REVIEW OF THE WORKING OF THE CONSTITUTION

REPORT OF THE NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION



VOLUME—I

REPORT

OF

THE NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

VOLUME – I

VIGYAN BHAVAN ANNEXE
MAULANA AZAD ROAD
NEW DELHI – 110 011
March 2002

1206 LJ&CA/2002—1A

National Commission to Review the Working of the Constitution

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- Justice Shri R.S. Sarkaria
- Justice Shri Kottapalli Punnayya
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CONTENTS

VOLUME I

		Page No.
Letter from the Chairperson forwarding the Report		(I)
Acknowledgements		(III)
Chapters		
1.	Introduction	1
2.	Basic Approach and Perspective	23
3.	Fundamental Rights, Directive Principles and Fundamental Duties	83
4.	Electoral Processes and Political Parties	119
5.	Parliament and State Legislatures	154
6.	Executive and Public Administration	176
7.	The Judiciary	198
8.	Union-State Relations	222
9.	Decentralization and Devolution	259
10.	Pace of Socio-Economic Change	289
11.	Summary of Recommendations	315
Notes of Members		371

VOLUME II

BOOK - 1

1.	**Gazette Notifications**		1
2.	**Advisory Panels**		13
3.	**Consultation Papers**		
	(i)	Enlargement of Fundamental Rights	23
	(ii)	Pace of Socio-Economic Change under the Constitution	55
	(iii)	Literacy in the context of the Constitution of India	233
	(iv)	Social Security and Employment	285
	(v)	Effectuation of Fundamental Duties of Citizens	369
	(vi)	Review of the Working of Political Parties specially in relation to Elections and Reform Options	419
	(vii)	Review of Election Law, Processes and Reform Options	473
	(viii)	Immunity of Legislators: What do the words 'in respect of anything said or any vote given by him' in article 105(2) signify?	539
	(ix)	Efficacy of Public Audit System in India: C&AG	559
	(x)	Probity in Governance	583
	(xi)	Liability of State in Tort	665
	(xii)	Superior Judiciary	703
	(xiii)	All India Judicial Service	749

BOOK – 2

3. **Consultation Papers (Contd.)**

(xiv)	Financial Autonomy of the Indian Judiciary	765
(xv)	Constitutional Mechanism for the settlement of Inter-State Disputes	831
(xvi)	Treaty-making power under our Constitution	861
(xvii)	The Institution of Governor under the Constitution	889
(xviii)	Article 356 of the Constitution	925
(xix)	Review of the Working of the Constitutional Provisions for Decentralisation (Panchayats)	955
(xx)	Decentralization and Municipalities	1007
(xxi)	Empowering and Strengthening local self-government in Cantonments	1093
(xxii)	Empowerment and Strengthening of Panchayat Raj Institutions/ Autonomous District Councils/Traditional tribal governing institutions in North East India	1135

BOOK – 3

4. **Background Papers**

(i)	Working of Parliament and Need for Reforms	1213
(ii)	Some ideas in Governance	1229
(iii)	Concurrent Power of Legislation under List III of the Indian Constitution	1245
(iv)	Fiscal and Monetary Policies	1259
(v)	Barriers to Inter-State Trade & Commerce – The Case of Road Transport	1273
(vi)	Article 262 and Inter-State Disputes relating to Water	1353
(vii)	Pace of Socio-Economic Change and Development under the Constitution	1385

5. **List of Organisations/Individuals who sent representations to the Commission** 1423

6. **List of Organisations/Individuals who responded to the Consultation Papers/Questionnaires issued by the Commission** 1451

7. **List of Organisations/Delegations/Individuals who interacted with the Commission** 1465

8. **List of Seminars sponsored by the Commission** 1469

9. **Minutes of meetings of the Commission** 1473

10. **Report of the Drafting and Editorial Committee** 1581

Justice M. N. Venkatachaliah
(Former Chief Justice of India)
Chairperson

सत्यमेव जयते

राष्ट्रीय संविधान कार्यकरण समीक्षा आयोग
विज्ञान भवन एनेक्सी,
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NATIONAL COMMISSION TO REVIEW
THE WORKING OF THE CONSTITUTION
VIGYAN BHAWAN ANNEXE,
MAULANA AZAD ROAD,
NEW DELHI-110011

March 31, 2002

Dear Mr. Prime Minister,

I am happy to present to you the Report of the National Commission to Review the Working of the Constitution.

My colleagues in the Commission and I have been guided, right from the inception of our work, by our conviction that the exercise to review the working of the Constitution would be meaningful and productive – even in the minutest degree – only if undertaken, from start to finish, in an objective and strictly non-partisan way, drawing judiciously and realistically upon experience thus far and with as clear a perception as may be of existing and emerging problems impinging on national reconstruction as lighted by the ideals, values and goals of the Constitution.

It is in this spirit that we endeavoured to invite the cooperation of all who felt they had something to say in regard to the subject matter before the Commission. The Commission is sincerely and deeply appreciative of the advice and assistance tendered to it by eminent persons and institutions engaged in diverse sections of nation-building activity. These included: distinguished parliamentarians, judges, civil servants, experts in the fields of science and technology, economic sciences, as well as jurists, and prominent personalities in the Media.

Many leaders of political parties were particularly forthcoming to contribute their ideas and perceptions as to what needed to be done to strengthen our Constitution to fulfill its objectives better.

The Commission sought to secure in its work as broad an engagement as possible of the public. Consultation Papers on various topics, prepared for the Commission by expert bodies, were publicized through the print and electronic media and placed on the Commission's web-site, and reactions from the people at large invited. The Commission was glad to avail of a large number of responses received from all regions of the country, from persons with stand-points in a wide-ranging variety of sectors. It was gratifying to note the interest in the public mind in the working of the Constitution and its organs, mechanisms and processes, and the frank expression of views in this respect made no doubt with a keen sense of personal involvement and duty as citizens with a real and direct stake in national well-being.

In reviewing the working of the Constitution, in the light of over fifty years of experience gained thus far, and formulating recommendations, the Commission has completed the task set for it in February 2000. Some recommendations, if found acceptable, may entail amendments to the Constitution; legislative interventions would be adequate for some others; and for the rest, administrative measures may suffice.

It is my pleasant duty to put on record that it has been a satisfactory experience to work with the distinguished members of the Commission who worked with a sense of duty and without accepting any consideration for performing the onerous task as a team. Members of the Drafting and Editorial Committee worked hard to draft and edit the report and help the Commission to adhere to the time schedule for presentation of the Report.

My colleagues in the Commission and I commend this Report to you.

With profound regards,

Yours sincerely,

(M.N. VENKATACHALIAH)

Shri Atal Bihari Vajpayee,
Prime Minister of India,
NEW DELHI.

ACKNOWLEDGEMENTS

The task of review of the working of the Constitution in its range, depth and complexity is such that any degree of its satisfactory accomplishment would have been impossible without collaborative assistance from many sources. The list of those who have earned the Commission's gratitude in this behalf is so large and the measure of the indebtedness of the Commission so deep that a mere formal expression of gratitude is inadequate.

To,

Justice Shri V.R. Krishna Iyer, Chairman, Justice Shri M. Jagannadha Rao, Prof. Amrik Singh, Shri Andre Beteille and Prof. Mushirul Hassan – Members of the Advisory Panel on "Enlargement of Fundamental Rights".

To,

Justice Shri R.S. Sarkaria, Chairman, Dr. M.G. Rao and Shri G.V. Ramakrishna – Members of the Advisory Panel on "Union State Relations".

To,

Justice Shri H.R. Khanna, Chairman, Dr. Jayaprakash Narayan and Dr. V.A. Pai Panandikar – Members of the Advisory Panel on "Strengthening of the Institutions of Parliamentary Democracy".

To,

Justice Shri O. Chinnappa Reddy, Chairman and Shri Raju Ramachandran, Shri R. Venkataramani, Shri Vinod Bobde, Shri Gopal Subramaniam and Prof. (Smt.) S.K. Verma – Members of the Advisory Panel on "Effectuation of Directive Principles".

To,

Justice Dr. K. Ramaswamy, Chairman and Shri P.S. Krishnan, Dr. Sukumar Azhikode and Dr. D. Swaminadhan – Members of the Advisory Panel on "Pace of Socio-Economic change and development under the Constitution".

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The Commission conveys its profound gratitude.

The Commission recalls with the sense gratitude of Dr. Subhash C. Kashyap, Chairman, Shri K. Parasaran and Dr. Abid Hussain, Members of the Drafting and Editorial Committee for the enduring value of the services rendered by them.

The Commission records with affection and appreciation the dedicated services of Dr. Raghbir Singh, (former Secretary to the Government of India) whose services have been invaluable to the Commission. Dr. Raghbir Singh co-ordinated the meetings of the Commission and of the Advisory Panels with commendable efficiency and patience, handling the complex procedures. The Chairman and the Members of the Commission convey their appreciation and gratitude to Dr. Raghbir Singh.

The Commission places on record the services of the team of officers consisting of Shri N.K. Nampoothiry, Additional Legislative Counsel, Dr. D.B. Singh, Deputy Secretary, Shri D. Bhardwaj, Deputy Research Officer, Shri K. Shankar, Deputy Research Officer, Shri S.R. Mishra, Assistant Legal Adviser, Dr. V.K. Singh, Assistant Legal Adviser and the establishment work done by Shri A.K. Pandey, Section Officer. These officers and their colleagues performed the responsibilities with meticulous care and put themselves whole heartedly on jobs assigned to them.

The Chairman expresses his appreciation of the valuable services rendered by his personal staff – Shri Naresh Kumar Sharma, Principal Private Secretary and Shri Mahesh Kumar Sharma, Personal Assistant for their sincere and devoted services.

The Commission places on record services of Late Prof. P.M. Bakshi, Ms. Maja Daruwala, Prof. N.R. Madhava Menon, Prof. Maitra, Prof. V.S. Rekhi and Prof. M.P. Singh, Dr. G. Mohan Gopal, Prof. S.P. Sathe for their research support.

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CHAPTER 1

INTRODUCTION

CONTENTS

1.1	➢ Genesis of the Commission	1.7	➢ Projects and Finance Committee
1.2	➢ Tenure of the Commission	1.8	➢ Eliciting Public Opinion
1.3	➢ Terms of Reference	1.9	➢ Process of Interaction
1.4	➢ Earlier efforts to review the Constitution	1.10	➢ Deliberations of the Commission
1.5	➢ Methodology and Procedure	1.11	➢ Drafting and Editorial Committee
1.6	➢ Consultation Papers and Advisory Panels	1.12	➢ Adoption of the Report

CHAPTER 1

INTRODUCTION

Genesis of the Commission

1.1.1 Pursuant to the President's address to the two Houses of Parliament assembled together at the commencement of the first session after the thirteenth general election to Lok Sabha, the Government of India, Ministry of Law, Justice and Company Affairs (Department of Legal Affairs), *vide* its Resolution, dated the 22 February, 2000 resolved to constitute "the National Commission to Review the Working the Constitution" to make suitable recommendations. The said resolution was subsequently modified by the Government *vide* its notifications dated 17 March, 2000 and 27 March, 2000 (Gazette Notifications are reproduced in Volume II).

1.1.2 The Resolution stipulated that the Commission shall consist of a whole-time Chairperson who shall be a person of distinction with knowledge and expertise of constitutional issues and in the working of the democratic institutions of the nation. It was further stipulated that besides the Chairperson, the Commission shall have not more than ten other Members who shall be selected on the basis of their proven expertise and knowledge in the field of constitutional law, economics, politics, law, sociology, political science and other relevant subjects. The Commission shall have a Secretary of the status of a Secretary to the Government of India to assist the Commission.

1.1.3 Accordingly, on 23 February 2000, the President of India appointed Justice Shri M.N. Venkatachaliah, former Chief Justice of India as the Chairperson of the Commission and the following persons as the other Members of the Commission:

1. Justice Shri B.P. Jeevan Reddy, Chairman, Law Commission of India
2. Justice Shri R.S. Sarkaria, former Judge, Supreme Court of India
3. Justice Shri Kottapalli Punnayya, former Judge, Andhra Pradesh High Court
4. Shri P.A.Sangma, former Speaker, Lok Sabha; and Member of Parliament
5. Shri Soli J. Sorabjee, Attorney General for India
6. Shri K. Parasaran, Senior Advocate and former Attorney General for India
7. Dr.Subhash C. Kashyap, former Secretary General, Lok Sabha
8. Shri C.R. Irani, Chief Editor and Managing Director, *The Statesman*
9. Dr. Abid Hussain, former Ambassador of India in the USA
10. Smt. Sumitra G. Kulkarni, former Member of Parliament, (Rajya Sabha)

Dr. Raghbir Singh, Secretary to the Government of India in the Ministry of Law, Justice and Company Affairs (Legislative Department) was asked to look after the work of the Secretary to the Commission immediately and on his superannuation, he was appointed as the Secretary to the Commission with effect from 1 April 2000.

Tenure of the Commission

1.2 In its Resolution of 22 February 2000, Government stipulated that the Commission shall complete its work and make its recommendations within one year. Government of India in the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) *vide* its Amending Notifications of 20 February 2001, 30 October 2001 and 26 February 2002 successively extended the tenure of the Commission upto 31 October 2001, 28 February 2002 and 31 March 2002 (Gazette Notifications are reproduced in Volume II).

1206 LJ&CA/2002—2B

Terms of Reference

1.3.1 The Resolution of the Government of India, Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) of 22 February 2000 stipulated the following as the terms of reference of the Commission :-

> "The Commission shall examine, in the light of the experience of the past 50 years, as to how best the Constitution can respond to the changing needs of efficient, smooth and effective system of governance and socio-economic development of modern India within the framework of parliamentary democracy and to recommend changes, if any, that are required in the provisions of the Constitution without interfering with its basic structure or features."

1.3.2 The Government authorized the Commission to decide its own procedure and hear and entertain all persons, representations and communications which in the opinion of the Commission shall facilitate its work and final recommendation.

Earlier efforts to review the Constitution

1.4.1 There was nothing entirely new in the effort at reviewing the working of our Constitution. The debate had continued right from the first decade of the life of the Constitution. Also, every amendment had been an occasion for review. But, in the half-a-century and more since the Constitution came into force, whereas as many as eighty-five amendments have been instituted, there has been (till the setting up of the National Commission to Review the Working of the Constitution) no comprehensive and transparent official exercise to review the working of the Constitution in its entirety with a view to evaluating its achievements and failures in fulfilling the objectives of the Constitution in the context of experience gained, and for future requirements perceived.

1.4.2 That the Constitution ought to be amenable to change to allow for emerging needs was always recognized. This was emphasized – right from its nascent stage; indeed, even from the time the document was being conceived

and tissue, texture and shape was being given to it. The framers of the Constitution themselves had that vision and prescience. Speaking on the Objectives Resolution on 22 January 1947, Jawaharlal Nehru had declared:

> "A free India will see the bursting forth of the energy of a mighty nation. What it will do and what it will not, I do not know, but I do know that it will not consent to be bowed down... This House cannot bind down the next generation or the people who will duly succeed us..."

1.4.3 Nehru was prominent amongst those who had first broached the idea of a Constituent Assembly to draw up a Constitution for a renascent India. As the head of the Interim Government and a prime-mover of the Constitution-making process, he was deeply immersed and dynamically involved in every stage of the framing of the Constitution. Yet Nehru reiterated this view over and over again, on appropriate occasions. Speaking of the Draft Constitution on 8 November 1948, Nehru said:

> "The Constitution is after all some kind of legal body given to the ways of Government and the life of the people. A Constitution if it is out of touch with the people's life, aims and aspirations, becomes rather empty: if it falls behind those aims, it drags the people down. It should be something ahead to keep people's eyes and minds made up to a certain high mark... Remember this that while we want this Constitution to be as solid and as permanent a structure as we can make it, ... there should be a certain flexibility. If you make anything rigid and permanent, you stop a nation's growth, the growth of a living, vital, organic people."

1.4.4 After the Constitution came into force, within two years, it was required to be amended. In the course of his speech on the Constitution (First Amendment) Bill, 1951, on 2 June 1951 Nehru once again repeated his views as to the need for the Constitution to be amenable to amendment. On this occasion, his words were trenchant and unsparing. He said:

> ".. ..... we have in India a strange habit of making gods of various things, adding them to our innumerable pantheon, and having given them our theoretical worship, doing exactly the

reverse. If we want to kill a thing in this country, we deify it. That is the habit of this country largely. So if you wish to kill this Constitution, make it sacred and sacrosanct – certainly. If you want it to be a dead thing, not a growing thing, a static, unwieldy, unchanging thing, then by all means do so, realizing that that is the best way of stabbing it in the front and in the back... A Constitution which is unchanging and static, it does not matter how good it is, but as a Constitution it is past its use. It is in its old age already and gradually approaching its death. A Constitution to be living must be growing; must be adaptable; must be flexible; must be changeable... Therefore, it is a desirable and a good thing for people to realize that this very fine Constitution that we have fashioned after years of labour, is good in so far as it goes, but as society changes as conditions change, we amend it in the proper way. It is not like the unalterable law of the Medes and Persians that it cannot be changed, although the world around may change."

1.4.5 Four years later, as an experienced Prime Minister with prolonged first-hand knowledge of the efficacy of the fundamental law of the land, he held the same view. Speaking on the Constitution (Fourth Amendment) Bill, 1955 Nehru said:

> "After all, the Constitution is meant to facilitate the working of the Government and the administrative and other structures of this country. It is meant to be not something that is static and which has a static form in a changing world, but something which has something dynamic in it, which takes cognizance of the dynamic nature of modern conditions, modern society."

1.4.6 In the years that followed the Fourth Amendment, the Constitution has been amended 81 times. The Union and the State Governments and Parliament faced the Supreme Court over fundamental rights issues: freedom of expression *vis-à-vis* national integrity; personal liberty *vis-à-vis* political stability; special treatment for some segments of society *vis-à-vis* abstract equality for all; property rights *vis-à-vis* social revolution needs etc. Questions also arose whether the power of constitutional amendment was complete, unrestrained and unlimited and whether there were limits to the power of judicial review of constitutional amendments.

