.
6. Term of office of members
   Coincides with holding the charge of Chief Engineer of any of the PWD Zones.
7. Filling up of casual vacancies
8. Meetings of Board
9. Temporary association of persons with Board
10. Constitution of committees
11. The remuneration, allowances and conditions of service
12. Acts and proceedings of Board presumed to be valid
CHAPTER III

13. **Functions of the Board**

- To actively promote and ensure development, maintenance and management of the state PWD road network;
- To actively promote and ensure development, maintenance and management of any other road network of the State as may be entrusted to it by the State Government, from time to time;
- To be responsible for the road projects from conceptualization to implementation and thereafter for maintenance and operation of any project irrespective of its cost;
- To advise the State Government, or any the Government agency on matters of policy in respect of the development of the Road Sector in the State;
- To lay down priorities of projects to be undertaken by the Board;
- To assist in developing concepts of projects by undertaking pre-feasibility and feasibility studies of the project;
- To undertake such project as may be entrusted to it by the State Government;
13. **Functions of the Board (Contd..)**

- To perform such other functions as may be entrusted to it by the State Government;
- To co-ordinate and monitor the projects undertaken in the State;
- To consider the proposal(s) for undertaking any project on private sector participation format, after obtaining prior approval of the State Government;
- To ensure construction compliance of road specifications to all agencies involved in road construction throughout the State of Uttar Pradesh;
- To consider the proposed concession agreement submitted to it and to recommend with or without modifications or not recommend or return the proposal and proposed concession agreement for reconsideration of the State Government or the Government agency;
- To elicit information relating to National and International Financial Institutions and to examine the feasibility of their participation;
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   • The Board may permit combination of two or more agreements of the nature specified in Schedule I into one agreement.
   • No concession agreement for more than thirty five years from the date of agreement.

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19. Selection of a person
20. Selection of a person by competitive public bidding
21. Selection by direct negotiation
22. Amount to be charged for providing goods and services
23. Financial security for maintenance of project
24. Training to employees
25. Transfer of certain rights
26. Termination of concession agreement
27. Power to add to Schedule 1
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   • Earmarked for being expended in the Road Sector.
   • All sums which may be paid to the Board by the State Government or by any Body.
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   • Rules would also provide for:
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U.P. ROADS (DEVELOPMENT, MANAGEMENT AND MAINTENANCE) ACT, 2008

Statement of Object and Reasons:

"The Road Sector in the State of Uttar Pradesh is in need of immediate attention for an all round, appropriate and proper Development of the State. The Road sector has till date been largely developed by the State Public Works Department, and certain other departments of the Government, such as the Rural Engineering Services, Railway Department, Municipal Authorities, Forest & Irrigation Departments and other Local Development Authorities, apart from certain other bodies such as the Mandi Parishads, Cane Development Department, etc.

Although one of the primary functions of PWD is to develop, maintain and manage the state road network, but a lot remains to be desired in the context of clarity of road network jurisdictions with respect to construction and maintenance thereafter, especially in view of the other aforementioned agencies. Further there is a need to maintain certain standards of road construction and maintenance, which should be followed by all the agencies involved. There is also a felt need to create an umbrella organization, a nodal body that shall be informed of all road construction activity in the State as well as be equipped to ensure the compliance of the necessary standards of road construction and maintenance as applicable to the different categories of roads, all of which essentially translates into a need to ensure all road construction activity to be undertaken in an organized and institutional manner. This is especially relevant in the context of various sources of available funding for the construction of roads presently, such as, the Member of Parliament Local Area Development Fund (MPLAD Fund), the Member of Legislative Assembly Local Area Development Fund (MLALAD Fund), the Pradhan Mantri Gram Sadak Yojna (PMGSY) etc. Further in the context of increasing policy of private sector participation in infrastructure development with respect to roads, there is a felt need to ensure a methodology for selection of the private sector participant in a proper and transparent manner, which also this legislation seeks to address.

With coming into effect the Uttar Pradesh Road Development Policy 2008, there is a felt need for a new legislation focusing solely on the Roads sector, not only, for the aforementioned reason of an all round Development of the State but also to give effect to the Road Development Policy or any other Road Policy laid down by the Government by way of an appropriate legislation."