1.4.7 In the period 1950 to 1967, Parliament and most State Assemblies had preponderant Congress majorities. General Elections in 1967 were followed by the formation of non-Congress coalitions in a number of States in the northern region of the country. Certain issues pertaining to Union-State relations arose during this period directly from the functioning of mechanisms and processes under the Constitution. An Administrative Reforms Commission was constituted by the Government of India to examine administrative aspects of Union-State relations.

1.4.8 In the period following the fourth General Election, the phenomenon of unprincipled defections for money or ministerships etc. came to the fore: legislators changing their party allegiance again and again in utter disregard of all moral and political proprieties, constituency choice and public opinion. Wide-spread concern about the problem was mirrored in Parliament, and led to a unanimous resolution in the Lok Sabha on 8 December 1967. The resolution read:

> "This House is of opinion that a high-level Committee consisting of representatives of political parties and constitutional experts be set up immediately by Government to consider the problem of legislators changing their allegiance from one party to another and their frequent crossing of the floor in all its aspects, and make recommendations in this regard."

1.4.9 Known subsequently as the Y.B. Chavan Committee, after the then Union Home Minister who was the Chairman of the Committee, this body produced a valuable report which addressed a variety of issues germane to the handling of the problem of defections which had basic implications with reference to the working of constitutional machinery and connected statutory and procedural instrumentalities.

1.4.10 The 25th anniversary of the coming into force of the Constitution of the world's largest democratic republic occurred, ironically, in the year in which the Emergency was clamped on the nation in an atmosphere of burgeoning national unrest. It was in this context that the first concerted initiative towards

a review and revision of the Constitution was undertaken in 1975. At the AICC Session in December, 1975 – the 'Kamagata Maru Session' – a resolution on the political situation stated:

> "If the misery of the poor and vulnerable sections of our society is to be alleviated, vast and far-reaching changes have to be effected in our socio-economic structure... The Congress urges that our Constitution be thoroughly examined in order to ascertain if the time has not come to make adequate alterations to it so that it may continue as a living document."

1.4.11 A document titled 'A Fresh Look at Our Constitution – Some Suggestions' surfaced at this time and was circulated but, after the recommendations contained in it had drawn stringent criticism from diverse quarters, it was not pursued. Amidst tenacious advocacy about the need for constitutional change, particularly after the Kamagata Maru Session of the Indian National Congress, the then Congress President, D.K. Borooah appointed, on 26 February 1976, a Committee "to study the question of amendment of the Constitution..., in the light of experience." The twelve-member Committee, headed by Sardar Swaran Singh, submitted 'tentative proposals' to the Congress President in April 1976 and these were then circulated among a select few. The then Chairman of the Law Commission of India, Justice P.B.Gajendragadkar wrote to the Prime Minister that while amendment to the Constitution was necessary to expedite the socio-economic revolution, "ad-hocism is undesirable and adoption of extremist doctrinaire positions is irrelevant and inadvisable". He advised the Prime Minister "to appoint a high powered committee to research and discuss the problem in depth for a dedicated and comprehensive effort."

1.4.12 The Swaran Singh Committee Report stated that its recommendations had been made with the background of the tentative proposals circulated earlier to Congress Chief Ministers and Pradesh Congress Committees, the views of Bar Associations of the Supreme Court and all the High Courts, comments in the Press and in public and memoranda and opinions received from individuals, professional bodies etc. It said:

"…..the Committee has kept before it certain important objectives. Our Constitution has functioned without any serious impediment during the past 26 years or so. While this is so, difficulties have been thrown up from time to time in the interpretation of some of its provisions, more particularly when they concern the right of Parliament to be the most authentic and effective instrument to give expression and content to the sovereign will of the people. Ours is a dynamic, moving and changing society, and the need to quicken the pace of socio-economic progress of our people has never been more urgent. Some of the amendments to the Constitution that we have proposed have been conceived in this spirit. The Committee would like to emphasise that the respect of the people for the three organs of our democracy and their confidence in these organs, have to be sustained and strengthened. An attempt has been made to clarify and define, where possible, with greater precision their respective functions in the light of the experience gained so that our democratic institutions may work smoothly in an atmosphere of complete understanding."

The Committee also declared that:

"The Parliamentary system is best suited to our country, and it is unnecessary to abandon it in favour of the Presidential or any other system. In a vast country like India, with the kind of regional diversity as we have, the Parliamentary system preserves best the unity and integrity of the country and ensures greater responsiveness to the voice of the people."

1.4.13 The Committee made a series of recommendations on a wide range of issues including the Preamble; the Directive Principles; the constituent power of Parliament to amend the Constitution; the power of judicial review; article 276; service matters; industrial and labour disputes; matters relating to revenue, land reform, procurement and distribution of food grains and other essential commodities; Election matters; Article 227; disqualification for membership of a house of Parliament or either house of the State Legislature; article 352 and Union State Coordination. The Committee also undertook to make separate proposals for the deletion of some provisions of the Constitution which, it observed, had become "obsolete or redundant."

1.4.14 Reacting to the Swaran Singh Committee and its report as published, Justice P.B. Gajendragadkar, then still the Chairman of the Law Commission,

in a letter to Smt. Indira Gandhi, reiterated his view that the amendment to the fundamental law of the land should not have been left to a party committee and that the modality could, advisedly, have been a committee of experts to hear all parties and persons. He said, further, that the Committee appointed by Congress President Borooah had "worked in a hurry, discussed issues in a casual manner and based its recommendations mainly on political considerations."

1.4.15 When the Forty-Second Amendment Bill was prepared, the Statement of Objects and Reasons echoed some of Jawaharlal Nehru's words: "A Constitution to be living must be growing", it declared. "If the impediments to the growth of the Constitution are not removed, the Constitution will suffer virtual atrophy.". The Prime Minister, in her speech in the Lok Sabha on 27 October 1976, said that the purpose of the Bill was "to remedy the anomalies that have long been noticed and to overcome obstacles put up by economic and political vested interests," and that the Bill was "responsive to the aspirations of the people, and reflects the realities of the present time and the future". The Bill was passed in the Lok Sabha with 4 votes against it and 366 in favour. All but eight of over 600 amendments had been dropped or defeated. The Rajya Sabha passed it by 190 votes in its favour and none against. Thirteen of 22 State Legislatures having ratified it, the President gave his assent on 18 December 1976.

1.4.16 After the change of Government, following general elections in 1977, the then Prime Minister, Morarji Desai appointed a Committee of Members of Parliament as a forum for considering substantive changes in the amendments brought about during the Emergency. Subsequently, the Prime Minister set up a Sub-Committee of the Cabinet for the same purpose. Issues germane to the 42nd Amendment were subject matter of voluminous expression of opinion by jurists, parliamentarians, editors and professional bodies. But, essentially, the effort focused on the correction of the imbalance in the Constitution caused by some provisions of the Forty-Second Amendment.

1.4.17 The need was felt for a comprehensive review of Union-State relations following the experience gained in the period after the General Elections of 1977 which had resulted in non-Congress governments at the Centre and in several major States in the north, but governments formed by the Congress in the southern States. In 1983, a Commission was constituted under the chairmanship of Justice R.S. Sarkaria with fairly wide-ranging terms of reference. These included:

> "(1) The Commission will examine and review the working of the existing arrangements between the Union and the States in regard to powers, functions and responsibilities in all spheres and recommend such changes or other measures as may be appropriate;
>
> (2) In examining and reviewing the working of existing arrangements between the Union and States and making recommendations as to changes and measures needed, the Commission will keep in view the social and economic developments that have taken place over the years and have due regard to the scheme and framework of the Constitution which the founding fathers have so sedulously designed to protect the independence and ensure the unity and integrity of the country which is of paramount importance for promoting the welfare of the people."

1.4.18 There were also some other especially note-worthy studies of particular problems in the political system. Deep concern had been voiced relative to flaws in the electoral process. This had occasioned a Joint Parliamentary Committee on Amendments to Election Law, which submitted its report in 1972. The Committee for Democracy set up by Loknayak Jaya Prakash Narayan had also studied the subject. Various aspects of electoral reforms were reviewed by a Cabinet Sub Committee appointed in 1977 and another in 1982. In 1990, the Government of India constituted a Committee under the Chairmanship of the then Union Law Minister Dinesh Goswami with Members drawn from different political parties. The Report of the Committee contained a series of recommendations, most of which were accepted for implementation. A Committee to examine issues related to State Funding of Elections was constituted in May 1998, known as the Indrajit

Gupta Committee after that outstanding Parliamentarian and leader who was its Chairman. Although the Committee had a relatively limited compass of study, its observations are noteworthy and comprise valuable supplementary material pertaining to the process of elections. Various Reports of the Law Commission of India provide a wealth of insights into the working of the machinery of the Constitution. The 170th Report of the Law Commission, on Reform of Election Laws, presented in May 1999, considers radical approaches seeking to improve the system of elections – the very sheet anchor of Parliamentary Democracy under the Constitution.

1.4.19 A little more than fifty years of national experience has accumulated relative to the working of our Constitution. Many things have changed since India's Independence. There have been impressive achievements in many spheres but so much more is required in qualitative as well as in quantitative terms, if we wish to build a truly just and caring society. Some important long range issues emerging from the prospects of India's participation in a global economic order advise an objective, expert review of our system to safeguard our national interest and our constitutional values and goals.

1.4.20 During the last two decades and more, there was a persistent demand in the civil society – from some NGOs, academics, constitutional scholars and others – that the working of the Constitution be subjected to a comprehensive review. Several books and a large number of articles and research papers devoted to the theme of constitutional review and reforms were published (some of these have been listed in the bibliographies annexed to Consultation Papers and were taken fully into account and used by the Commission in its study and deliberations) and many seminars and conferences organised in different parts of the country. The most significant of these non-political civil society efforts was the seminar organised by 15 national institutions in 1992 and the committee appointed by the India International Centre to review the working of the Constitution. The committee which had the senior Congress leader and former cabinet minister, Dr. Karan Singh as the Chairman and included among its members two of the members of this Commission,

presented its report to the President and others. Concluding recommendation of the committee was that of a Review Commission being appointed.

1.4.21 The National Agenda for Governance issued by the National Democratic Alliance as the NDA Election Manifesto before the last general elections contained a pledge that a Commission would be appointed to review the Constitution in the light of its working for fifty years. The Pledge was affirmed in the President's address to Parliament and was followed by the appointment of this Commission in February 2000.

Methodology and Procedure

1.5.1 The Commission held its first meeting at New Delhi on 23 March 2000. Taking note of its terms of reference, the Commission realised that it was not required to "re-write" the Constitution, as indeed the name of the Commission itself indicated, its function was to review the working of the Constitution and to examine how best it could respond to the changing needs of good governance and socio-economic development of modern India. The Commission felt concerned that the constitutional aspirations of raising the living conditions of the poor and the deprived and ensuring them an adequate means of livelihood had not been realised fully. It was decided to examine the working of the present provisions of the Constitution and the applicable laws and practices to consider how the constitutional objectives in the aforesaid areas could be achieved better.

1.5.2 Before considering the methodology and procedure of reviewing the working of the Constitution to be adopted by it, the Commission considered it appropriate to identify the main areas of concern which appeared to it to be most relevant to realising the values and vision of the founding fathers and the objectives and aims enshrined in the Constitution. These were found to be as follows :

I. Strengthening of the institutions of parliamentary democracy; (Working of the Legislature, the Executive

and the Judiciary; their accountability; problems of administrative, social and economic cost of political instability; exploring the possibilities of stability within the discipline of parliamentary democracy).

II. Electoral reforms; standards in political life.

III. Pace of socio-economic change and development under the Constitution (assurance of social and economic rights: how fair? how fast? how equal ?)

IV. Promoting literacy; generating employment; ensuring social security; alleviation of poverty.

V. Union-State relations.

VI. Decentralization and devolution; empowerment and strengthening of Panchayati Raj Institutions.

VII. Enlargement of Fundamental Rights.

VIII. Effectuation of Fundamental Duties.

IX. Effectuation of Directive Principles and achievement of the Preambular objectives of the Constitution.

X. Legal control of fiscal and monetary policies; public audit mechanism.

XI. 'Administrative system' and 'standards in public life'.

1.5.3 As a first step towards reviewing the working of the Constitution, the Commission in its meeting held on 23 March 2000 decided to invite suggestions from the public in regard to the endeavour of the Commission within its terms of reference. A public notice dated 9 June 2000 was issued through both the print and the electronic media inviting suggestions from public, non-governmental organizations, institutions and others interested, latest by the 31 July 2000. The notice was also put on the website of Commission.

Consultation Papers and Advisory Panels

1.6.1 One of its members, Justice B.P. Jeevan Reddy was nominated as the

spokesperson of the Commission to interact with the media. The Commission decided to adopt the methodology of generating public debate and eliciting opinion by way of releasing Consultation Papers and Questionnaires on the main areas of concern identified by it. The Commission also decided to constitute Advisory Panels of experts for each of the areas identified by it. It appointed a Committee consisting of the following Members for identifying the experts, research institutions and resource persons:-

1. Justice Shri B.P. Jeevan Reddy
2. Shri Soli J. Sorabjee
3. Shri K. Parasaran
4. Dr. Abid Hussain
5. Dr. Subhash C. Kashyap
6. Shri C.R. Irani

1.6.2 The Committee was asked also to identify experts or research institutions for preparation of Consultation Papers along with Questionnaires. In regard to the procedure and methodology for evaluating the working of the Constitution in the areas identified, it was decided that Consultation Paper(s) on each of the identified areas along with suitable questionnaires would be formulated in a computer-friendly format so as to enable the Commission to ledgerise and classify the data received in response to the Questionnaires. It was also decided that these Consultation Papers shall be circulated to all Political Parties, Ministries/Departments of Government of India, State Governments/Union Territory Administrations, Constitutional Bodies and Statutory Commissions such as the National Commission for the Scheduled Castes and the Scheduled Tribes, the National Commission for Minorities, the National Commission for Backward Classes, the National Human Rights Commission, the National Commission for Women, Representative Bodies of Trade and Industry, Bar Associations, Central Universities, Academicians and the Media. The Commission resolved to place the Consultation Papers and Questionnaires on the Commission's Website for general access and also to respond to all individual requests for Consultation Papers.

1.6.3 The aforesaid Committee suggested that for each of the Advisory Panels, one of the Members of the Commission may function as "Member-in-charge". It also made recommendations regarding the composition of the expert/advisory panels in respect of the different areas. Each Member-in-charge was authorized to nominate additional Members to the Panels. The Members-in-charge were required to identify research institutions/resource persons to prepare the Consultation Papers. It was also decided that the Secretary to the Commission would function as the Member-Secretary of the various Advisory Panels for close coordination and speedier and effective disposal of matters. Having regard to the importance and significance of the Consultation Papers and Questionnaires, it was decided that they should have authentic research backup.

1.6.4 The Commission constituted eleven Advisory Panels for scrutiny and approval of the various Consultation Papers and Questionnaires before the same could be placed before the Commission. The composition of the various Advisory Panels is given in **Volume-II.**

1.6.5 The Commission identified the following institutions/expert bodies/experts to entrust them with preparation of the Consultation Papers and Questionnaires on the areas identified by it:

(i) Centre for Policy Research, New Delhi.

(ii) Institute for Constitutional and Parliamentary Studies, New Delhi.

(iii) Institute of Social Sciences, New Delhi.

(iv) All India Institute of Local Self Government, Nagarpalika Network, New Delhi.

(v) Citizenship Development Society, New Delhi.

(vi) North East India Social Science Congress, Shillong

(vii) Omeo Kumar Das Institute of Social Change and Development, Guwahati.

(viii) Centre for the Study of Developing Societies, Delhi.

(ix) Institute for Social and Economic Change, Bangalore.

(x) Indian Institute of Public Administration.

Besides, the Commission could avail of the services of some experienced persons to assist it by preparing background materials and expert notes. The Commission also undertook in-house preparation of certain Consultation Papers and background materials.

1.6.6 The Commission, from time to time, released the Consultation Papers along with the Questionnaires and Executive Summary to the Press and other media, general public, Ministries/Departments of the Government of India, State Governments and Union Territory Administrations, recognized Political Parties, important institutions/Universities, interest groups, etc. for enabling them to furnish replies to the Questionnaires and submit their comments on the various issues raised in the Consultation Papers.

1.6.7 The Commission, with the assistance of National Informatics Centre, put the Consultation Papers and Questionnaires on the Commission's Website for enabling the public to make on line submission of their responses. The responses to the Questionnaires were collated, compiled and edited and a summary containing gist of replies was placed before the Commission for consideration at the time of finalizing the recommendations on the relevant subject.

1.6.8 The Commission released 22 Consultation Papers. Seven other Papers prepared for the Commission were also utilized by the Commission as Background Papers. All the Consultation Papers and Background Papers have been included in Volume-II.

Projects and Finance Committee

1.7.1 The Commission at its meeting held on the 8 and 9 July 2000 decided to constitute a Committee called the "Projects and Finance Committee" to consider *inter alia* the following matters:-

(i) Monitoring the quality of the "Consultation Papers" and "Questionnaires" so as to ensure uniformity and eliminate possibilities of duplication or repetition resulting from the overlapping areas in the subjects or topics to which they relate.

(ii) Lay down broad guidelines and procedures for the passage of the 'Consultation Papers' and 'Questionnaires' through the various stages.

1.7.2 The Committee comprised of the following members :

1. Shri Soli J. Sorabjee (Convener)
2. Justice B.P. Jeevan Reddy
3. Shri P.A. Sangma
4. Dr.Subhash C. Kashyap
5. Dr. Abid Hussain
6. Shri K. Parasaran

Eliciting Public Opinion

1.8.1 The Commission took various steps for having a wide range of consultations and debates on various issues and difficulties experienced in the working of the Constitution for more than 50 years with a view to eliciting public opinion. For the said purpose, besides issuing a public notice and circulating the consultation papers and questionnaires to elicit responses and replies, as and when the various Consultation Papers and Questionnaires were finalised by the Commission, these along with summaries thereof were released to the media at press conferences or otherwise.

1206 LJ&CA/2002—3A

1.8.2 Certain Universities/educational institutions in various parts of the country agreed to conduct Seminars/Interactive Sessions on behalf of the Commission to elicit views of the public on various issues of concern. The National Law Schools/Universities/College(s) which conducted seminars and conducted public interactive sessions under the sponsorship of the Commission have been listed in Volume-II.

1.8.3 In response to its Public Notice, the Commission received more than 20,000 letters/communications/Memoranda. The Commission examined all the communications/Memoranda/letters and found that 2350 of them contained certain suggestions/comments relevant to the study of the Commission as per its terms of reference. The rest of the communications were too general in nature. Certain letters questioning the necessity or relevancy of the review work were also received.

1.8.4 The Commission received 212 responses to its various Consultation Papers. Out of these, 131 responses were from organizations / institutions/ associations / universities / State Governments / Union Territory Administrations/Central Ministries/Political Parties and 81 from individuals. A list of individuals/organisations who made representations to the Commission and those who responded to the Consultation Papers and Questionnaires is included in Volume-II.

Process of Interaction

1.9 In order to elicit views of experienced persons on the problem areas, besides sponsoring Seminars, the Commission held wide-ranging interactive sessions with representatives of bodies/institutions which came up with proposals for such interaction. The Commission had also the privilege of inviting distinguished statesmen and other persons in various fields and hearing their views. They included some of the former Prime Ministers, Governors, Members of Parliament, political leaders and Journalists. The

1206 LJ&CA/2002—3B

Commission called on the former President of India, Shri R. Venkataraman and had the benefit of his views. A list of bodies / institutions and persons with whom the Commission had direct interactive sessions is included in Volume-II.

Deliberations of the Commission

1.10.1 The deliberations of the Commission were spread over eighteen sessions and 46 days of sittings. The Commission in its initial meetings decided the methodology and procedure required to be adopted by it for carrying out the task before it, identified the problem areas, put one Member in-charge of each area and organized the preparation and circulation of consultation papers on various matters of concern.

1.10.2 The Commission discussed in depth the various issues brought before it by its Members. The Commission also discussed the various Consultation Papers for finalizing them before these were actually issued for eliciting public opinion. Opportunity was availed by the Commission, during these meetings, to hear the views of eminent persons and organizations who came forward on their own or at the request of the Commission to give their suggestions.

1.10.3 In its thirteenth, fourteenth and fifteenth meetings held in November – December, 2001 and in January, 2002 the Commission held detailed discussions on draft recommendations as contained in the Consultation Papers and the public reactions and comments received thereon alongwith the draft reports on several aspects of matters under review. Each recommendation was thoroughly debated and considered before it was finally adopted by the Commission. The minutes of the meetings of the Commission are reproduced in Volume-II.

1.10.4 Besides the regular meetings, the Commission had opportunity to interact with various persons/ bodies/ institutions for hearing their views. These included Chairman and Members of the Union Public Service

Commission, Scientific Advisor to Prime Minister, Dr. A.P. J. Abdul Kalam, Chairman and Members of the Scheduled Castes and Scheduled Tribes Commission, Chairperson and Members of National Commission for Women and others.

1.10.5 The Advisory Panels of the Commission also held several meetings for detailed discussions for finalizing the Consultation Papers and some of the Background Papers.

Drafting and Editorial Committee

1.11.1 In September 2001, the Commission decided to appoint an Editorial Committee to edit the draft chapters as completed by the Members in-charge and approved by the Commission. Later in December the Committee was renamed Drafting and Editorial Committee and entrusted also with the task of drafting the Chapters. Shri Gopi K. Arora was appointed to assist the Committee as Consultant.

1.11.2 The Committee consisted of the following:

1. Dr. Subhash C. Kashyap (Chairman)
2. Shri K. Parasaran
3. Dr. Abid Hussain

1.11.3 The committee held 15 sessions . It worked out the chapterisation, layout and rules of format for presentation of the Report in two volumes. The first volume contained the main report and the second volume (divided in Books 1, 2 and 3) contained data regarding representations etc. and documents like the consultation papers. The main report was to consist of 11 chapters. The committee members divided the chapters of the report among themselves for purposes of drafting and editing and on completion, each chapter was discussed word by word by the committee before it was finalized

to form part of the Draft Report to be placed before the Commission for consideration and approval.

Adoption of the Report

1.12 The Drafting and Editorial Committee of the Commission submitted the complete Draft Report to the Chairperson on 15 February, 2002. The Commission considered the Report at its sixteenth session spread over five days from 25th February to 1st March, 2002 and the Seventeenth session spread over in four days from 6th to 9th March, 2002. The Report was finally adopted and signed on 11 March, 2002. The Commission resolved to present it to the Hon'ble Prime Minister on 31st March 2002.

(Justice M.N. Venkatachaliah)
Chairperson

(Justice B.P. Jeevan Reddy)
Member

(Justice R.S. Sarkaria)
Member

(Justice Kottapalli Punnayya)
Member

(Soli J. Sorabjee)
Member

(K. Parasaran)
Member

Subject to my note of 30.3.2002

(Dr. Subhash C. Kashyap)
Member
30/3/2002

(C.R. Irani)
Member
with additional Note attached

(Dr. Abid Hussain)
Member

(Shri Sumitra G. Kulkarni)
Member
Subject to my comments given separately
11.3.2002

CHAPTER 2

BASIC APPROACH AND PERSPECTIVE

CONTENTS

2.1 ➢ Approach to review

2.2 ➢ The 'Present' as History

2.3 ➢ Constitutional Reforms: Apprehensions

2.4 ➢ Polity and Democracy

2.5 ➢ Administrative Inefficiency and Indifference: The burgeoning of Extra-Legal Systems

2.6 ➢ India: Burden of the Colonial Past

2.7 ➢ Spirit of the Independence Movement

2.8 ➢ Making of the Constitution: Nature of the Polity: Federalism

2.9 ➢ Basic values of the Constitution: Democracy, Republicanism, Rule of Law, Constitutionalism and Respect for Minority Rights:

2.10 ➢ Democracy and Republicanism

2.11 ➢ Entrenched, Justiciable Constitutional Bill of Rights and Directive Principles:

2.12 ➢ The Working of the Constitution: Economic and Social Change

2.13 ➢ Economic Performance

2.14 ➢ Disturbing Features: Increasing Disparities of Income

2.15 ➢ Public Finance and Public Spending

2.16 ➢ Poverty in the Third World: myth and Reality:

2.17 ➢ The Working of the Executive

2.18 ➢ Parliamentary System: Reforms

2.19 ➢ Parliament and State Legislatures: Reforms

2.20 ➢ Accountability versus Stability

2.21 ➢ The Institution of Prime Minister

2.22 ➢ The Judiciary

2.23 ➢ Electoral System

2.24 ➢ Political Parties

2.25 ➢ Political System and Structure

2.26 ➢ Fifty years of Working of the Constitution: Achievements and Failure: A Balance Sheet

2.27 ➢ Areas of concern: Commission's perception

CHAPTER 2

BASIC APPROACH AND PERSPECTIVE

Approach to review

2.1.1 The terms of reference of the Commission have been so artistically drafted that they admit of no scope for misunderstanding. They aptly meet standards set by J. Stephen for a draftsman to attain a level of proficiency in drafting statutes whereby a reader or user of law drafted by him is not likely to go astray in construing the law even when he interprets it with a bad faith.

2.1.2 As the new millennium commences, we live in a world delicately poised between past fears and future hopes. Never in the past was the need to develop capabilities to manage forces of change so vital. Science and technology will change the world of tomorrow beyond recognition. Life-styles and mind sets will change; so would our world view. Newer concepts of wealth and newer dimensions of poverty will emerge; and so would newer patterns of geo-political equations. The world will increasingly be an inter-dependent world. What happens in far away countries is as consequential to our security and survival as what happen in our immediate neighbourhood. Research in genetically modified food, for instance, somewhere in another hemisphere, for instance, will profoundly affect our agricultural economy. Those who bear the responsibility of the government have a historic role and opportunity to re-build and prepare India for its rightful position in the comity of nations as front runner in humankind's struggle for a greater future. This requires enlightened leadership having vision and deep sense of mission, and great amount of much work on their part. There is a gnawing doubt whether, sometime and somewhere down the line, we, as a nation, appear to have dropped some fundamental values of a free and self governing people and are finding it extremely difficult to retrieve and restore these values to their proper position in our national life. The words "changing needs of efficient,

smooth and effective system of governance and socio-economic development" impart an important dimension to the task. "Today's world", wrote a scholar, "is divided not by ideology but by technology"[1]. The following characterizes the nature of the contemporary Indian State:

- *The crucial failure is the innate resistance in governments and governmental processes to the fundamental article of democracy, viz. that all power and all authority flows from the people and that all public institutions are meant solely to serve the public interest. The assurance of the dignity of the individual enshrined in the preamble of the Constitution has remained unredeemed;*

- *From this fundamental breach of the constitutional faith flow almost all our present ills. The first and the foremost need is to place the citizens of this country at center-stage and demonstrate this prioritization in all manifestation of governance;*

- *Citizens see their government "beseiged by uncontrollable events and are losing faith with institutions. Society is unable to cope with current events.";*

- *Human dignity, human rights, literacy, health, social security and other public goods are not to be seen as ultimate rewards of development; but are quintessentially crucial to the developmental process itself;*

- *Vision of the future shape of the world lies in science, technology, economics, international trade and intellectual property regimes;*

- *Human rights and the role India should endeavour to perform are matters that must receive fuller, more organized, sensitive and incisive intellectual responses;*

- *The ability to respond to and manage the great forces of change ushered in by science and technology is of critical importance. The future of the world is knowledge based and knowledge driven. We simply cannot afford to ignore this truth. Our strategic economic responses need to be sharper;*

[1] Jeffrey Sachs "NEW MAP OF THE WORLD" The Economist, June 2000

- *The Indian State has not shown commensurate and sensitive receptivity to the great transformation in international law and in the concept of national sovereignty. Domestic application of international treaty obligations has not adequately informed its institutions. Minimum economic standards are now a legitimate component of a justiciable Bill of Rights.*

2.1.3 Over the years under the sweep of the global winds of change transforming a welfare-economy into a market economy, the State has itself undergone a change in its character and in its mechanisms for the realization of its social and economic goals. The Overview of the World Development Report 2000 mentions that "The development landscape is being transformed, presenting policymakers with new challenges at the global and local levels". The Report recalls four critical lessons which 50 years of development-experience have yielded. "First, macro-economic stability is an essential prerequisite for achieving the growth needed for development. Second, growth does not trickle down; development must address human needs directly. Third, no one policy will trigger development, a comprehensive approach is needed. Fourth, institutions matter; sustained development should be rooted in processes that are socially inclusive and responsive to changing circumstances."

The 'Present' as History

2.2.1 "Monarchy", it is said, "lives by honour and the Republic by virtue". A period of little more than fifty years may, conceivably, be not deemed to constitute a period of history: being, perhaps too short a span in the life of a nation, or to pass judgement about a nation. But that time-span is enough to discern the virtues imbuing a nation's political institutions and the quality of its leadership. However, if the achievements of the present are so remarkable as to be historic, then, even a decade or two can be of historical import.

2.2.2 Surprises can be exciting and pleasant. Germany and Japan were amongst the many countries devastated at the end, and as a result, of the Second

World War. The economic development of Germany, its re-unification and the broader agenda of the unification of Europe provided one of the most shining examples of enlightened political statesmanship. While a megalomaniacal Hitler tried to put a 'German roof' over Europe, Helmut Kohl was determined to put a 'European roof' over Germany. Quality of leadership has immense significance especially in periods of national crisis and reconstruction.

2.2.3 The surprises can, quite often, be unpleasant. The 20th century has, on its conscience, some 100 million human beings killed in armed conflicts and a further 120 million dead as a result of politically-related violence, in which race, ethnicity, religion or political opinion has been a factor.

Constitutional Reforms; Apprehensions

2.3.1 At bicentenary of the Constitution of the United States of America a group of about two hundred persons – professors, jurists, politicians, journalists, diplomats, administrators, senators – looked into the need for reforms in the American Government. The broad issue was identified thus:

> *"Government deficits, the spiraling imbalance of trade, inconsistencies in foreign policy, illegal immigration, unemployment, the decay of our cities, the abuse of the environment, the staggering cost of elections, and the piracy of special interest groups – these problems and a host of others have led thoughtful citizens to question whether our political system is capable of meeting the challenge of modern governance"*[2].

As to the need for reassessment of institutions, it was said:

> *"We stand in awe of the wise men who framed the Constitution nearly two centuries ago, but as they themselves anticipated, changing circumstances demand a reassessment."*[3]

[2] About the Book and the Editor: Reforming American Government
[3] Ibid

2.3.2 The Debate ranged from "Leave the Constitution Alone" to "Crisis and Its Cure". "The foremost requirement of a great power", it was noticed, "is strong executive leadership. The political demand for it, manifest world-wide, arises from the present condition of international relationships, given the state of the military arts; from the inexorable need to develop and use science to maintain national security; and from the nature of modern economic and social organization especially when coupled with emergent ecological considerations."

2.3.3 The opposition to the idea of any reform, more so of constitutional reform, is understandable. Opposition may arise from any or more of several conceivable apprehensions vis-a-vis the nature and composition of the reform body itself; from a propensity for conservatism; a form of inertia relative to change; or from apprehensions as to possible loss of available privileges. On the first, a study says:

> *"There is much to be said for the use of a constitutional revision commission when it is so composed as to be representative of the various major interests of the state; when it is dominated by one of those interests, little can be expected of it."*

On the second cause of opposition, it is said:

> *"The forces standing against revision have as a major ally the conservatism and apathy of the average citizen who is willing to suffer what he knows rather than risk the unknown quantity that constitutional revision may produce. The history of constitutional revision wherever successfully accomplished has been one of constant and unremitting efforts for citizen education over a period of years. Citizen demand, and only citizen demand, eventually overcomes the interests standing in opposition to change. Great economic, social, and political pressure is required to overcome entrenched interests and citizen inertia."*[4]

On the third factor, it is observed :

> *"There are always substantial and powerful forces that will oppose any extensive constitutional revision. There are always groups that stand to lose – or think they stand to lose – in power, prestige, economic position, or legal status if a constitution is substantially rewritten.*

[4] Major Problems in State Constitutional Revision – edited by W. Brooke Graves p.30

Rewriting will bring up for reassessment and redetermination the constitutional provisions under which they hold power."[5]

2.3.4 "A nation may make a Constitution, but a Constitution cannot make a nation". No Constitution, written or unwritten, is 'worth more than the political temper of the community allows it to be worth'. A Constitution, however lofty its exhortations and sentiments, is not a self-executing document. It requires human agency to implement it. The political traditions of the people and the spirit of constitutionalism are what make a Constitution work. Its essence is its practice.

2.3.5 An assessment of 'half-a-century of the Constitution at work' involves an appraisal of the performance of all the three organs of the State, viz. the Executive, the Legislature and the Judiciary. These organs are not merely the manifestations of the presence of the State. Their functions hold a cardinal position. The conditions of activity of these organs are elemental to the comprehension of the inextricable nature of the relationship of the various organs of the State and provides an understanding of the philosophy of the Constitution at work. Making of India's Constitution has been a stupendous task. India has a diversity which few countries match. Its diversity needs a constitution which is not intended for a nation; but as a writer said its constitution is intended for a civilisation.

2.3.6 In the changing context of globalised economy, the Fundamental law should address itself in action to relocate the sources of the social obligations of the State. This is a complicated exercise. Central to the process of development is the realization of rights. It means that consideration of human rights, equity, equality, equal justice and the accommodation of diversity are central to the conceptualization, design, implementation, delivery, monitoring and evaluation of all developmental processes. The problems of social exclusion, more virulent in India on account of the hierarchical structure of its society, need systemic solutions.

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[5] Ibid p.28

2.3.7 The working of the Constitution over a period of about fifty years, on a balance of the good and bad, achievements and failures, promises and performances, is one of lost opportunities. The increasing impurity of the political climate and its deadening effect on the creativity of the people present a depressing picture. There are, it is true, some impressive achievements. Much has been done and achieved; but in the area of social justice performance falls greatly short of the potentials and of expectations.

Polity and Democracy

2.4.1 All political theories are united on the question of the principle; against arbitrary Government. When a democratic system is chosen, a nation cannot be impatient with democracy. Democracy has its own defects. It is not the best or the most beneficial form of political organization of human beings. But it is accepted as the least hostile amongst all other systems tried. The slackness in jettisoning the heavy baggage of inherited social evils in India has produced pervasive disenchantment with the institutions of democracy. 'Collective action that promises vast benefits is retarded by special interests that hold strategic controls'.

2.4.2 The political structure and system under the Indian Constitution envisage a federal democratic form of government based on the values of equality, social justice and republicanism. It provides a framework for the attainment of its social and economic goals. It envisages a State-centric welfare government. Fundamental Rights and the Directive Principles are the conscience of the Constitution. State has social obligations.

2.4.3 A glimpse of the 'Half-a-century of the Constitution at Work' render some undelectable conclusions inescapable:

(a) The full realization of the goals of social and economic justice as rewards of a peaceful social revolution promised by the Constitution has remained an unredeemed pledge.

(b) That the democratic processes have not promoted self-governance. People of India, under the dispensation, have no effective control over their social, political and economic destiny or emancipation. The system of administration designed and practiced by the political executive with the active support of the permanent civil services has reduced and limited the sovereignty of the people to a mere right to exercise their franchise at the elections; The remedy is to widen the base of democratic debate. As Jefferson observed; "I know of no safe depository of the ultimate powers of the society but the people themselves. And if we think them not enlightened enough to exercise their control with a wholesome discourse, the remedy is not to take it away from them but to inform their discretion".