Preamble- To provide a high quality and efficient road transportation system through adequate design, proper construction, and effective maintenance and management of all roads in the State of Uttar Pradesh to ensure a smooth, safe and uninterrupted / rapid flow of goods and passenger traffic both within the State and on the inter-state routes at all times for the benefit of road users, farmers, transporters, and other goods and service providers, through public and / or private investment; and to provide access to all habitations with all weather roads in a phased manner, so as to improve the socio-economic development of rural masses of the State.
CHAPTER I

PRELIMINARY

1. **Short title, extent and commencement**

   (1) This Act may be called the U.P. Roads (Development, Management and Maintenance) Act, 2008.

   (2) It extends to the whole of Uttar Pradesh, except cantonment areas.

   (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. **Definitions** - In this Act, unless there is anything repugnant in the subject or context,

   a) "agriculture" includes horticulture and the planting and upkeep of orchards;

   b) "Board" would have the same meaning as the PWD Road Development Board established in terms of Section 3;

   c) "building" means a house, hut, shed or other roofed structure, for whatsoever purpose and of whatsoever material constructed, and every part thereof, and includes a wall or masonry platform, but does not include a tent or other such portable and merely temporary shelter;

   d) "Collector" means the principal administrative officer of the District and vested with the accompanying authority;

   e) “concession agreement” means a contract of the nature specified in Schedule I between a developer and the State Government acting through the Board, a Government agency or a specified Government agency, relating to a project.

   f) “Consortium” would include one or more companies or associations or body of individuals, in any combination;

   g) “developer” means a person with whom concession agreement is entered into by the State Government, the Government agency or the specified Government agency;

   h) “Development" means any or all of the acts related to building of roads which include the construction thereof;

   i) “escrow account” means a bank account in which cash is deposited or from which cash is withdrawn in such manner as specified in the concession agreement;

   j) “Government agency” means a Corporation or a body owned or controlled by the State Government or an authority established by or under any law and includes a local authority, and would also include the Board.

   k) “local authority” means a municipal corporation, nagar panchayat, municipal council, notified area committee, district panchayat, taluka panchayat, village panchayat or such other body.
l) “Maintenance” means any or all of the acts of the PWD towards keeping the roads in good and motorable condition;

m) “Management” means any or all of the acts of the PWD towards keeping the roads in good and motorable condition by way of Development and maintenance;

n) "person" shall include any company or association or body of individuals, whether incorporated or not and shall include a consortium;

o) “place of worship” includes a temple, math, samadhi, church, gurdwara, mosque, imambara, dargah, karbala, takya, or idgah;

p) "prescribed" means prescribed by rules made under this Act;

q) “PWD” means the public works department of the State of Uttar Pradesh;

r) “PWD Road” means All State Highways, Major District Roads, Other District Roads and Rural Core Road Network;

s) "road" means a metalled road maintained by the State Government, the Government of India or a local authority, or a route demarcated by the State Government, the Government of India or a local authority with a view to constructing along it a metalled road, and includes the State and National highway.

t) “road specifications” would mean the road construction and maintenance specifications as laid down, and as may be amended from time to time, in the U.P. PWD Manual and as applicable for different categories of roads.

u) “senior loan” means a loan in respect of which a claim on assets is prior to the claim on the assets in respect of other loan and which is specified as such in an agreement providing finance.

v) “specified Government agency” means an agency consisting of the State Government and a Government agency participating jointly;

w) “State Government guarantee” means a guarantee given by the State Government to a developer;

x) “subordinate loan” means a loan in respect of which a claim on assets is subsequent to the claim on the assets in respect of another loan and which is specified as such in an agreement providing finance;

y) “subsidy” means financial assistance in cash or kind provided by the State Government, the Government agency or the specified Government agency.

z) “user charges” means the amount charged under section 22.
CHAPTER II

ESTABLISHMENT AND CONSTITUTION OF BOARD

3. **Establishment of Board** - As soon as may be after the commencement of this act, the State Government may, by notification in the *Official Gazette* establish a Board to be called the PWD Road Development Board with effect from such date as may be specified in the notification.

4. **Head Quarter of the Board** - The Head Quarter of the Board shall be at Lucknow or at such other place as the State Government may, by notification in the *Official Gazette*, specify.

5. **Constitution of Board** - The Board shall consist of the Engineer-in-Chief as Chairman, and all Chief Engineers of the PWD Zones as members.

6. **Term of office of members** - Every Chief Engineer upon assuming charge of any of the PWD Zones shall automatically hold office as member of the PWD Road Development Board, till such time as they occupy office as Chief Engineer of a PWD Zone.

7. **Filling up of casual vacancies** – If any vacancy arises in the Board or any committee thereof by reason of death, resignation or otherwise, the same shall be filled by the State Government in the same manner as vacancies are filled for the post of Chief Engineer.

8. **Meetings of Board** – The Board shall meet at such time and place and shall observe such rules of procedure in regard to transaction of its business at its meeting (including the quorum at such meeting) as may be provided by regulations.

9. **Temporary association of persons with Board** – The Board may associate with itself any person whose assistance or advice is required in performing any of its functions under this act.

10. **Constitution of committees** – The Board may constitute Executive Committees headed by a Superintendent Engineer for each project and such other committees consisting of such number of members, for performing such of its functions, as may be provided by regulations.

11. **The remuneration, allowances and conditions of service** - The remuneration, allowances and conditions of service of the officers and servants of the Board shall remain unchanged by virtue of having become member of the Board.

12. **Acts and proceedings of Board presumed to be valid** – No act or proceeding of the Board or of any of its committees shall be invalid merely by reason of –

   (a) any vacancy therein or any defect in the constitution thereof, or

   (b) any irregularity in its procedure not affecting the merit of the case.
CHAPTER III
FUNCTIONS OF THE BOARD

13. Functions of Board – The functions of the Board shall be as follows, namely:-

(a) To actively promote and ensure development, maintenance and management of the state PWD road network;

(b) To actively promote and ensure development, maintenance and management of any other road network of the State as may be entrusted to it by the State Government, from time to time;

(c) To be responsible for the road projects from conceptualization to implementation and thereafter for maintenance and operation of any project irrespective of its cost;

(d) To advise the State Government, or any the Government agency on matters of policy in respect of the development of the Road Sector in the State;

(e) To lay down priorities of projects to be undertaken by the Board;

(f) To assist in developing concepts of projects by undertaking pre-feasibility and feasibility studies of the project;

(g) To undertake such project as may be entrusted to it by the State Government;

(h) To perform such other functions as may be entrusted to it by the State Government;

(i) To co-ordinate and monitor the projects undertaken in the State;

(j) To consider the proposal(s) for undertaking any project on private sector participation format, after obtaining prior approval of the State Government;

(k) To ensure construction compliance of road specifications to all agencies involved in road construction throughout the State of Uttar Pradesh;

(l) To consider the proposed concession agreement submitted to it and to recommend with or without modifications or not recommend or return the proposal and proposed concession agreement for reconsideration of the State Government or the Government agency;

(m) To elicit information relating to National and International Financial Institutions and to examine the feasibility of their participation;
CHAPTER IV

ROAD PROJECTS BY PRIVATE SECTOR PARTICIPATION

14. **Participation in projects** - Any person may participate in financing, construction, maintenance and operation of projects.

15. **Concession agreement**

   (1)  (a) A person may enter into a concession agreement of the nature specified in Schedule I with the State Government through the PWD Road Development Board.

   (b) The scheme for a concession agreement shall be such as may be prescribed

   (2) Where the Board having regard to the nature of a project is satisfied that, it is necessary so to do, it may permit combination of two or more agreements of the nature specified in Schedule I into one agreement.

   (3) No concession agreement shall provide for transfer of a project by a developer to the State Government later than thirty five years from the date of agreement.

   (4)  (a) The State Government may, by notification in the Official Gazette, add to Schedule I any other nature of agreement and thereupon the nature of agreement so added shall be deemed to be a nature of agreement specified in schedule I for the purpose of this Act.

   (b) Every notifications issued under clause (a) shall be laid before the State Legislature as soon as may be after it is issued.