(c) The society has not been able to use the great gifts of Human Rights, Human Security, Rule of Law, Secular Values to bring about a just, caring and inclusive society. Democratic sentiments and institutions need to be strengthened by civic- education, identifying and striving for common purpose and keeping the areas of private and public life separate. The sociology of pluralism is not inimical to strong democracy, but, on the contrary, is in itself a strong sustaining factor of democracy. It is essential to promote participatory institutions.

2.4.4 But the brighter side of the Half-a century of the Constitution at work is that basic spirit and creed of democracy has taken deep roots in the country, feudal character of society and polity notwithstanding. Democratic processes are, it is true, tainted by the impurity of the electoral processes and pervasive corruption in the working of the democratic institutions. They detract heavily from, and threaten, survival of democracy. Hopefully, they are the manifestations of a difficult but passing phase. With educational advancement and participatory institutions that situation hopefully would improve. The 73rd and the 74th Constitutional Amendments have provided a historic opportunity. The broader base of democratic debate, free compulsory education and an independent press will strengthen democratic institutions and processes.

2.4.5 But, on an overall assessment, the political, social and economic gifts of democracy have endowed Indians with significant rewards, particularly in the

matter of enjoyment of personal liberty and individual freedom. The Press has been free and fiercely independent.

Administrative inefficiency and indifference: The burgeoning of Extra-Legal Systems

2.5.1 It is a sad fact that needlessly harsh, lugubrious, unimaginative and indifferent administration has pushed the poor to the wall. Pervasive corruption, inefficiency and insensitivity – particularly in the distribution of public goods – has resulted in the burgeoning of 'extra-legal' systems. These "extra-legal systems", says an economist, "constitute the most important rebellion against the status-quo in the history of developing countries since their independence" :

- *"Unlike the situation in advanced countries where the 'under-class' represents a small minority living on the margin of society, in some countries extra-legality has always been the mainstream ... Most Governments in most nations are in no condition to compete with the extra-legal power ..... throughout the Third World extra-legal activities burgeon wherever the legal systems imposes rules that thwart the expectations of those it excludes. People take refuge in it when the cost of obeying the law – outweighs the benefit."*[6]

- *'Fraternity' the noble ideal of brotherhood of man enshrined in the Preamble of the Constitution has remained unrealized. The People of India are more divided amongst themselves than at the time of the country's independence.*

- *National political parties are more divided on the definition of 'common national purpose' than ever before; the noble purposes of public life have degenerated than ever before into opportunistic and self-seeking politics of competitive personal gain.*

- *The world is changing at a bewildering pace. In 1800, the world's population is estimated to have been 1 billion. It took 130 years to climb to the mark of 2 billion; just 3 decades for the third billion; only one decade and a half for the fourth, a dozen years for the fifth and even less than that for the sixth billion.*[7]

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[6] Hernando de Soto "The Mystery of Capital" p.73, 74, 76, 77
[7] P.C. Alexander: India in the New Millennium p.17, 18

- *While it took 1000 years for English wheat production to quadruple from half a tonne to two tonnes per hectare, the world's cereals yields have doubled in the last 40 years.*

- *Crisis of leadership, corruption, insensitivity and inefficiency of administration have resulted in extra-legal systems and parallel economies and even parallel governments. Bureaucratic pettifoggeries which cause frustration in people in their daily life has a more serious fallout of pushing more and more people into extralegal systems.*

India: Burden of the Colonial Past

2.6.1 Today as we celebrate the 50 years of the Constitution we stand in awe of the great women and men who sculpted it. Political leaders of the day, who had come under the spell of the Mahatma, were truly magnificent individuals. When we compare them with the founding fathers of the American Constitution, the great leaders of the Russian Revolution and the leaders of the movement for the advancement of the coloured people in America and Africa, our leaders, in addition to their great patriotism and wisdom, had another dimension to their great vision. They brought a spiritual dimension to a political task. In the entire debates in the Constituent Assembly, there is no touch of bitterness or rancour against the British or the grim events of the Partition; their anxiety was to save the Indian sub-continent from the scourge of the bigotries and intolerances that had made Partition inevitable. They reaffirmed their immense faith in the good sense of the common man and provided universal adult suffrage as one of the corner stones of the democratic edifice.

2.6.2 In 1750, India's share of the world's manufacturing output was 24.5% while that of the United Kingdom and the United States was 1.9% and 0.1% respectively. By 1900, India's share had come down to 1.7% while the United Kingdom and the United States of America[8] had increased their shares to 62%

[8] Paul Kennedy – The Rise and Fall of the Great Powers – page 149

and 23.6% respectively. Emerging from a long period of colonial rule, exploitation and divisive politics, independent India still bore visible, deep and unmistakable fault lines strewn across its national fabric. The dominant devisors included a whole range of ethnic, linguistic, religious, class and caste differences so pronounced that these appeared as serious impediments to formulating an agenda for materializing the vision of a democratic society with legal, political, social and economic benefits accruing to all citizens and with the ability to attain its rightful position in the comity of nations. Enveloping entire social spheres was a huge cultural haze manifested by superstition, social evils and malpractices, antediluvian dogmas, prejudices and contradictions across different sections of our society. It was an unequal society and all unequals were prone to live 'under a constant dread of an impending disaster.'

Spirit of the Independence Movement

2.7.1 The biggest divides – caused by communal and casteist attitudes – provided the sub-text for regional and other social divides. Increasingly, sentiments involving religion were manipulated by the colonial power to counter the movement towards the cherished goal of freedom and independence; and proved decisive in precipitating the Partition. The fight on this front was lost early. There were other divides fostered by colonial strategists and rulers who operated the policy of 'Divide et impera' and consciously contrived to create and widen fissures in the polity. The other India overseen by the British, but ruled by the princes and their overlords, was perpetuated as an independent autonomous chunk of political India.

2.7.2 There were some social road blocks to progress fostered by moribund tendencies innate to the society itself. Under the caste regime, access to social facilities, social institutions and educational and economic opportunities were not available at all; but were severely restricted. The position of women presented a pitiable picture of injustice, cruelty, exploitation and indignity.

2.7.3 The stupendous task of the framers of the Indian Constitution needs to be seen in this context. A people suffering oppression under a feudal system were grimly struggling to be reborn into a life of dignity and hope. The past was heavy on their shoulders and the future uncertain. Over the centuries, despite India's magnificent achievements in, and contributions to, art, literature, architecture, astronomy, sculpture, aesthetics, etc. and to the profound issues of man's spiritual quest towards which the whole world looked with wide eyed wonder, it remained a fractured society deeply and painfully riven with rifts, animosities, hostilities and threats. The communal carnage of the Partition left India shocked and demoralized.

2.7.4 Within the independence movement strenuous efforts were made to address some of these issues by symbolism, action and dialogue. The struggle for freedom and independence was energized and driven by a powerful passion to free India from foreign rule and contained in it myriad hopes and aspirations for political, social and economic emancipation not of Indians alone, but of subjugated and exploited human beings the world over. Our great national leaders consistently articulated their vision of a higher human civilization based on humanism, pluralism, peace, brotherhood and oneness in which India would perform her rightful role in service of humankind.

2.7.5 Thus, inherent to the national movement was a social compromise that lasted through to the time when Independence was finally declared. The other lights kindled within the freedom movement on swadeshi, self-reliance, rural re-construction and basic education were available as pointers to address the issues in the future.

Making of the Constitution: Nature of the Polity : Federalism

2.8.1 Federalism as a form of governance becomes an attractive, and indeed, an obvious choice where wide political, cultural and linguistic diversity exists in a vast

area of a country. Referring to the federal form being the obvious choice for India, Sawer observes: "The sub-continent of India was another area which by reason of size, population, regional (including linguistic) differences and communication problems presented an obvious federal situation, if not the possibility of several distinct Nations:"[9] "Not only did India become the first republican member of the Commonwealth", writes C.F. Strong[10], "but it began the chapter of post-war constitutionalism."

> *"The rise of the constitutional state is essentially a historical process and the chief materials of history include the history of political ideas which have prompted their development." A Constitution is defined "as a frame of political society organized through and by law, in which law has established permanent institutions with recognized functions and definite rights", and a constitutional state "as one in which the powers of the government, the rights of the governed and the relations between the two are adjusted."*

2.8.2 Constitutions can be unitary or federal, unwritten or written, flexible or rigid, whether parliamentary or non-parliamentary. These are merely broad propositions and "the only manner in which states may be differentiated is according to the structural peculiarities of their governmental organization".

2.8.3 A unitary state is one organized under a single central government; a federal state is one in which a number of coordinate states unite for certain common purposes. But the distinction must be kept clearly distinguished between "local governments in a unitary state and state governments within a federal state."

2.8.4 Federalism, as a political choice, was an inevitable necessity in view of the vast size of the country and its diverse regional, linguistic, ethnic, cultural patterns. But the federalism that the wise founders conceived was not the conventional or the ideal concept of federalism. India was to be a 'union' of States. The Union was an indissoluble union. The range of problems that confronted India at the time of the making of its Constitution has few parallel in the history of any country. The depth, range, diversity and complexity of its problems could baffle any pre-set

[9] Sawer, Modern Federalism (1969) p.284
[10] C.F. Strong –Modern Political Constitutions – Sidgwick & Jackson, London

political pattern or theoretical solutions or off-the-shelf-solutions as obvious political choices. The pattern was indeed sui-generis. This aspect was aptly summed up by a distinguished author when he said, "Characterizations such as 'quasi-federal' and 'statutory decentralization' are interesting, but not particularly illuminating. The members of the Assembly themselves refused to adhere to any theory or dogma about federalism. India had unique problems, they believed, problems that had not 'confronted other federations in history'. These could not be solved by recourse to theory because federalism was 'not a definite concept' and lacked a 'stable meaning'..... The Assembly, in fact, produced a new kind of federalism to meet India's peculiar needs."[11]

2.8.5 The Objectives Resolution of the Constituent Assembly dated 22nd January, 1947 had arguably contemplated that, "the territories in India shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of Government and administration, save and except such powers and functions are vested in, or assigned to, the Union or as are inherent or implied in the Union or resulting therefrom".[12] But later, in the light of the experiences of the Partition, the Union Powers Committee (Second Report, 5th July, 1947) opted for a strong Centre taking the view, "that the soundest framework of our Constitution is a federation with a strong Centre. In the matter of distributing powers between the Centre and the units, we think that the most satisfactory arrangement is to draw up three exhaustive lists on the lines followed in the Government of India Act, 1935, viz. the federal, the provincial and the concurrent. We think that the residuary power should remain with the Centre."

2.8.6 In a federal system, the Union and its Units touch each other at many points. That can be a source of friction; therefore, the need for accurate definition of their respective spheres and powers. This is possible only under a written Constitution. The achievement of the federal form of government is that it reconciles the conflicts between the Union and the States by an appeal to a

[11] The Indian Constitution Cornerstone of a Nation: Granville Austin p.186
[12] Indian Federalism – A comparative Study: by Justice E.S. Venkataramiah and P.M. Bakshi p.75

fundamental law which all the parties recognize as binding and which erects a judicial forum for the authoritative determination of the limits of the respective powers.

2.8.7 The observations of Dr. Ambedkar on the special nature of India's federalism are worth recalling. He said, ... "there are some other special features of the proposed Indian Federation which mark it off not only from the American Federation but from all other Federations. All federal systems including the American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand the Draft Constitution can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of war it is so designed as to make it work as though it was a unitary system."

2.8.8 Dr. Ambedkar added that Indian federalism did not suffer from the faults of rigidity or legalism. The Indian federal polity was not the classical federalism of the American mould as is demonstrated by the many of its features which may be called 'unfederal'. There is no separate judicial systems to administer the State and federal laws separately. The judiciary is an integrated judiciary.

2.8.9 Article 263 had been most underutilized provisions of the Constitution. It can be imaginatively put into service by constituting subject or area specific Inter State Councils to deal with emerging new issues involving Union-State relations, more so in relation to areas touching upon international trade and participatory role therein of the States.

2.8.10 Dealing with the prominent unitary features of India's federal set-up, the Supreme Court observed, "that the inference is inevitable that the distribution of powers – both legislative and executive – does not support the theory of full sovereignty in the States".[13] "In a sense, therefore, the Indian Union is federal.

[13] AIR 1963 Supreme Court 1241 (V 50 C 188) State of West Bengal vs. Union of India

But, the extent of federalism in it is largely watered down by the needs of progress and development of a country which has to be nationally integrated, politically and economically coordinated, and socially, intellectually, and spiritually uplifted." [14]

Basic Values of the Constitution: Democracy, Republicanism, Rule of Law, Constitutionalism and Respect for Minority Rights

2.9.1 The Preamble of the Constitution is the key to its social, political and economic philosophy. It enshrines sovereignty of the people; promises a socialist, secular, democratic republic based on justice, liberty, equality and fraternity. Democracy, rule of law, constitutionalism and respect for minority rights are essential, collective, inter-dependent, indivisible elements of a pluralist society. They together assure the dignity of the individual and unity and integrity of the nation. The Constitution promised a social revolution and the democratic means for its achievement. The reality of a constitution is not merely its adoption which, in and of itself, does not necessarily signal a state's commitment, even in theory, let alone in practice, to constitutionalism. Constitutionalism is a broad amorphous concept. Louis Henkin[15] presents some minimum ingredients of constitutionalism such as: government according to the constitution; separation of powers; popular sovereignty and democratic governance; constitutional review; an independent judiciary; controlling of police; civilian control of the military; individual rights; and provision for amendment.

2.9.2 Elective despotism could be checked only by the doctrine of Government of enumerated powers under a written constitution. There are certain essential components of this concept of rule of law. The law is supreme over the acts of both Government and private persons. There is one law for all. Rule of law requires for its operation the making of just laws which embody and give expression to the more general and somewhat amorphous normative principles of rule of law and an independent judiciary, and a judiciary with the power to issue

[14] Rajasthan vs. Union (1978) 1 S.C.R. at p.34
[15] Henkin, 'Elements of Constitutionalism', Occasional Paper Series, August, 1994, Centre for the Study of Human Rights, Columbia University (Quoted in "Enforcement of Human Rights through Bill of Rights P.465)

practical orders: "Rights and duties, after all, may exist on paper, but those who are unimpressed by pieces of paper may still have a healthy respect for threats of imprisonment. The exercise of all public power must find its ultimate source in some legal rule. This principle is the bond that unites the governors and the governed. If this obligation of the government is broken, then, it would be unrealistic to expect a voluntary, unilateral adherence to law by the citizenry".

Democracy And Republicanism

2.10.1 Strong democracy does not need homogenous interests but depends on civil education, capacity for mutual action and sociology of pluralism. Constituent Assembly debates refer to the times in the past "when India was studded with republics and even where there were monarchies, they were either elected or limited". Dr. Radhakrishnan echoed this:

> *"We cannot say that the republican tradition is foreign to the genius of this country. We have had it from the beginning of our history. When a few merchants from the north went down to the south, one of the Princes of Deccan asked the question, "Who is your King?" The answer was, "Some of us are governed by assemblies, some of us by kings".*

2.10.2 Democracy has wider moral implications than mere majoritarianism. A mere majoritarian democracy is likely, sooner or later, to degenerate into elective despotism. Pluralism is the soul of democracy. "A true democracy", it is said, "is surely one in which the existence of the power of the many is conditional on respect for the rights of the few." There is no place for "a crude statistical view of democracy."

2.10.3 Democratic polity, to be conflict-free, has to be an inclusive democracy. Prof. De Smith expressed this:

> *"...we have seen it enacted so many times in so many countries. In a large majority of newly independent states, even the most modest expectations of liberal constitutionalists have gone unfulfilled..."*

"...Nor was a federal constitutional structure, which presupposed a willingness to accept restraints on the exercise of power at both the central and regional levels, at all likely to flourish. When, moreover, the principal divisive factors in the state are communal-religious, racial, tribal or linguistic, the prospects for constitutionalism are never bright, even in a developed country, as the recent history of Northern Ireland has underlined."

2.10.4 It is erroneous to think that democracy succeeds where the composition of the society is homogeneous and that it is difficult in pluralist society. Benjamin Barber[16] affirms that:

"Strong Democracy rests on the idea of a self-governing community of citizens who are united less by homogeneous interests than by civic education and who are made capable of common purpose and mutual action by virtue of their civic attitudes and participatory institutions rather than their altruism or their good nature. Strong democracy is consonant with – indeed it depends upon – the politics of conflict, the sociology of pluralism, and the separation of private and public realms of action".

2.10.5 On the positive side, the significant developments in the working of the democratic system are that the democratic base has been widened with the formation of elected panchyati raj institutions. Second is the impressive and progressive improvement in the educational qualifications of the elected members of the Parliament and State legislatures. The third significant feature is that the representation of the society in the legislatures has become more egalitarian. The composition of Parliament and the State legislatures, in terms of width of social representation, is moving in the right direction. Political debate is becoming increasingly broad based.

2.10.6 Equally impressive has been the way democracy has taken roots in the country. The 73rd and 74th amendments to the Constitution ensuring reservation of one-third of seats for women in elections to village *panchayats* and *nagar palikas* have provided a further impetus to democracy, decentralization and local governance providing a broader base for democratic debate.