16. **Recommendation by Board** -

   (1) A proposal prepared by a person other than the State Government or a Government agency in financing, construction, maintenance and operation of the project, the cost of which exceeds such amount as may be prescribed under the Financial Handbook, shall be submitted to the Board alongwith proposed concession agreement relating thereto for its consideration.

   (2) The Board shall consider the proposal and the proposed concession agreement submitted to it under sub-section (i) or sub-section (1) of section 21 and may either recommend with or without modifications or not recommend, or return the proposal and concession agreement for reconsideration, of the State Government.
17. **Assistance by State Government, Government agency or specified Government agency** - The State Government, a Government agency or a specified Government agency may provide to a person assistance in the following manner, namely:-

(a) participation in the equity of the project not exceeding forty-nine per cent of the total equity.

(b) Subsidy not exceeding fifteen per cent of the cost of the project.

(c) Senior or subordinate loans,

(d) Guarantee by the State Government, a Government agency or a specified Government agency in respect of liability of a Government agency arising out of a concession agreement.

(e) Opening and operation of escrow account

(f) Conferment of a right to develop any land.

(g) Incentives by the State Government in the form of exemption from the payment of, or deferred payment of, any tax or fees levied by the State Government under any law, or

(h) In such other manner as deemed fit.

18. **Procedure for concession agreement** - No concession agreement for undertaking a project shall be entered into with any person unless the procedure specified in section 19 and section 20 or, as the case may be, section 19 and section 21 has been followed.

19. **Selection of a person**

(1) A concession agreement for undertaking a project may be entered into with a person who is selected through a competitive public bidding as provided in section 20 or by direct negotiation as provided in section 21.

(2) The matters relating to competitive bidding and direct negotiation shall be such as may be prescribed.

20. **Selection of a person by competitive public bidding** (1) On the acceptance of the recommendation of the Board made under sub-section (2) of section 16, the State Government or the Government agency as the case may be, shall select a developer for the project through the competitive public bidding in the manner provided hereunder-

(a) A public notice inviting persons to participate in competitive public bidding for undertaking the project.

(i) shall be published once in a week for two consecutive weeks in at least three newspapers, two in general circulation and one in circulation in the area in which the project is to be undertaken, and

(ii) may be published by any other means of mass communication.
(b) (i) Any person who intends to participate in the competitive public bidding to undertake the project in pursuance of a public notice published under clause (a) shall provide information with regard to his legal, technical, managerial and financial capacity to undertake the said project in such form along with such particulars as may be specified by the State Government or the Government agency, as the case may be.

(ii) The State Government or the Government agency shall examine the information and other particulars submitted by the person under sub-clause (I) and decide as to whether such person fulfills the criteria for pre-qualification as laid down by the State Government or the Government agency.

(iii) A person who fulfills the criteria as laid down under sub-clause (ii) shall be declared as the pre-qualified person;

(c) (i) Where after a person who is a consortium is pre-qualified under clause (b) but before such person enters into a concession agreement with the State Government or the Government agency, as the case may be, if any constituent of the consortium disassociates from such consortium, then the State Government or the Government agency shall call upon the consortium to include, within thirty days, such constituent in the consortium as specified by it so that in the opinion of the State Government or the Government agency, as the case may be, the consortium fulfills the criteria referred to sub-clause (ii) of clause (b).

(ii) Where the consortium fails to comply with the requirement specified in sub-clause (I), the consortium shall cease to be the prequalified person.

(d) All pre-qualified persons shall be permitted to submit their proposals to undertake the project in such form (containing technical and financial aspects) as may be specified by the State Government or the Government.

(2) On receipt of the proposals from the pre-qualified persons, the State Government or shall evaluate the proposals from technical aspect.

(3) If the proposals are in order from the technical aspect, the State Government or the Government agency shall evaluate the proposals from the financial aspect, having regard to different factors specified below in respect of different nature of the agreements specified in Schedule I.

(a) In relation to the build own operate and transfer agreement and the build operate and transfer agreement, any of the following factors shall be taken into consideration for the purpose of evaluation of the proposal, namely.-

(i) lowest bid in terms of the present value of user charges, where period of concession is fixed;

(ii) the highest revenue share to the State Government, the Government agency or the specified Government agency.
(iii) a bid in terms of the shortest concession period, where the user charges is fixed.
(iv) the lowest present value of the subsidy, where the period of concession is fixed.

(b) In relation to the build and transfer agreement and the build lease and transfer agreement, the lowest net present value of the amortization payment from the State Government, the Government agency or the specified Government agency shall be taken into consideration.

(c) In relation to the lease management agreement, highest present value of the lease payment to the State Government, the Government agency or the specified Government agency shall be taken into consideration.

(d) In relation to the management and service agreement, the lowest present value of the management fees to be paid by the State Government, the Government agency or the specified Government agency shall be taken into consideration.

(e) In relation to any other nature of agreement, the State Government, the Government agency or the specified Government agency may consider such factors as may be recommended by the Board.

(4) Where –

(a) the proposals are evaluated under sub section (3) from the financial aspect having regard to a relevant factor specified in that sub section and referred to in the proposal, and

(b) One of the proposal so evaluated satisfies the financial aspect having regard to the relevant factor,

The State Government, the Government agency or, as the case may be, the specified Government agency, may enter into a concession agreement with the person who has submitted the proposal referred to in clause (d) of sub-section (1)

(5) Where no proposal stands the scrutiny from the technical or financial aspect, the competitive bidding shall stand cancelled.

(6) Nothing in sub-section (5) shall prohibit the State Government, the Government agency or, as the case may be, the specified Government agency from inviting persons to participate in competitive public bidding in respect of the proposal which stands cancelled under that sub-section after, if necessary, revising the same.
21. **Selection by direct negotiation**

(1) Where- (i) a proposal for undertaking a project and a proposed concession agreement prepared by a person are submitted to the Board or the State Government.

The State Government through the Board may-

(a) consider the proposal and the proposed concession agreement from all aspects (including technical and financial) and if necessary modify the same in consultation with the person who has submitted the proposal and the proposed concession agreement, and

(b) recommend the proposal under Section 16 (2) to the State Government if-

(i) the cost of the project exceeds the limit prescribed under sub-section (1) of section 16 and

(ii) the undertaking of the project does not require financial assistance in the form of subsidy from the State Government or any Government agency.

(2) On acceptance of the recommendation of the Board made under sub-section (2) of section 16, the State Government or the Government agency shall adopt the proposal as the basis for selecting a person with whom concession agreement for undertaking the project may be entered into, and for selecting such person, the State Government or the Government agency shall follow the procedure of competitive public bidding specified in section 20.

(3) Where a person is selected by following the procedure of the competitive public bidding (hereinafter referred to as “the selected person”) the proposal of the selected person shall be compared with the proposal which is earlier submitted by a person to the Board or the State Government or the Government agency under sub-section (1) (hereinafter referred to as “the earlier proposer”)

(4) Where the proposal of the earlier proposer is not preferable to the proposal of the selected person, the earlier proposer shall be given an opportunity to make his proposal competitive with that of the selected person within a period of thirty days from the date on which he has been given the opportunity and where the earlier proposer fails to do so within the said period, the Board or the State Government or the Government agency may enter into a contract with the selected person.

(5) (a) Where a concession agreement has not been entered into with the earlier proposer, the cost of preparation of the proposal and the concession agreement incurred by him shall be reimbursed by the State Government or the Government agency and on such reimbursement, the proposal and the concession agreement submitted by the earlier proposer shall be the property of the State Government or the Government.

(b) the cost of preparation of the proposal and the concession agreement shall be determined in such manner as may be prescribed.
22. **Amount to be charged for providing goods and services** -

(1) Where, in pursuance of a concession agreement with the State Government, the Government agency or as the case may be the specified Government agency,

(a) (i) the developer has constructed a project for providing goods or services, and

(ii) the project vests in the developer for a period specified in the concession agreement and

(iii) on expiry of such period, the project is to vest in the State Government. The developer may charge such amount as specified in the agreement, for providing goods or services by the project so long as the project continues to vest in him, or

(b) An existing project is vested to a person to renovate, operate and maintain the developer may charge such amount as specified in the agreement for providing goods or services by the project so long as the project continues to vest in him.