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[16] Benjamin Barber "Strong Democracy" p.117

2.10.7 The framers of the Constitution sought to unite the vast country with its great diversity and many languages and creeds within the common bond of constitutional justice on the great ideals of Justice, Liberty, Equality and Fraternity. The framers showed an uncompromising respect for human dignity, an unquestioning commitment to secularism, equality and non-discrimination and an abiding concern for the poor and the weak. They made a bold attempt to base the constitutional foundations on the firm faith that all classes of people, followers of all faiths and particularly the traditionally under-privileged should all join to work for their united constitutional salvation on the shared faith that the peoples as a whole must sink or swim together and that in the long run prosperity and salvation are in union and not in division. The words of Pandit Nehru during the constituent assembly debates are worth recalling:

> *"What we achieve in unanimity, what we achieve by cooperation is likely to survive. What we gain here and there by conflict and by overbearing manners and by threats will not survive long. It will only leave a trail of bad blood..... The great thing is to discover not what Governments prescribed", said Lord Acton, "but what they ought to prescribe; for no prescription is valid against the conscience of mankind."*

2.10.8 The Union of India was intended to be an indestructible union. The units had no power of secession. The cherished values of the Constitution were enshrined in the great words of its preamble. The Constitution promised Justice, social, economic and political; Liberty of thought, expression, belief, freedom of faith and worship; Equality of status and opportunity and to promote Fraternity, assuring the dignity of the individual and the unity and integrity of the Nation. The constitutional document thus is a formidable one. It has more than 395 articles and 12 schedules. It has an 'internal architecture' of its own called the 'basic features'. Any expounding of its provisions must have reference to the other provisions and the structure of the constitutional scheme, which underlies and infuses and breathes life into it.

Entrenched, Justiciable Constitutional Bill of Rights and Directive Principles

2.11.1 A Bill of Rights is the political technique of placing certain basic civilisational values as limitations on the majority. The entrenched and justiciable Fundamental Rights are the expedient adopted by self-governing peoples to recognize certain basic human-rights as inalienable and place them beyond the reach of an 'amoral majority.' Values of life, liberty and dignity are not subject to political vicissitudes. They depend on the outcome of no elections. They are sacrosanct in themselves and are inalienable.

2.11.2 Part III of the Indian Constitution enshrines these great rights. Part IV contains directives which enable the realization and effectuation of the aspiration of Part III and give full meaning to them. Part IV is theoretically non-justiciable. But it permeates the whole ethos of Part III. Despite Sir Ivor Jenning's sarcasm that "the ghost of Sidney and Beatrice Webb stalk through the pages of the text, Part IV of the Constitution expresses Fabian Socialism without the Socialism", the Constitution seeks humanism, endurance and higher values.

The Working of the Constitution: Economic and Social Change

2.12.1 India has recorded significant achievements along many dimensions of human development since Independence. Important changes, for example, are visible in the social sphere too where affirmative action, political organization and collective mobilization are gradually transforming the status and position of many socially backward communities, particularly among those classified as belonging to the Scheduled Castes and the Scheduled Tribes. Equally impressive has been the way democracy has taken roots in the country. The 73rd and 74th amendments to the Indian Constitution ensuring reservation of one-third of seats for women in elections to village level *panchayats* and *nagar palikas* have provided a further impetus to democracy, decentralization and local governance. Several positive changes are beginning to be felt at the grassroot level with women enjoying far greater freedoms than before, with the induction of more and more women into

public decision making and with several thousands of self-help groups, voluntary organisations and civil society initiatives engaged in critical development action.

2.12.2 Market economy has its own negative impact on equality of distribution. It can produce unacceptable levels of economic inequality. The share of income and consumption of the poorest 20 per cent in India is 9.2% while that of the richest quintiles is 39.5%. This is perhaps the pattern in the modern market economics. In USA (1994) poorest 20% of the population had 1.5% share of income and consumption while the richest 20% had 45.2%. In China (1995), the poorest 20% had 5.5% share and the richest 20% had 47.5%. This reflects, in a non-trivial sense, the anomalies and inequities of the international economic order. Over the 30 years from 1960 to 1990, the affluent 20% of the world have enhanced their share of incomes and consumption to 86% while the poorest 20% have had their share reduced to 1%.

2.12.3 Similarly, there has been only a marginal improvement in access to basic health care between 1992-93 and 1998-99.

- *Despite the positive growth record, there has not been a perceptible and significant improvement in the quality of people's lives. For instance, there has been a marked slowing down in the rate of reductions in infant mortality in recent years.*
- *Again, despite the better growth record in recent years, progress in bridging gender gaps has been slow. Between 1991 and 1997, literacy gaps between women and men has hardly been bridged.*

Economic performance

2.13.1 Most noticeable, however, is the expansion and diversification of production. New technologies, modern management and the advances in science, medicine, engineering and information technology have increased domestic production of a wide range of goods and services. Particularly significant has been the increase in agricultural production. Between 1950-2000, the index of

agricultural production increased more than four fold. Between 1960-2000, wheat production went up from 11 million tonnes to 75.6 million tonnes and the production of rice increased from 35 million to 89.5 million tonnes. This is no mean achievement for a country that relied on food aid until the early 1960s. Similarly, there has been a rapid expansion in both the industrial and service sectors. The index of industrial production went up from 7.9 in 1950-51 to 154.7 in 1999-2000. Electricity generation went up from 5.1 billion KWH to 480.7 billion KWH.

2.13.2 This economic expansion has contributed to a steady and impressive growth in India's GNP. With the exception of 4 years, India has enjoyed a positive growth rate in its GNP every year since 1950. Particularly striking are the higher rates of growth after the mid-1980s, and even more so after the initiation of economic reforms in 1991. Prudent fiscal and economic management enabled India to avert the fiscal crisis that many east asian countries experienced in the mid-1990s. On the contrary, India's GDP grew annually by 6-8% per annum between 1994-2000 except in the year 1997-98 when it grew by 4.8%.

2.13.3 As a result, India's per capita Net National Product (NNP) in 1999-2000 was more than 2.75 times higher than what it was in 1951. Before 1980, the annual average rate of increase of per capita income was around 1.2%. Since then, there has been a significant change. In the first half of the 1980s, per capita NNP grew by 2.4%, and between 1985-90, by 3.2% on average every year. The financial crisis of the early 1990s saw a slowing down in the growth of per capita income, but there has been a quick recovery. Per capita NNP has grown on average by 4.8% every year between 1993-94 and 1998-99.

2.13.4 In India the industry generated 330 billion Rs. ($7.7 billion) in 1999, 15 times the level in 1990. One study estimates that by 2008, information technology shall account for 30% of India's exports and 7.5% of its GDP. Employment in the software industry is projected to rise from 180,000 in 1998 to 2.2 million in 2008, to account for 8% of India's formal employment.

2.13.5 Information and communication technology has created new out-sourcing opportunities by enabling services to be provided in one country and delivered in another. Delivered by telecommunication or data networks, the services include credit card administration, insurance claims, business payrolls and customer, financial and human resource management. The global out-sourcing market is worth more than $100 billion, with 185 Fortune 500 companies out-sourcing their software requirements in India alone. India has now 1,250 companies exporting software.

2.13.6 India's English-language technical colleges turn out more than 73,000 graduates a year. By investing in infrastructure (especially high-speed links and international gateways with sufficient bandwidth), the Government has helped develop India's place in the new economy. These efforts will deliver long-term benefits for human development and equitable growth.

2.13.7 There are economic predictions that by 2020 India would be one amongst top 10 countries in per capita income and the third in purchasing-power-parity. It is also predicted that by 2020 India would be the largest software developer and will be leading in space technology which will greatly enhance the potential for education, tele-medicine, disaster-management, meteorology, remote sensing, etc.

Disturbing Features: Increasing Disparities of Income

2.14.1 Global disparities of incomes and inequality are, indeed, high.

- *In 1993, the poorest 10% of the world's people had only 1.6% of the income of the richest 10%.*
- *The richest 1% of the world's people received as much income as the poorest 57%.*
- *The richest 10% of the US population (around 25 million people) had a combined income greater than that of the poorest 43% of the world's people (around 2 billion people).*
- *Around 25% of the world's people received 75% of the world's income (in PPP US$).*

- *In 1998, out of $70 billion spent on global health research, only $300 million went for research on HIV/AIDS and $100 million on malaria which are the problems of developing countries.*
- *This attitude is reflected on the fact that out of 1223 new drugs developed between 1975 and 1976 only 13 were relevant to tropical diseases.*[17]

2.14.2 The Human Development Report (1999) noted of increasing inequalities between the countries. It says :

> "Inequality between countries has also increased. The income gap between the fifth of the world's people living in the richest countries and the fifth in the poorest was 74 to 1 in 1997, up from 60 to 1 in 1990 and 30 to 1 in 1960."

2.14.3 By the late 1990s, the fifth of the world's people living in the highest-income countries had:

- 86% of world GDP – the bottom fifth just 1%
- 82% of world export markets – the bottom fifth just 1%
- 68% of foreign direct investment – the bottom fifth just 1%
- 74% of world telephone lines, today's basic means of communication – the bottom fifth just 1.5%.

2.14.4 But despite the positive growth record, there has not been a perceptible and significant improvement in the quality of people's lives. For instance, there has been a marked slowing down in the rate of reductions in infant mortality in recent years. Again, despite the better growth record in recent years, progress in bridging gender gaps has been slow. Between 1991 and 1997, literacy gaps between women and men has hardly been bridged. India's low level of human development reflects the persistence of extensive human deprivations. Despite the growth record, India's backlog of human poverty is indeed enormous. At the end of 50 years, *human poverty* still persists in substantial number and the backlog of human deprivations are enormous.

[17] UNDP Human Development Report, 2001

Extent of Human Deprivation in India

- *India ranks 128 on the Human Development index – only 45 countries in the world have a lower human development index than India.*
- *Life expectancy at birth is estimated to be 63 years up by 32 years from the life expectancy in 1950-51. But it is 17 years less than of Japan, 10 years less than of Sri Lanka and 7 years less than of China.*
- *Wide variations exist in life expectancy between male and female between the States and between the rural and urban areas.*
- *260 million people in India live below the income poverty line.*
- *Close to 380 million people are illiterate and nearly 2/3rd of them are women.*
- *52% married women in the reproduction age group suffer from anaemia – the proportion varies from 23% in Kerala to 86% in Arunachal Pradesh.*
- *Nearly 1,10,000 women die during child birth or due to pregnancy related causes - most of them can be avoided.*
- *Infant mortality rate have almost halved to 72 births per 1000 births down from 146 in 1951 but in South Asia, India had the slowest rate of improvement in child survival.*
- *Wide variations in infant mortality rate extist across the states – it varies from 16 in Kerala to 98 (more than 6 times higher) in Madhya Pradesh and Orissa.*
- *One third of all babies in India have low birth-weight; in Sub-Saharan Africa, the proportion is just one-sixth.*
- *53% children under 5 years remain malnourished. Percentage of malnourished children is nearly twice the percentage reported in many parts of Sub-Saharan Africa.*

Public Finance and Public Spending

2.15.1 The state of public finance in India, despite the accelerating growth and low inflation and reasonable foreign exchange reserves situation, remains a source of concern. India's fiscal deficit is among the highest in the world - between 5-6% of GDP. The combined deficit of the Central and State Governments, after declining from 9.2% in 1990-91 to 6.8% in 1993-94, rose to 8.5% in 1998-99. Bulk of social sector spending comes from State Government revenues. However, the fiscal situation of most States is not good. Many face severe deficits. The pressure from the Central Government to reduce these deficits is even greater. This typically translates into State Governments cutting down their spending on social sectors - at a most inappropriate time. Indeed, it is

only when the State invests in the social sectors - in health and education - that there is any possibility of sustaining a more equitable and higher economic growth rate in the years to come.

2.15.2 The combined fiscal deficit of the Central Government and the State Governments, as mentioned by the Finance Minister in his budget speech on 28th February, 2001, was in the order of 10 per cent of GDP. The amount left in the hands of the Central Government, after disbursement of States' share of the Central taxes and grants and meeting Central expenditures in the nature of expenses on interest payments, defence, major subsidies and pensions, was Rs. 12,000 crores necessitating borrowing in the order of 111,000 crores to make both ends meet. Again, the depressing picture portrayed by the Finance Minister was that 70% of these borrowings had to be for financing unproductive expenditures.

2.15.3 The preoccupation with managing the fiscal deficit as a goal in itself is resulting in many instances of lower allocations to the social sector. Unfortunately, the State Governments do not realize the impact of such cutbacks on human development. Many policy makers in fact see this as an opportunity for government to abdicate its responsibility towards assuring citizens of their basic human rights.

2.15.4 The poor and other socially disadvantaged groups are worst affected by such cuts. The combined deficit of the States has also gone up from 3.2% to 3.6% between 1991-99. In 1998-99, the States' budget deficit worsened below the level of 1990-91, and is likely to continue unless a serious effort is made to check it. Between 1993-94 and 1997-98, the fiscal deficit rose in Uttar Pradesh from 4.5% of State GDP to 8.6%; in Bihar from 4% to 6.2%; in Orissa from 5.7% to 6.3%.

2.15.5 Public spending has played an important role in India's poverty reduction. The marked decline in income poverty from the mid 1970s to the end of the 1980s coincided with the sharp rise of public expenditures. Between 1976 and early

1206 LJ&CA/2002—5B

eighties, real per capita development expenditure increased at an annual rate of 6%. It was also a period that coincided with the declaration of an increased political commitment to poverty eradication, and the introduction of several new anti-poverty programmes. Nationalized banks were required to assign 40% of their lending to priority sectors – small farmers, small businesses and artisans. New employment-creation and asset generation programmes were introduced. The period also witnessed a substantial increase in rural non-agricultural employment and real wages went up sharply.

2.15.6 Government expenditures on poverty alleviation appear to have strong "trickle down" characteristics, much more distinctly than income growth. Practically all States that have succeeded in reducing income poverty have made sizeable investments in poverty alleviation programmes. The size of government spending matters, and so does the efficiency of spending. It cannot be denied that leakage, wastage, corruption and inefficiency greatly reduce the impact on poverty reduction. The enormous scope that exists for improving the efficiency of public spending shows the potential that exists for rapidly reducing human poverty with significant improvements in the implementation and management of development programmes.

2.15.7 Some recent trends in public spending on poverty alleviation are however disturbing. Between 1990-91 and 1996-97, the Central Government expenditure as a percentage of GDP at current market prices went down from 18.1% to 14.3%. During this period, however, Central Government expenditure on social sectors (comprising education, health and family welfare, water supply, sanitation, housing, social welfare, nutrition, rural employment and minimum basic services) as a ratio to total expenditure increased from 7.7% to 10.5%. Real development expenditure per capita by the States went up from Rs.207 in 1980-81 to Rs.367 in 1995-96. However, what is worrisome is that during this period, development expenditure as a multiple of non-development expenditures fell from 3.2 in 1980-81 to 2.1 in 1995-96.

2.15.8 Taking all 14 States together, there has been a decline in State plan expenditures. And this perhaps conceals an even greater decline in investment for new capacity as much of the increase is in the revenue component of the plan. With the exception of Rajasthan where there has been a marginal increase, there has been a decline in the levels of plan expenditure in every other State. The drop is the largest in Bihar.

Poverty In the Third World: Myth and Reality

2.16 The economic conditions in the Third World, no doubt, present a grim picture. Poverty in the developing countries is real and grinding. Enormous disparities of global wealth between the North and South, the West and the rest is a reality. An economist points out,

> *"Even in the poorest countries the poor save. The value of savings among the poor is, in fact, immense: forty times all the foreign aid received throughout the world since 1945."*

The chief obstacle, according to him, is that these enormous assets and resources of the poor are not documented and, therefore, not available to support credit. If U.S.A raises its budget for foreign aid to 0.7% of national income as recommended by U.N., it would take that richest country 150 years to transfer to the world's poor the wealth they already possess.

He says,

> *"In the West, by contrast, every parcel of land, every building, every piece of equipment or store of inventories is represented in a property document that is visible sign of a vast hidden process that connects all these assets to the rest of the economy.*
>
> *Without an integrated formal property system, a modern market economy is inconceivable.*
>
> *By our calculations, the total value of the real estate held but not legally owned by the poor of the Third World and former communist nations is at least $9.3 trillion. This is a number worth pondering: $9.3*

trillion is about twice as much as the total circulating US money supply. It is very nearly as much as the total value of all the companies listed on the main stock exchanges of the world's twenty most developed countries: New York, Tokyo, London, Frankfurt, Toronto, Paris, Milan, the NASDAQ and a dozen others. It is more than twenty times the total direct foreign investment into all Third World and former communist countries in the ten years after 1989, forty-six times as much as all the World Bank loans of the past three decades, and ninety-three times as much as all development assistance from all advanced countries to the Third World in the same period."

Speaking of the poor, he writes,

"The words 'international poverty' too easily bring to mind images of destitute beggars sleeping on the kerbsides on Calcutta and hungry African children starving on the sand. These scenes are, of course, real, and millions of our fellow human beings demand and deserve our help. Nevertheless, the grimmest picture of the Third World is not the most accurate. Worse, it draws attention away from the arduous achievements of those small triumphed over every imaginable obstacle to create the greater part of the wealth of their society. A truer image would depict a man and woman who have painstakingly saved to construct a house for themselves and their children, and who are creating enterprises where nobody imagined they could be built. I resent the characterization of such heroic entrepreneurs as contributors to the problem of global poverty.

They are not the problem. They are the solution."

The author also recounts a story whose message, he said, had stirred millions of people:

"of an Indian merchant who had been promised by a prophet that he would surely become rich beyond all imaging if only he would seek his treasure. The merchant traveled the world only to return home old, sad and defeated. As he re-entered his abandoned house, he needed a drink of water. But the well on his property had silted up. Wearily, he took out his spade and dug a new one – and instantly struck the Golconda, the world's greatest diamond mine.'
"Leaders of the Third World", he says, "need not wander the world's foreign ministries and international financial institutions seeking their fortune. In the midst of their own poorest neighbourhoods and shanty towns there are – if not acres of diamonds – trillions of dollars, all

ready to be put to use if only we can unravel the mystery of how assets are transformed into live capital."[18]

The Working of the Executive

2.17.1 A political executive is in the form of the Council of Ministers. In a parliamentary democracy, unlike in the presidential system, there is a degree of fusion of the two organs of the State, the Political Executive and the Legislature. The principle of responsible government has its institutional implications. The conventions of the cabinet system are : (1) that members of the cabinet are, as a rule, members of parliament; (2) that they are necessarily members of the majority, whether of one party or of a coalition; (3) that they hold office only while parliament and the country do not obviously withdraw their confidence from a minister or the entire cabinet; (4) that the cabinet acts as unit in face of other governmental bodies and this implies a certain predominance of the prime minister over his colleagues. The principle of collective responsibility means that the ministers answer as one for any action of the government. It does not necessarily mean collective decisions upon every matter. Normally, cabinet is a small body of persons drawn from the majority party (or the majority coalition) in the legislature. In India over the years the size of the Cabinets, both in the Union and the States, have tended to increase enormously adding to the cost and clumsiness of Government. A law or parliamentary convention to limit the size of the Cabinet is all the more desirable at the present juncture in view of a manifest sense of abandonment with which large size of Cabinets are resorted to. There are also other political rewards for the party members and supporters in the form of chairmenship of statutory corporations, usually attached with status of a Minister of Cabinet rank. The magnitude of the harm caused to public-interest, to the efficiency of administration and to the exchequer is, indeed, incalculable. This has increasingly become the pervasive political culture of the day.