(2) A concession agreement may provide that a developer may having regard to the rate of inflation, variation in the rate of foreign exchange and such other factors, as may be prescribed revise the amount of charges referred to in subs section (1) in such manner as may be prescribed.

23. **Financial security for maintenance of project** - Where a provision is made in a concession agreement requiring the developer to maintain the project constructed by him for a period specified in such agreement,-

(a) there shall be opened an escrow account by the developer, the money out of which shall be expended for the maintenance of the project in accordance with the provision made in the concession agreement or in any other agreement with the State Government or the Government agency, or

(b) the developer shall execute a bond in the favour of the State Government or the Government agency binding himself to make payment of such amount of money as specified in the bond to the State Government or the Government agency in case he fails to maintain the project in accordance with the provisions made in the concession agreement or any other agreement with the State Government or the Government agency.

24. **Training to employees** - A developer shall provide at his expense, training to the employees of the State Government or the Government agency in respect of maintenance or operation of the project in accordance with the provisions made in the concession agreement or in any other agreement with the State Government or the Government agency.
25. **Transfer of certain rights** - Where the project is transferred to the State Government or the Government agency according to the provisions of the concession agreement, all the rights of the developer in respect of the project shall stand transferred to the State Government or the Government agency.

26. **Termination of concession agreement** -

   (1) Where a concession agreement is terminated by the State Government or the Government agency with the consent of the developer or in absence of any default of the developer, the developer shall be entitled to such amount of compensation for such termination as specified in the concession agreement.

   (2) A concession agreement may provide that if a default specified therein is committed by the developer, the State Government or the Government agency shall, after giving to the developer an opportunity of being heard in such manner as may be prescribed, be entitled to terminate the concession agreement and-

      (a) take over the project without repaying the amount invested by the developer in the equity and shall assume the liability of the developer towards loans taken by him in respect of the project, or

      (b) enter into a concession agreement with another person whose name is recommended by the lenders of the developer and approved by the State Government or the Government agency, on the same terms and conditions as are specified in the concession agreement so terminated.

27. **Power to add to Schedule 1**

   (1) The State Government may, by notification in the Official Gazette, add to Schedule 1 any other nature of project and thereupon the said nature of project so added shall be deemed to be a project specified in schedule I for the purpose of this Act.

   (2) Every notifications issued under sub-section (1) shall be laid before the State Legislature as soon as may be after it is issued.
CHAPTER V
FINANCE, ACCOUNT, AUDIT AND ANNUAL REPORT

28. **Funds of the Board** –

   (1) The Funds as may be allocated to the PWD from the Annual Budget of the State, that are earmarked for being expended in the Road Sector shall be appropriated as its own fund.

   (2) All sums which may, from time to time, be paid to the Board by the State Government or by any body.

   (3) and the amount charged by the board under section 31 shall be carried to the fund of the Board and all payments shall be made therefrom.

   (4) The Board may spend such sums as it thinks fit for the performance of its functions under this act, and such sums shall be treated as expenditure payable out of the fund of the Board.

   (5) The Financial Handbook of the PWD would operate in defining the financial responsibilities and competence of the members of the Board.

29. **Accounts and audit** –

   (1) The accounts of the Board shall be prepared and maintained in such form and in such manner as may be provided by regulations.

   (2) The Board shall cause to be prepared for each financial year an annual statement of accounts in such form as may be provided by regulations.

   (3) The accounts of the Board shall be audited by

      (a) the Account General of the State, or;

      (b) an auditor duly qualified to act as an auditor of the Companies under section 226 of the Companies Act, 1956.

   (4) The auditor shall send a copy of the report together with audited copy of accounts to the Board which shall as soon as may be after the receipt of the audit report forward the same to the State Government.

   (5) The State Government shall cause the audit report together with audited copy of accounts to be laid before the State Legislature as soon as may be after the receipt of the same under sub-section (4).
30. **Annual report** –

(1) The Board shall during each financial year prepare in such form and at such time as may be provided by regulations, an annual report giving a true and full account of its activities during the previous financial year and an account of the activities likely to be undertaken by it in current financial year and copies of such report shall be forwarded to the State Government.

(2) The State Government shall cause every such report to be laid before the State Legislature as soon as may be after the receipt of the report under sub-section (1).
CHAPTER VI

MISCELLANEOUS

31. **Amount to be charged by Board** – The Board may charge such amount as may be determined by it for considering the proposal and the proposed concession agreement under sub-section (2) of section 16.

32. **Protection of action taken in good faith** – No suit, prosecution or other legal proceeding shall lie against the Board or any member and officer or servant of the Board for anything which is in good faith done or intended to be done in pursuance of the provisions of this act or any rules and regulations made thereunder.

33. **Arbitration** – Every concession agreement under private sector participation shall contain an arbitration clause providing that –

   (a) all parties to the agreement shall submit to arbitration any dispute which may arise between them out of the provisions of this agreement,

   (b) the place of arbitration shall be at Lucknow or any other place in India agreed to by the parties, and

   (c) the disputes referred to in clause (a) shall be decided in accordance with the law for the time being in force in India.

34. **Power to make Rules** –

   (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this act.

   (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

   (a) the scheme for concession agreement under clause (b) of sub-section (1) of section 15;

   (b) the matters relating to competitive public bidding and direct negotiation under sub-section (2) of section 19;

   (c) the manner in which the cost of preparation of the proposal and the concession agreement shall be determined under clause (b) of sub-section (5) of section 21;

   (d) the other factors having regard to which charges may be revised and the manner in which they may be revised under sub-section (2) of section 22;

   (e) the manner in which an opportunity of being heard shall be given to the developer under sub-section (2) of section 26;

   (f) any other matter which is to be or may be prescribed.
(3) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.

(4) Any rescission or modification so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect.

35. **Power to make regulations** –

(1) The Board may make regulations not inconsistent with provisions of this act and the rules made thereunder, for enabling it to discharge its functions under this act.

(2) In particular and without prejudice to the foregoing power, such regulations may provide for all or any of the following matters, namely:–

(a) the time and the place at which the Board shall meet and rules of procedure the Board shall observe in regard to transaction of its business at its meeting under section 8;

(b) the other committees which the Board may constitute the number of members which the Executive Committee and other committees may consist of and the functions of the Board which they may perform under section 10.

(c) the form and manner in which the accounts of the Board shall be prepared and maintained under sub-section (1) of section 29;

(d) the form in which an annual statement of accounts of the Board shall be prepared under sub-section (2) of section 29;

(e) the form in which and the time at which an annual report of the Board shall be prepared under sub-section (1) of section 30;

(f) any other matter which is, or may be, necessary to be prescribed for the efficient conduct of the affairs of the Board.

36. **Savings** –

(1) the provisions of this Act are in addition to, and not in, derogation of any other law for the time-being in force

(2) Nothing in this act shall affect the validity of –

(a) the provisions of the Uttar Pradesh Road Side Land Control Act, 1945.

(b) a concession agreement entered into by the State Government with any person before the date of the commencement of this act (hereinafter referred to as ‘the said date’).
SCHEDULE I

(See sub section (I) of Section 15)

NATURE OF CONCESSION AGREEMENT

1. **Build own Operate and Transfer Agreement**: An agreement whereby the developer undertakes to finance, construct, maintain and operate a project and whereby such project is to vest in the developer for a specified period.

   During the period of operation of the project by the developer, he may be permitted to charge user charges as specified in an agreement. The developer is required to transfer the project to the State Government, the Government agency or, as the case may be, the specified Government agency after the expiry of the period of operation.

2. **Build Own Operate and Maintain Agreement**: An agreement whereby a developer undertakes to finance, construct, operate and maintain a project and whereby such project is to vest in the developer for specified period.

   During the period of operation of the project, he may be permitted to charge user charges as specified in the agreement.

3. **Build and Transfer Agreement**: An agreement whereby developer undertakes to finance and construct a project. After the completion of the project, the developer is required to transfer the project to the State Government, the Government agency or, as the case may be, the specified Government agency.

   The developer shall be paid such amount as is fixed in amortization schedule specified in the agreement.