[18] Hernando de Soto – The Mystery of Capital p.30

2.17.2 The permanent civil service is another gargantuan structure. The salaries, perquisites and the other benefits of office are so heavy that very little is left out of the revenues towards social infrastructure, social security, health, and education and other needs of the society. The financial allocations for health, education and social security in terms of percentage of the GDP is dismally low. The mobilization of resources in the States present a discouraging picture. There is heavy leakage of taxes. The executive has failed to afford reassurances to the citizenry of prompt reasonable efficient services particularly in public utilities. The citizenry has no assurances of living under the adequate system. Public-Greviance-Rederessal-Mechanisms are weak. Citizen Charters and Institutions of Charter Ombudsman have not taken off. Commission's Report addresses some of these problems bedeviling the polity.

Parliamentary System : Reforms

2.18.1 Debate on constitutional and parliamentary reforms has been raging for a long time. On occasions these have also become part of political campaigns. The ideas of a fixed term for Parliament, proportional system of representation, changes in the first-past-the post system, negative voting, state funding of elections, disqualification from electoral contest, anti-defection measures have all been debated endlessly.

2.18.2 Though the polity is federal, system of Government is the "parliamentary system" on the British pattern called the Westminster model. In a Parliamentary system there is no strict separation of powers between the Legislature and the Executive. Indeed, it involves a fusion of legislative and executive powers than a strict separation of those powers. The executive is drawn from the legislative-majority and can count on automatic endorsement of its programmes. The responsibility for success or failure of programme is clear and identifiable.

2.18.3 Indian Constitution has adopted this parliamentary system as distinct from the "presidential system" in which the executive is independent of, and not

accountable to, the legislature. Position of the President of the Indian Republic under the Constitution is substantially different from that of the American President and is similar to that of the Queen in England. A learned judge adopting a picturesque riverine imagery said, "Not the Potomac, but the Thames, fertilizes the flow of the Yamuna,".[19] The President of India "represents the nation but does not rule the nation. He is the symbol of the nation."

2.18.4 The Supreme Court of India dealing with the nature of the system of Cabinet Government observed,

> *"The Indian Constitution has not indeed recognized the doctrine of separation of powers in its absolute rigidity.....*
>
> *Our Constitution, though federal in its structure, is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State.*
>
> *..... In the Indian Constitution, therefore, we have the same system of parliamentary executive as in England and the Council of Ministers consisting , as it does, of the members of the legislature is, like the British Cabinet, "a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part.....*
>
> *The Cabinet enjoying, as it does, a majority in the legislature concentrates in itself the virtual control of both legislative and executive functions;"*[20]

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[19] AIR 1974 Supreme Court Samsher Singh v. State of Punjab p.2212
[20] 1955 AIR Supreme Court (Vol.42) p.556

2.19.1 The Parliament and the State Legislatures, owing to the inherent weaknesses of the electoral system, have not acquired a true representative character. The 13th Lok Sabha represents only 27.9% of the total electorate and the recent past Legislature of Uttar Pradesh represents only 22.2% of the electorate. A fair and impartial electoral system is the key to the success of any democracy. Corruption in political life and elections is at the root of the pervasive corruption that is seen everywhere. Electoral reforms and reforming of the political parties and their internal democracy, both stupendous tasks, are an essential part of the remedies. The politician-bureaucrat nexus has eroded administrative credibility. Unprincipled, opportunistic political re-alignments from time to time and defections and re-defections erode the stability of governments. The administrative and economic costs of political instability and short-lived governments are enormous.

2.19.2 Maladministration has paralysed the creative energies of the people and has pushed people and their day to day living more and more into extra-legal systems. Owing to opportunistic and self-seeking politics and politicians and an increasing scenario of politician, criminal and bureaucratic nexus, the political climate of the country has been polluted bringing in its wake enormous corruption - electoral, political and bureaucratic. There is pervasive de-generation of values. The foremost requirement is the restoration of confidence in the institutions of democracy. This needs strong and enlightened national leadership to be able to address itself to the emergent problems in international relationships; to issues of national integrity and security, to issues of development and economics. This Report addresses some of these issues particular in relation to the ticklish issues of dealing with the aspirations to enter Parliament and State Legislatures of those who have criminal records.

2.19.3 The first significant development in the composition of our Parliament and the State legislatures is the increasing higher level of education amongst them. The second significant and impressive feature is that the representation of the elite sections of society in the legislatures has given way to more and more common people who till recently were in the lower echelons. The composition of the legislatures is moving in the right direction. However, the negative factor that compels notice is the representative character of panchayat and legislatures. As noticed earlier, the 13th Lok Sabha represents only 27.9% of the total electorate in the country and amongst the State legislatures, for example, in Uttar Pradesh, the largest State population-wise and constituting of highest number of Members of Parliament for any State, the legislature represents only 22.2% of the total electorate. This low representative character of the panchayat and legislatures, even after more than 50 years of Independence, is a matter of concern. This position is indeed partly reflection of the number of voters who do not discharge this civic duty; but is more reflective of the inherent defect in the first-past-the-post system as it now obtains. In some cases those who would otherwise have forfeited their security deposit have been declared elected as they had obtained the highest number of votes amongst the candidates.

2.19.4 The Commission has examined these issues and other connected issues of the processes and products of the electoral system and has made certain recommendations. The alarming increase of violence and influence of money in the electoral processes is a matter of great concern. It threatens the very survival of the democratic system.

Accountability versus Stability

2.20.1 A Parliamentary system, unlike the Presidential system, lays emphasis on accountability. Any emphasis of the preponderance on stability, as against accountability, would negate certain basic assumptions - the political relationship between the Parliament and the Cabinet - and would 'presidentialise' the Prime Minister's office. Indeed, on the 'ever growing power' of the Prime Minister in

Britain, some observers comment that "Britain, now has a quasi-presidential government." and that "the Prime Minister had become the focal point of public attention and governmental power" [21]. The debate, by implication, recognizes the trend in the Parliamentary system towards stability. In an article written for the American bicentennial review, Arther M. Schlesinger, Jr. said:

> *"The parliamentary system is to be defined by a fusion rather than by a separation of powers. The executive is drawn from the legislative majority and can count on automatic enactment of its program. No one doubts where responsibility lies for success or failure. But while the parliamentary system formally assumes legislative supremacy, in fact it assures the almost unassailable dominance of the executive over the legislature."*[22]

2.20.2. In the Parliamentary system, if there is conflict between accountability on the one hand and stability on the other, the latter must necessarily yield. But accountability and stability need not necessarily and always be mutually conflicting. Instability introduced by personal ambitions in opportunistic politics and unprincipled defections would need to be provided against. Need for political stability has to be seen in two emerging contexts: that in administering any economy in the global context, a reasonable degree of stability of Government and strong governance is important. Secondly, the economic and administrative costs of political instability might reach unaffordable levels. Writing on the economic costs of political instability a scholar says:

> *"The costs of the Indian economy of short-lived governments and their fall are very high. The uncertainty leads to postponement of investment decisions, both by domestic investors as well as foreign investors. Foreign direct investment gets postponed too. The paralysis of governmental decision-making also delays public investment. Naturally, one would expect economic growth to slow down. The economic impact can be quite sizeable as is reflected in our experience.*

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[21] Mackintosh: "The British Cabinet"
See also: Lalit Mohan Gautam's critiques of the Commission's Consultation papers: "Presidentialising the System".
[22] Reforming American Government: Leave the Constitution Aone(1982) p.51

Thus the fall in the annual GDP growth rate over the growth rate of the previous year was 10.7 percentage points during 1979-80 when Morarjee Desai and Charan Singh governments fell; 4.6% in 1991-92 when V.P. Singh and Chandra Sekhar governments fell, 2.8% in 1996-97 when Deve Gowda government fell.

These numbers are large, but not surprising. A three-month postponement of half of total investment means 16 per cent fall in investment. This could easily result in lowering of growth rate by 1 percentage point. In today's terms, this is an income loss of roughly Rs. 15,000/- crores. If the political uncertainty lasts longer, the loss would be higher. This is the immediate loss. When its future effects are accounted for, the value of the loss would be many times more."

2.20.3 There are also those who do not subscribe to this instability argument. They point out that only on 5 occasions out of 13, the Lok Sabha was dissolved before completing its full term and during the 53 years since Independence, just four Prime Ministers ruled for 40 years - two of them for 30 years between them. One political party alone, it is pointed out, was in power for 45 years out of 50 years.

The Institution of Prime Minister:

2.21.1 The importance and influence of the Prime Minister under the Cabinet-System is ever increasing. To those who speak of the 'Presidential System', the answer of the critics is the increasing 'presidentalising' of the Prime-Minister's office. Walter Bagehot said that the "hyphen which joins, a buckle which fastens, the legislative part of the State to the executive part of the State is the Council of ministers,"[23] But Crossman in his introduction to Bagehot's "English Constitution" referring to the increasing importance of the institution of the Prime-Minister said that the 'hyphen which joins, the buckle which fastens' is one single-man, viz. the Prime-Minister. "His right to select his own Cabinet and dismiss them at will; his power to decide the Cabinet's agenda and announce the decisions reached without taking a note; his control, through the Chief Whip, over patronage – all this had already before 1867 given him near-Presidential powers. Since then his

[23] R.H.S. Crossman: Introduction to Walter Bagehot: "The English Constitution" p.20

powers have been steadily increased, first by the centralization of the party machine under his personal rule..."[24]

2.21.2 Speaking of the British Cabinet and power to recommend dissolution of the House, C.F. Strong observes, "As Walter Bagehot acutely pointed out, the Cabinet is a creature, but, unlike all other creatures, it has the power of destroying its creator, i.e. the House of Commons. For if the Cabinet is defeated in the Commons it can, instead of resigning, advise the Queen to dissolve the assembly upon which it depends. Then the electorate decides whether the party from which the appealing Cabinet is drawn shall return with a majority or not."[25] But the position is held to be different under the Indian Constitution.

The Judiciary

2.22.1 Though India has a federal polity, it has an integrated judiciary.There are no separate systems of Federal and State courts. One system of courts deal with enforcement of laws – both of Union and of the States. A written constitution defines the powers of the different organs of the State. Each organ, the Executive, the Legislature and the Judiciary has its own assigned role. It is supreme in its assigned field. However, under parliamentary system of government, there is a fusion between the two organs of the State, namely, the Executive and the Legislature. The Legislature oversees the working of the Executive and exercises legislative control over public expenditure. A government under a written constitution is one of enumerated powers. Under a federal disposition, quite often, issues of the demarcation of powers between the Union on the one hand and the States on the other hand need to be settled by an independent wing. So also, the issues as to the limits of the powers of the Legislature and the Executive. There must necessarily be some authority to adjudicate such issues and to interpret and define the scope and limitations of the powers of the Executive and the Legislature. Under the Constitution, that power is vested in the Judiciary to ensure

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[24] Ibid p.51
[25] Modern Political Constitutions, C.F. Strong p.216

the constitutional checks and balances and to adjudicate disputes touching the limits on the power of the respective branches of Government. This task is as vital as it is essential. If a justiciable entrenched constitutional Bill of Rights is appended, the role of the judiciary assumes a more significant dimension. Democracy is said to be most perfect work of political wisdom but the pivot on which this grand machine turns is the principle of equality. Rule of law is the force which moves the democratic machine.

2.22.2 Another recurrent theme of debate relates to constitutional adjudications, judicial review and judicial activism. Even the incorporation of an entrenched justiciable Bill of Rights was attacked on democratic theory that the consequential shift of power to the judiciary, and away from the elected legislature, would place power in the hands of 'unelected, unaccountable and elite group of people, viz., the judges' who can over-turn the acts of Parliament. The power to identify and determine the inconsistency between an impugned law or an administrative policy on the one hand and the provisions of the Bill of Rights on the other hand, would itself, it is said, violate three most fundamental elements of democracy viz.- participation, representativeness and accountability and that judges exercise such powers without being accountable to the community. It is argued that 'judicial activism' is a slippery word which could mean a thin justification to interfere in the governing process.

2.22.3 It was also argued that such a power in the judiciary would shift the power from the legislatures to the judges; a process bristling with the possibilities of politicization of the judiciary. Speaking of this process an American writer[26] said,

> "A popular style in complaining about the courts is to contrast modern judges with those of a golden or, at least, a less tarnished age. Many people have a fuzzy impression that the judges of old were different. They did things like "follow precedent" and "apply the law, not make it up." There is a good deal to be said for that view. The practice of judicial law making has certainly accelerated

[26] Robert H. Bork – The Tempting of America – The Political Seduction of the Law p-15

spectacularly in this century, particularly in the past four or five decades. Nevertheless, the whole truth is rather more complicated."

Of the need for judicial restraint the author says:[27]

> "In law, the moment of temptation is the moment of choice, when a judge realizes that in the case before him his strongly held view of justice, his political and moral imperative, is not embodied in a statute or in any provision of the Constitution. He must then choose between his version of justice and abiding by the American form of government. Yet the desire to do justice, whose nature seems to him obvious, is compelling, while the concept of constitutional process is abstract, rather arid, and the abstinence it counsels unsatisfying. To give in to temptation, this one time, solves an urgent human problem, and a faint crack appears in the American foundation. A judge has begun to rule where a legislature should."

2.22.4 But Bill of Rights and judicial activism are here to stay. Constitutional adjudications have an inevitable legislative element. But then, they need great wisdom and restraint on the part of the judges in wielding that high power lest they erect their own prejudices into principles. The "irreplaceable value of the power of judicial review lies in the protection which it has accorded to constitutional rights." A learned judge of the American Supreme Court said that "it is this role and not some amorphous general supervision of the government that has maintained public esteem for the federal courts and **has permitted the peaceful existence of counter-majoritarian implications of judicial review and the democratic principles on which our federal government rests."** **(emphasis supplied)**

2.22.5 About half a century of the Constitution at work has tossed up many issues of the working of the judiciary: from the difficult problems of appointments to the superior judiciary to the problems of court clogging and judicial delays. A wide variety of issues have arisen. Who should appoint the judges? Should they be "judges' judges" or "peoples' judges"? Should the composition of the judiciary reflect the pluralism of the society? Particularly disturbing has been the chronic

[27] Robert H. Bork – The Tempting of America – The Political Seduction of the Law p-1

and recurrent theme of the near collapse of the judicial trial-system, its delays and the mounting costs. The glorious uncertainties of the law have frustrated the aspirations for an equal, predictable and affordable justice.

2.22.6 In all countries with advanced systems of dispute resolution, the percentage of cases which will go through the entire litigative processes is comparatively small. Most of the litigations or potential litigations are settled at the pre-litigation stage or at the pre-trial stages. In India, however, the percentage of cases that go through whole processes in courts and their hierarchies is quite large. Imaginative use of Alternative Dispute Resolution mechanisms, such as, arbitration, mediation, conciliation etc. and auxiliary adjudicative services, neutral assessment and active case flow management need to be explored.

Electoral System

2.23.1 Regular, fair and free elections are fundamental to a constitutional democracy. They draw the nation to a debate on vital issues that touch the lives of the people. But there is increasing disillusionment about the purity of electoral process. Corruption and criminalisation has bedeviled its processes.

2.23.2 At the Golden jubilee of Independence, the Parliamentarians took a pledge :-

> *"That meaningful electoral reforms be carried out so that our Parliament and other legislative bodies be balanced and effective instruments of democracy; and further that political life and processes be free of the adverse impact, on governance of undesirable extraneous factors including criminalisation;*
>
> *That continuous and proactive efforts be launched for ensuring greater transparency, probity and accountability in public life so that the freedom, authority and dignity of the Parliament and other legislative bodies are ensured and enhanced; that more especially, all political parties shall undertake all such steps as will attain the objective of ridding our polity of criminalisation or its influence;*

2.23.3 The proposals in the Consultation papers have evoked diverse views, including some sharp reactions. For instance, the proposal whether a political party securing less than, say, 5% or 10% of the votes polled should be entitled at all to representation, there was a pointed criticism. It has been eminently argued by a young scholar that, if the rule was operated, only two national parties, viz. the Congress and the B.J.P, which together, at present, account for about 300 seats in the Lok Sabha would qualify and the rest of the parties which account for 245 seats would be looked upon as "usurpers"![28] Such a rule, it was urged, would ignore regional, social and other legitimate force, seeking space in the national democratic debate. It was mentioned that even in Britain, the two-party system is on the decline and the vote share of the top two political parties show a marked fall over the years.

2.23.4 Even in regard to requirement of 50%+1 vote considered necessary to improve the representative image of Parliament and the State Legislatures, there have been certain criticisms in the responses raised from the public.

2.23.5 In a different context, namely, the requirement of "secure majority" for the outcome of referenda, both as international practice and practice adopted by the United Nations, the responses have indicated the 50%+1 vote as desirable standard. In that context, a Canadian Minister said:

> *"In short, Canadian practice, international practice and the practice of the United Nations unanimously indicate that in the matter of referendums on accession to sovereignty, the absolute majority of votes, namely, 50%+1, expresses not only a clear majority but also a rule that must be recognized as being democratic, constant and universal."*[29]

2.23.6 In regard to the relevance of the German Model to Indian conditions critics rely upon the following observations of David Willets:

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[26] Lalit Mohan Gautam "Presidentialising the System"

[29] Joseph Facal, Minister Responsible for Canadian Intergovernmental Affairs on "Rules cannot be changed in the middle of the game".

"We have had a different history from the countries of the continent and that does give our Constitution a different shape from theirs. But that is not evidence that it is wrong. Different countries with their own traditions can quite reasonably have different constitutional arrangements. That the German Constitution works well for them is no reason for us to have it here."

Political Parties

2.24.1 Herman Finer sets out Burke's definition of a political party as "a body of men, united for the purpose of promoting by their joint endeavours the public interest, upon some principle on which they are all agreed."[30] C.F. Strong refers to the following definition of political parties by Walter Dean Burnham, "...political parties, with all their well-known human and structural shortcomings, are the only devices thus far invented by the wit of Western man which with some effectiveness can generate countervailing collective power on behalf of the many individually powerless against the relatively few who are individually – or organizationally – powerful."[31] This desire for collective power and solidarity against perceived injustices seems to be the moving force behind the phenomenon of proliferation of smaller political parties.

2.24.2 Under the Constitutional document, there is no specific reference to the political parties excepting in the Twelfth Schedule which deals with defections. The right to form a political party is a right under the common law and is protected article 19(1)(c) of the Constitution.

2.24.3 Political parties play a great role in the working of the Constitution and its democratic institutions. Issues of the organization, functioning, inner-party-democracy, transparency of funding, ethical standards are all matters of vital public concern. There are 552 political parties in the country at the last count. But there is no comprehensive law regulating their functions and operations which are crucial to the welfare of the nation and, indeed, to the very survival of the

[30] The Theory And Practice of Modern Government: Herman Finer p.240
[31] Supreme Court Statecraft: The Rule of Law and Men: Wallace Mendelson p.226

democratic spirit and tradition. Samuel Lubbel, speaking on the crisis in politics, saw "no party coalition in command of sufficiently stable majority to be able to advance a unifying set of policy" and that "reasoned argument compromise and accommodation were increasingly shoved aside in favour of polarization, violence and struggle for raw power"[32]. This, more or less, characterizes the situation in the country.

"Government is man's unending adventure." John Morley in his notes on "Politics and History" speaks of the great complexity of Governmental business: "Everybody who knows anything knows that it is a waste of our short lives to insist on ideal perfection. Popular government, or any other for that matter, is no chronometer, with delicate apparatus of springs, wheels, balances, and escapements. It is a rough heavy bulk of machinery, that we must get to work as best we can. It goes by rude force and weight of needs, greedy interests and stubborn prejudices."

2.24.4 Political parties that control and run democratic governments themselves need to be arranged on transparent systems as to their organization, funding, accounts and audit. There is increasing criminalisation of politics and of the electoral process. If remedies are not found and implemented speedily there might remain very little of value to salvage.

Political System and Structure:

2.25.1 The political, social and economic philosophy of the Constitution is reflected in the Preamble of the Constitution which declares India a "sovereign, socialist, secular, democratic, republic". The Preamble read with the Directive Principles of State Policy presents the socio-economic goals of the Constitution. Fundamental Rights and Fundamental Duties are the means by which the socio-

[32] Samuel Lubell: "The Hidden Crisis in American Politics:

economic goals of the Constitution are to be realized. "The Judiciary", said Granville Austin, "was to be the arm of the social revolution."[33]

2.25.2 The framers of the Constitution sought to unite the vast country with its great diversity, many languages and creeds within a common-bond of constitutional justice on the great ideals of liberty, equality, fraternity and justice. Universal adult franchise was the foundation for the democratic polity. Framers showed an uncompromising respect for human dignity, an unquestioning commitment to equality and non-discrimination, and an abiding concern for the poor and the weak. They made a bold attempt to base the constitutional foundations on the firm faith that all classes of people, followers of all faiths, and particularly the traditionally under-privileged should all join to work for their united constitutional salvation on the shared faith that peoples of the several faiths must sink or swim together, and that in the long run prosperity and salvation are in union and not in division.

2.25.3 The framers of the Constitution intended that it should not commit the country to any particular form of economic structure giving fullest freedom to the elected representatives to evolve any economic order or system to achieve the goals of economic democracy.

2.25.4 Indeed political reforms, in their very nature, follow and cannot force the pace of enlightened public opinion. Educating public opinion even on a vital and important issue may take years. The nuances of Parliamentary Democracy are political. As A.W. Bradley said:

> *"the responsibility of government to parliament is a political relationship. As such it is not a matter of precise definition and lawyers must resist the temptation to lay down rules for it".*[34]

The words of Sir Ivor Jennings are also worth recalling :

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[33] The Indian Constitution – Cornerstone of a Nation – Granville Austin p.
[34] ECS Wade and G. Philip "Constitutional & Administrative Law" by A.W. Bradley 5th Ed. P.97

"In truth what the democratic system does is to harness a man's ambitions; if they lie in the right direction, to the National dog-cart: The horse will go of his own volition because he wants to get somewhere, and perforce the cart will follow; by choosing the right horses the nation will arrive at it's chosen destination. The horse chooses the destination, but the Nation chooses the horse; and – it is here a dictatorship differs; the horse can always be changed in mid-stream if necessary."[35]

Fifty years of Working of the Constitution: Achievements & Failures : A Balance Sheet

2.26.1 "The ideals on which this Draft Constitution is framed", lamented a member of the Constituent Assembly, "have no manifest relation to the fundamental spirit of India. I can assure you that this Constitution will not prove suitable and will break down soon after being brought into operation."[36] But a learned author who surveyed its working spoke with feeling when he said, "The Constitution has been accepted as the charter of Indian unity. Within its limits are held the negotiations over the working of the federal system..... The Constitution has established the accepted norms of 'national' behavior..... The Constitution's greatest success, however, lies below the surface of government. It has provided a framework for social and political development; a rational, institutional basis for political behavior. It not only establishes the national ideals, more importantly it lays down the rational, institutional manner by which they are to be pursued – a gigantic step for a people previously committed largely to irrational means of achieving other-worldly goals."[37] "By independence we have lost the excuse" said Ambedkar, "of blaming the British for anything going wrong. If hereafter things going wrong, we will have nobody to blame except ourselves."

2.26.2 What are our achievements and failures over the 50 years since Independence? How have each of the three organs of the State, the Legislature,

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[35] Sir Ivor Jennings – Parliament Second Edition p.521 (See: Lalit Mohan Gautam's paper "Presidentialising the System"

[36] The Indian Constitution – Cornerstone of a Nation – Granville Austin p.325

[37] Ibid p.309-310

the Executive and the Judiciary redeemed the constitutional pledge of ushering in a social revolution? Has the dream of the founding fathers for a life of dignity to the vast millions through the process of socio-economic transformation been realized? What then is the Balance Sheet?

2.26.3 Political Accomplishments:

- India's democratic base has stabilized as a working federal polity. With the Constitution, 73rd and 74th amendments, the base of democratic debate has widened. There is greater push towards non-centralisation. General Elections have been held with regularity; and transfers of power consequent upon the results of elections have been orderly, peaceful and democratic.

- The educational qualifications of the Members of Parliament and Legislatures have shown marked improvements. The Parliament and Legislatures are increasingly more representative of the composition of society. More and more members of the hitherto backward classes are moving up in the political ladder.

- The main cause and source of political-decay is the ineptness of the electoral process which has not been able to keep out criminal, anti-social and undesirable elements from participating in and even dominating the political scene and polluting the electoral and parliamentary processes.

- Though democratic traditions are stabilizing, however, democracy cannot be said to be an inclusive representative democracy. The pluralism and diversity of India is not reflected in and captured by its democratic institutions; likewise, participation of women in public affairs and decision-making processes is nowhere near proportionate to their numbers.

- The enormity of the costs of elections and electoral corruption in having have been a grievous deleterious effect on national progress and has led to the degradation of political processes to detriment of common good.

- Political parties, which have a fair share of the criminal elements, handle enormous funds collected ostensibly for meeting party

and electoral expenditure. Money-power and criminal elements have contributed to pervasive degeneration of standards in public life and have criminalized politics. This is reflected in the quality of governments and of the governing processes.

- There are no legal instrumentalities or set of law regulating the conduct of the political parties, legitimacy of fund-raising, audit and account requirements and inner-party democracy.

- National political parties are more divided on the definition of 'common national purpose' than ever before; the noble purposes of public life have degenerated than ever before into opportunistic and self-seeking politics of competitive personal gain.

- 'Fraternity', the noble ideal of brotherhood of man enshrined in the Preamble of the Constitution has remained unrealized. The people of India are more divided amongst themselves than at the time of the country's independence.

- There is increasing criminalisation and exploitation of the political climate and processes and an increasing criminals-politicians-bureaucratic nexus.

- There is crisis of confidence. There is crisis of leadership. Political leaders, owing to narrow partisan and sectarian interests and desire for short-time political gains, are unable even to agree upon broad common national purposes.

2.26.4 Economic or Physical Infrastructure: Impressive Performance

- There has been marked expansion and diversification of production. New technologies and modern management techniques are increasingly employed. There are marked advances in Science, Technology, Medicine, Engineering and Information Technology.

- Between 1950-2000, the index of agricultural production increased from 46.2 to 176.8.

- Between 1960-2000, wheat production went up from 11 m. tones to 75.6 million tones.

- Between 1960-2000, rice production went up from 35 m. tones to 89.5 million tones.

- Impressive expansion of industrial and service sectors has taken place.
- Index of industrial production went up from 7.9 in 1950-51 to 154.7 in1999-2000.
- Electricity generation has increased from 5.1 billion KWH in 1950-51 to 480.7 billion KWH in 1999-2000.
- 6 to 8% annual growth of GNP between 1994-2000 (except in 1997-98) was achieved.
- Revenues from Information Technology industry have grown from $150 million in 1990 to $ 4 billion in 1999.
- India's per capita Net National Product (NNP) in 1999-2000 was more than 2.75 times than what it was in 1951.

2.26.5 Social Infrastructure:

- Between 1950 to 1998 infant mortality rate have halved to 72 births per 1000 births down from146.
- India's maternal mortality rate in 1998 was 407 per 100,000 live births. These levels are more than 100 times the levels found in the West.
- Some 53% children (almost 60 million) under five remain malnourished – nearly twice the levels reported in many parts of sub-Saharan Africa.
- The proportion of low birth weight babies born in India is 33%. It is only 9% in China and South Korea, 6% in Thailand and 8% in Indonesia.
- India was a signatory to the Alma Ata Declaration in 1978 that assured 'health for all' by the year 2000. Only 42% of the children between 12-23 months are fully immunized – 37% in rural areas and 61% in urban areas. The coverage is shockingly low in Bihar – 11% and in Rajasthan – 17%.

- Life expectancy at birth has grown up from 32 years in 1950-51 to 63 years in 2000.
- A child born in Kerala today can expect to live longer than a child born in Washington.
- Life expectancy of women in Kerala is now 75 years.
- India has put in place an extensive system of Public Health Services and medical network. In 1951, the country had only 725 primary health centers. By 1995, this has increased to more than 1,50,000.
- The number of primary schools has increased significantly between 1951 and 1995 from 2,10,000 to 5,90,000.
- Close to 95% of the villages have a primary school within a walking distance of one kilometer.
- While per capita daily consumption of cereals has improved only marginally from 400 gms in 1950 to about 440 gms in 2000. The per capita pulses (protein intake) have over the 50 years decreased.
- The promise of social revolution has remained unredeemed. There are 270 million Scheduled Castes and Scheduled Tribes measures for whose welfare and uplift have not been implemented with sincerity.
- There are 380 million children below the age of 14. Almost 100 million of them are Dalit children. No effective steps are taken to bring them to the level of the "core-mainstream".
- Population control measures in the northern States have not succeeded. Fertility rates in Uttar Pradesh indicate that State is almost a century behind Kerala.

2.26.6 Significant Failures: Economic Issues:

- The richest top quintile of population has 85% of the income. In India, the poorest quintile has only 1.5% of the country's income. The second, the third and the fourth quintile from top have respectively 8%, 3.5% and 2% of the income.

- This disparity is an internal reflection of the international economic order. Internationally, inequalities amongst countries have been increasing. The income gap between the fifth of the world's people living in the richest countries and the fifth in the poorest was 74 to 1 in 1997, up from 60 to 1 in 1990 and 30 to 1 in 1960.

- 260 million people live below the poverty line.

2.26.7 Administration :

- Corruption, insensitivity and inefficiency of administration have resulted in extra-legal systems and parallel economies and even parallel governments. Bureaucratic corruption and pettifoggeries, which cause frustration in people in their daily lives has more serious fallout of pushing more and more people into extra-legal systems. The pervasive cynicism that mal-administration generates results in a lack of faith in and disenchantment with institutions of democracy.

- There is an increasing non-accountability. Corruption has been pervasive. Public interest has suffered.

- Constitutional protection for the Services under Article 311 has largely been exploited by dishonest officials to protect themselves from the consequences of their wrong-doings.

2.26.8 Gender Justice and Equality:

- The regional disparities in life expectancy is indicated by the fact that a woman born in Kerala can expect to live 18 years longer than one born in Madhya Pradesh.

- In most countries life expectancy among women exceeds that of men by about 5 years. In all but a few countries of the world, there are typically 1005 women for every 1000 men. Men outnumber women only in societies where women are specifically and systematically discriminated. In India, there are only 933 women for every 1000 men. This is the phenomenon about 'missing' women.

- Overall representation of women in public services is just 4.9%.
- Political participation of women indicates that in 1952 there were only 22 women in Lok Sabha against 499 seats (4.41%). In 1991 this increased to 49 seats as against 544 seats (9.02%).
- In the Central Council of Ministers there are only 3 Cabinet Ministers out of 30.
- In India between 1995-2000, out of 503 judges of the High Court only 15 were women.

2.26.9 Administration of Justice:

- Judicial system has not been able to meet even the modest expectations of the society. Its delays and costs are frustrating, its processes slow and uncertain. People are pushed to seek recourse to extra-legal methods for relief. Trial system both on the civil and criminal side has utterly broken down.

2.26.10 On an overall assessment there are more failures than success stories, making the inference inescapable that the fifty years of the working of the Constitution is substantially a saga of missed opportunities.

Areas of Concern: Commission's perception

2.27 The following are the important areas of concern according to the perception of the Commission:

(a) There is a fundamental breach of the constitutional faith on the part of Governments and their method of governance lies in the neglect of the people who are the ultimate source of all political authority. Public servants and institutions are not alive to the basic imperative that they are servants of the people meant to serve them. The dignity of the individual enshrined in the Constitution has remained an unredeemed pledge.

There is, thus, a loss of faith in the Governments and governance. Citizens see their Governments besieged by uncontrollable events and are losing faith in institutions. Society is unable to cope up with current events.

(b) The foremost area of concern is the present nature of the Indian State and its inability to anticipate and provide for the great global forces of change ushered in by the pace of scientific and technological developments.

(c) The next and equally important dimension is the increasing cost of government and financial defects which are alarming. In 1947, there was a deficit of Rs.2 crores in the revenue budget; in 1997-98 it became Rs.88,937 crores; in 2001-02, it is about Rs.1,16,000/- crores(4.8% of GDP). India is on its way to a debt-trap.

(d) There is pervasive impurity of the political climate and of political activity. Criminalisation of politics, political-corruption and the politician-criminal-bureaucratic nexus have reached unprecedented levels needing strong systemic changes.

(e) Issues of national integrity and security have not received adequate and thoughtful attention. Mechanisms for the assessment of early warning symptoms of social unrest are absent. Mechanisms for adequate and immediate state responses to emergencies and disaster management are wholly inadequate. Administration, as a system for anticipating coming events and planning responses in advance, has failed. It has become un-coordinated and directionless amalgam of different departments often with over-lapping and even mutually conflicting jurisdictions, powers and responsibilities

which merely acts as a reaction to problems. There are no clear-cut standards or basis for fixing responsibilities.

(f) Though India's overall record and experience as a working democracy (despite many centrifugal forces) are worthy to mention and though the bases of democratic debate have widened with the 73rd and 74th Constitutional amendments, the working of the institutions of parliamentary democracy, however, have thrown-up serious fault-lines, which might, if unattended, prove destructive of the basic democratic values.

(g) There is pervasive misuse of the electoral process and the electoral system is unable to prevent the entry of persons with criminal record into the portal of law-making institutions.

(h) The Parliament and the State Legislatures, owing to the inherent weakness of the electoral system, have failed to acquire adequate representative character. The 13th Lok Sabha represents only 27.9% of the total electorate and the Legislature of U.P. represents only 22.2% of electorate, respectively.

(i) The increasing instability of the elected governments is attributable to opportunistic politics and unprincipled defections. The economic and administrative costs of political instability are unaffordably high and their impact on the polity is not clearly comprehended and realized. Though just four Prime Ministers ruled the country for 40 years out of the 54 years of independence and one political party alone was in power for 45 years, however, 1989 onwards the country saw five General Elections to the Lok Sabha. Costs of this political instability are simply colossal.

(j) The state of the Indian economy is disturbing. The economy is gradually sinking into a debt-trap. Economic, fiscal and monetary policies, coupled with administrative inefficiency, corruption and wasteful expenditure are increasingly pushing the society into extra-legal systems, crime-syndicates, mob-rule and hoodlum out-fits. Black-money, parallel economy and even parallel governments are the overarching economic and social realities. Legitimate governments will, in due course, find it increasingly difficult to confront them. In course of time these illegal criminal out-fits will dictate terms to the legitimate governments.

(k) Rural de-population, urbanization and urban-congestion and social unrest need immediate attention and solutions. Increasing unemployment will prove a serious threat to orderly government.