4. **Build Lease and Transfer Agreement**: An agreement whereby a developer undertakes to finance and construct the project. On completion of the project, the developer hands it over to the State Government, the Government agency or, as the case may be, the specified Government agency for operation under a lease agreement for period specified in the agreement after the expiry of which the project stands transferred to the State Government, the Government agency or, as the case may be, the specified Government agency.

5. **Build Transfer and Operate Agreement**: An agreement whereby the developer undertakes to finance and construct the project. On completion of the project, the developer transfers the project to the State Government, the Government agency or, as the case may be, a specified Government agency which permits the developer to operate the project on its behalf for a period specified in the agreement.

6. **Lease Management Agreement**: An agreement whereby the State Government, the Government agency or the specified Government agency leases a project owned by the State Government, the Government agency or, as the case may be, the specified Government agency to the person who is permitted to operate and maintain the project for the period specified in the agreement and to charge user charges therefor.
7. **Management Agreement:** An agreement whereby the State Government, the Government agency or the specified Government agency entrusts the operation and management of a project to a person for the period specified in the agreement on payment of specified consideration. In such agreement the State Government, the Government agency or, as the case may be, the specified Government agency may charge the user charges and collect the same either itself or entrust the collection for consideration to any person who shall after collecting the user charges pay the same to the State Government, the Government agency or, as the case may be, the specified Government agency.

8. **Rehabilitate Operate and Transfer Agreement:** An agreement whereby an existing project is vested in a person to renovate, operate and maintain for the period specified in the agreement after the expiry of which the project is required to be transferred to the State Government, the Government agency or, as the case may be, the specified Government agency. During the period of operation of the project by the developer, he may be permitted to charge user charges as specified in the agreement.

9. **Rehabilitate own Operate and Maintain Agreement:** An agreement whereby an existing project is vested in a person to renovate, operate and maintain. The developer shall be permitted to charge user charges as specified in the agreement.

10. **Service Contract Agreement:** An agreement whereby a person undertakes to provide services to the State Government, the Government agency or the specified Government agency for a specified period. The State Government, the Government agency or, as the case may be, the specified Government agency shall pay him an amount according to the agreed schedule.

11. **Supply Operate and Transfer Agreement:** An agreement whereby a person supplies to the State Government, the Government agency or the specified Government agency the equipment and machinery for a project and undertakes to operate the project for a period and consideration specified in the agreement. During the operation of the project, he shall undertake to train employees of the State Government, the Government agency or, as the case may be, the specified Government agency to operate the project.

12. **Joint Venture Agreement:** An agreement whereby the State Government, the Government agency or the specified Government agency enters into an agreement with a developer to jointly finance, construct, operate and maintain a project for a period specified in the agreement after the expiry of which the project is required to be transferred to the State Government, the Government agency or, as the case may be, the specified Government agency.
ANNEXURE B: QUESTIONNAIRE

In Re: Legislation for the Road Sector in U.P.

(Please Note: The 'You' in the question refers to 'PWD')

1. What is the regulatory framework you would like to see for the Road Sector in U.P.?

2. What is the Role of the PWD envisaged for the Road Sector in U.P.?

3. Do you believe all the Roads in the State of U.P. are under the PWD?

4. If not, please state why?

5. Are there any ownership issues with respect to roads in the State of U.P.?

6. How would you like this ownership issue to be resolved?

7. What is your wish list with regard to Road Ownership issues?

8. Do you need a new Road Legislation?

9. If yes, why?

10. What are the issues foremost on your mind that requires to be sorted out in the new legislation?

   (Pls. list in Order of Priority)

11. What is your vision for the Road Sector?

12. What is your vision for PWD?

13. Is there a Mapped PWD Road Maintenance Network?
14. Is there any Act or Government Notification that defines the ‘PWD Road Network’?

15. Is ‘Ownership’ of Roads defined in any Act?

16. Is ‘Ownership’ of Roads defined in any Rules?

17. Is ‘Ownership’ of Roads defined from time to time by Government Notification?

18. Is ‘Ownership’ of PWD Roads defined by Government Orders?

19. Is there any Government document that defines the jurisdiction of the PWD, RES etc.?

20. How would you describe the PWD – Government or Government Agency?

21. How would you as an individual describe your employment in the PWD –
   - A Government Servant or
   - An employee of a Government Agency?