(l) Future of society is increasingly knowledge-based and knowledge-driven. The quality of education and the efficiency of the administration and higher research are in educational agenda and need of immediate and urgent repair. The country is engaged in a unilateral and unthinking educational disarmament.

(m) System of administration of justice in the country is another area of concern.

(n) Criminal justice system is on the verge of collapse. The quality of investigations and of prosecutions requires a strong second look. Law's delay and costs of litigation have become proverbial. Victimology, victim-protection, protection of

witnesses in sensitive criminal-trials need institutional arrangements. Recruitment, training, refresher and continuing legal education for lawyers, judges and judicial administrators need immediate attention. The increasing utilization of alternative dispute resolution mechanisms, such as mediation, conciliation and arbitration and mechanisms of auxiliary adjudicative services need to be stressed. Training programmes for conciliators, mediators etc. need to be institutionalized. Legal profession needs to be transformed to meet the increasing public-expectations. Modernizing the system and making it user-friendly is one of the urgent tasks.

(o) Communal and other inter-group riots in a country like India with its religious, social and cultural diversity cannot be treated as merely law and order problem. They are manifestations of collective behavioural disorders. Legal and administrative measures are required to be taken to remove the insecurity felt by the minorities and for bringing them into the mainstream of the national fabric. The Commission dealt with various safeguards required in the matter. The Commission considered the aspects of positive discrimination for bringing equality of opportunity under articles 15 and 16 of the Constitution to the socially and educationally backward classes of citizens, granting of recognition to languages spoken by a section of population in a State under article 347, inadequate political representation of minorities, religious freedom under article 25(2) and necessity of establishment of an Inter-Faith Commission in the context of the present scenario.

(p) The state of social infrastructure is disturbing. There are 380 million children below the age of 14. The arrangements for their education, health and well-being are wholly inadequate both qualitatively and quantitatively. 96.4% of the primary education budget goes for salaries alone.

(q) Rates of infant mortality, blindness, maternal mortality, maternal-anemia, child malnutrition and child-immunization, despite significant progress achieved, yet remain at high and disconcerting levels.

(r) Public health and hygiene have not received adequate attention. There is alarming increase of infectious diseases such as Tuberculosis, Malaria, Hepatitis, HIV etc.

Pandora's Boxes!

2.28.1 The Commission has examined various areas of the working of the Constitution with the help and assistance of experts and formulated its views. Change must come from the spirit of constitutionalism and by determined and dedicated leaders and statesmen when societies do not have predictable futures.

2.28.2 A learned university scholar likened the proposals in the Consultation papers of the Commission as Pandora's boxes. Michael Foley referred to a similar criticism of William Ress-Mogg of the 11 proposals of the Labour Party under John Smith and lamented that the 'party under John Smith fell into hands of lawyers... (who) love proposals for constitutional reform.'

2.28.3 There is pervasive disenchament with the working of the institutions of democracy. People themselves seem almost to have resigned to what they consider their inevitable fate. Their patience and emotional resources appear to be wearing thin, yielding place to a sense of revulsion against the State and a deep

distrust against the machinery of the government, particularly - the police and the bureaucracy. There is pervasive and cynical disbelief that anything will change at all. Seventy eight years ago Chakaravarti Rajagopalachari wrote some prophetic words from his prison cell in Vellore: "We all ought to know that Swaraj will, not at once or, I think, even for a time to come, bring better government or greater happiness for the people. Elections and their corruptions, injustice, and the power and tyranny of wealth, and inefficiency of administration, will make a hell of life as soon as freedom is given to us."

2.28.4 Government, it is said, is a potent teacher which teaches people by its own example. In the Indian context the lessons have not been happy. Quite often they were bitter, leaving the populace confused. The Parliamentary reforms need a high level of public awareness and political commitment. Simplistic analogies do not help. Not unoften, the proposed solutions may themselves turn-out to be the source of other problems. There is always the law of unintended results. Particularly, in regard to the institutions of parliamentary democracy, the utility of changes imposed by law is greatly debateable.

Arthur M. Schlesinger, Jr. said[38]:

> *"My concern is that this agitation about constitutional reform is a form of escapism. Constitution-tinkering is a flight from the hard question, which is the search for remedy. Structure is an alibi for analytical failure. As Bryce wisely reminds us, "The student of institutions, as well as the lawyer, is apt to overrate the effect of mechanical contrivances in politics.*
>
> *Fascinating as constitutional-tinkering may be, like the Rubik cube, let it not divert us from the real task of statecraft. Let us never forget that politics is the high and serious art of solving substantive problems".*

John Major said[39]:

> *"The British Constitution is vibrant and robust. But it is not indestructible. People must realize that our Constitution is not a piece*

[38] 'Leave the Constitution Alone (1982): Reforming American Governmentp.54
[39] John Major, Speech on the Constitution given to the Centre for Policy Studies: 26th June, 1996.

of architecture that one can re-engineer by knocking down a wall here or adding an extension there. It is a living, breathing constitution. It's roots are ancient but it has evolved. It embodies a set of values, a legacy of understanding that have developed year by year over the centuries. No one should lightly contemplate tampering with an institution that is so ancient and yet so alive."

Remedies, it is said, will come by reversing the decay not by sweeping reform measures. An American writer said,"

"The remedies will come – if they come at all – not through any sudden and sweeping reform measures but through the gradual development and adoption of new doctrine by the elite cadre of political activist and, through them, by the public at large, which will lead to incremental changes in institutions and behaviour."[40]

Madhu Limaye observed:

"The process of cleansing public life and strengthening democracy is a difficult and painful process. ..... It has to be accompanied by democratization of parties. There is no easy way out, no instant solution awaiting implementation through a suitable statute."[41]

2.28.5 In the last analysis, citizen education is essential for any remedial action. If the democratic polity has failed to fulfill even the minimal expectations of the people, in a large measure, people have none else to blame except themselves. Indeed 200 years ago, in one of the most moving and poignant events in human history, Pontius Pilate offered to the hysteric crowd before him a choice as to whom he should pardon – Jesus or Ba-rab'bas. The crowd wanted pardon for Ba-rab'bas, the robber. Jesus was crucified. Professor Rene Cassin, the illustrious French jurist and principal architect of the Universal Declaration of Human Rights on the occasion of the award of the Nobel Prize for Peace on him, was asked why he thought the Universal Declaration of Human Rights was necessary. He is reported to have answered "because, Men are not always good." The haunting words "Not Always Good", reverberates through history as man's inhumanity.

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[40] 'Reversing the Decay of Party (1982), James L. Sundquist : Reforming American Government
[41] 'Contemporary Indian Politics' Madhu Limaye

2.28.6 Good systems can and do change men. Good governments can earn their confidence. It is only when we fulfill the basic duty of politics and restoring the power of the Constitution and its institutions back to their legitimate owners – the people – that things will begin to change. It is only then that "We can move beyond the limits of physical world and use our minds to sore into the future". Dag Hammarskjold said: "In our era, the path to holiness must lead through the world of action."

2.28.7 It is with this hope that the Commission dedicates this Report to the people.

CHAPTER 3

FUNDAMENTAL RIGHTS, DIRECTIVE PRINCIPLES AND FUNDAMENTAL DUTIES

CONTENTS

A. Fundamentals of the Constitution

B. Vision of Socio-Economic Change

3.2 ➢ The Preamble
3.3 ➢ The Socio-Economic Agenda

C. Fundamental Rights

3.4 ➢ Background and Approach
3.5 ➢ Definition of 'the State'
3.6 ➢ Heads of Discrimination
3.7 ➢ Reservation for Minorities
3.8 ➢ Freedom of Press and Freedom of Information
3.9 ➢ Rights against Torture and Inhuman, Degrading and Cruel Treatment and Punishment
3.10 ➢ Right to Compensation for being Illegally Deprived of one's Right to Life or Liberty
3.11 ➢ Right to Travel Abroad and Return to one's Country
3.12 ➢ Right to Privacy
3.13 ➢ Right to Work
3.14 ➢ Preventive Detention
3.15 ➢ Right to Justice and Legal Aid
3.16 ➢ Right to Property
3.17 ➢ Article 31B and Ninth Schedule
3.18 ➢ Suspension of articles 17, 23, 24,25 and 32 during Emergency
3.19 ➢ Capital Punishment
3.20 ➢ Right to Education
3.21.1 ➢ Rights of Children
3.22.1 ➢ Right to Safe Drinking Water, Clean Environment, etc.
3.23.1 ➢ Right to Freedom of Religion
3.24 ➢ Special Provision Relating to Language Spoken by a Section of Population of a State

D. Directive Principles

3.25 ➢ Principles of Governance
3.26 ➢ Justiciability and Enforceability
3.27 ➢ Right to Social Security and to Work
3.28 ➢ Right to Health
3.29 ➢ Right to Food and Freedom from Hunger, Clothing and Housing or Shelter
3.30 ➢ Right to Education
3.31 ➢ New Challenges to Education Policy
3.32 ➢ Control of Population
3.33 ➢ Right to Culture
3.34 ➢ Promotion of Inter-Religious harmony and inter-faith values
3.35 ➢ Mechanism for Realization of Directive Principles
3.36 ➢ Credibility of Socio-Economic Data

E. Fundamental Duties

3.37 ➢ The Background
3.38 ➢ Usefulness of Duties
3.39 ➢ Spirit of Harmony and Dignity of Women
3.40 ➢ Composite Culture

CHAPTER 3

FUNDAMENTAL RIGHTS, DIRECTIVE PRINCIPLES AND FUNDAMENTAL DUTIES[1]

A. Fundamentals of the Constitution

3.1 The Constitution which lays down the basic structure of a nation's polity is built on the foundations of certain fundamental values. The vision of our founding fathers and the aims and objectives which they wanted to achieve through the Constitution are contained in the Preamble, the Fundamental Rights and the Directive Principles. These three may be described as the soul of the Constitution and the testament of the founding fathers to the succeeding generations together with the later Part on Fundamental Duties.

B. Vision of Socio-Economic Change

The Preamble

3.2.1 The vision of socio-economic change through the Constitution is reflected in its lofty Preamble. The Preamble expresses the ideals and aspirations of a renascent India. At independence, emerging out of a long period of foreign domination and oppression under a feudal system, the people were grimly struggling to be reborn into a life of dignity and hope. The past was heavy on their shoulders, and the future uncertain. There was social and economic exploitation around. There were a whole host of social ills such as illiteracy, superstition, *sati*, child-marriage, agrarian exploitation, child-labour, bonded labour, gender-inequality, bedeviling the society and polity.

3.2.2 The framers of the Constitution sought to unite the vast country with its great diversity of languages and creeds within a common bond of constitutional justice based on the great ideals of liberty, equality, fraternity and justice. Framers showed an uncompromising respect for human dignity, an

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[1] *See* also the Consultation Papers released by the Commission on "Enlargement of Fundamental Rights" and "Effectuation of Fundamental Duties" in Volume II (Book 1) of this Report.

unquestioning commitment to equality and non-discrimination, and an abiding concern for the poor and the weak. They made a bold attempt to base the constitutional foundations on the firm faith that all classes of people, followers of all faiths, and particularly the traditionally under-privileged should all join to work for harmony, progress, prosperity and nation building.

3.2.3 The Preamble through its noble words promised Justice, social, economic and political; Liberty of thought, expression, belief, freedom of faith and worship; Equality of status and of opportunity and to promote Fraternity, assuring the dignity of the individual and the unity and integrity of the Nation. Speaking of the imperatives of social democracy, Dr. Ambedkar said:

> "It was, indeed, a way of life, which recognizes liberty, equality and fraternity as the principles of life and which cannot be divorced from each other: Liberty cannot be divorced from equality; equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things."

The Socio-economic Agenda

3.3.1 The scheme of the Constitution for the realisation of the socio-economic agenda comprises of both the justiciable Fundamental Rights as well as the non-justiciable Directive Principles. The judicial contribution to the synthesis and the integration of the Fundamental Rights and the Directive Principles in the process of "constitutionalising" social and economic rights has been crucial to the realisation of the Directive Principles not only as a means to effectuate Fundamental Rights but also as a source of laws for a welfare state.

3.3.2 The Constitution makes it mandatory to protect and promote freedoms, and to assure every citizen a decent standard of living. It makes a strong commitment to promoting the well-being of all citizens without any discrimination on the grounds of caste, creed, community or gender.

C. Fundamental Rights

Background and Approach

3.4.1 Constitutional guarantees for the human rights of our people were one of the persistent demands of our leaders throughout the freedom struggle. By the year 1949, when the Constituent Assembly had completed the drafting of the Fundamental Rights Chapter, it had before it the 'Universal Declaration of Human Rights, 1948.

3.4.2 The International Covenant on Civil and Political Rights,1966 (ICCPR) broadly referred to the inherent right to life and liberty and the right against arbitrary deprivation of those rights and its various aspects (Articles 6 to 14); privacy, family, etc. (Article 17); freedom of conscience and religion (Article 18); freedom of expression and information (Article 19); Right of peaceful assembly (Article 21); freedom of association (Article 22); rights of minorities (Article 27); etc. The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) broadly referred to the "right to work" and its various aspects (Articles 6 and 7); right to form trade unions for promotion of economic or social interests and the right to strike (Article 8); right to social security and social insurance (Article 9); family, marriage, children and mothers' rights (Article 10); adequate standard of living, right to food, clothing and housing, freedom from hunger (Article 11); physical and mental health (Article 12); education (Article 13); compulsory primary education (Article 14) and culture (Article 15). The treaty obligations under the covenant enjoined the State Parties to ensure these rights without discrimination and "to take steps" to promote them "to the maximum of its available resources", with a view to achieving "progressively" the full realisation of these rights. The Directive Principles of State Policy in Part IV of the Constitution are indeed the precursor to economic, social and cultural rights specified in the ICESCR.

3.4.3 During the last three decades, a vast number of human rights have found place in new constitutions and bills of rights of more than eighty countries and of

supra-national entities. Countries which enacted these new constitutions have had the benefit of all the developments in the human rights jurisprudence which have taken place since 1950. Also, our Supreme Court has by judicial interpretation expanded the scope of the fundamental rights, particularly in relation to article 21, and this has included more civil and political rights which were not explicit in Part III.

3.4.4 A new development is that of the principle of 'basic structure' of the Constitution enunciated by the Supreme Court in 1973 in *Kesavananda Bharati vs. State of Kerala*[2]. As to what are these basic features, the debate still continues. The Supreme Court has also held that the scope of certain fundamental rights could be adjudged by reading into them or reading them not only in the light of the Directive Principles of State Policy but also international covenants or conventions which were in harmony with the Fundamental Rights.

3.4.5 The Commission feels that after fifty years, time is ripe to review and enlarge suitably the contents of some of the Fundamental Rights, particularly those Fundamental Rights which have been judicially deduced.

Definition of 'the State'

3.5 Fundamental rights guaranteed by the Constitution are, in the absence of specific constitutional provisions, mainly enforceable against 'the State'. The definition of 'the State' in article 12 being an 'inclusive' one, courts have ruled that where there is pervasive or predominant governmental control or significant involvement in its activity, such bodies, entities and organizations fall within the definition of 'the State'.

It is recommended that in article 12 of the Constitution, the following Explanation should be added:-

[2] AIR 1973 SC 1461 = 1973(4) SCC 228

'Explanation – In this article, the expression "other authorities" shall include any person in relation to such of its functions which are of a public nature.'

Heads of discrimination

3.6 **In articles 15 and 16, prohibition against discrimination should be extended to "ethnic or social origin; political or other opinion; property or birth'.**

Reservation for minorities

3.7.1 There was a plea on behalf of some minority communities for an express provision for reservation in favour of minorities both in articles 15 (4) and 16 (4). The Commission, upon due consideration of the representations, felt that no special provision was necessary inasmuch as, under the existing provision of articles 14, 15 and 16, it is open to the State to make reservation if it is of the opinion that such reservation is necessary and justified.

3.7.2 The Commission noted that the ultimate aim of affirmative action of reservation should be to raise the levels of capabilities of people of the disadvantaged sections and to bring them at par with the other sections of society.

Freedom of Press and Freedom of Information

3.8.1 Article 19(1)(a) refers to 'freedom of speech and expression'. It is proposed that the article must expressly include the freedom of the press and other media, the freedom to hold opinion and to seek, receive and impart information and ideas. It is also proposed to amend article 19(2) by adding a further restriction on disclosure of information received in confidence except if required in public interest.

The Commission recommends that article 19(1)(a) and (2) be amended to read as follows:

"Art. 19(1): All citizens shall have the right -

(a) to freedom of speech and expression which shall include the freedom of the press and other media, the freedom to hold opinions and to seek, receive and impart information and ideas;".

19(2): "Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, or preventing the disclosure of information received in confidence except when required in public interest.".

3.8.2 A mere legislation by the Parliament by amending the Contempt of Courts Act, 1971 alone may not suffice because the power of the Supreme Court and the High Courts to punish for contempt is recognized in the Constitution. Therefore, **the Commission recommends that an appropriate proviso to article 19(2) of the Constitution may be added as under:-**

"Provided that, in matters of contempt, it shall be open to the Court to permit a defence of justification by truth on satisfaction as to the bona fides of the plea and it being in public interest.".

Rights against torture and inhuman, degrading and cruel treatment and punishment

3.9 Torture and inhuman, degrading and cruel treatment and punishment grossly violate human dignity. The Supreme Court has implied a right against torture, etc. by way of interpretation of article 21 which deals with the right to life and liberty. The Universal Declaration of Human Rights 1948 and the ICCPR prohibit such acts in article 5 and article 7 respectively.

It is, therefore, recommended that the existing article 21 may be re-numbered as clause (1) thereof, and a new clause (2) should be inserted thereafter on the following lines:-

"(2) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.".

Right to compensation for being illegally deprived of one's right to life or liberty

3.10 Article 9(5) of the ICCPR states, "any one who has been victim of unlawful arrest or detention shall have an enforceable right to compensation." In *D.K. Basu vs. State of West Bengal*[3], the Supreme Court of India held that the reservation made by India to this clause while acceding to the Convention does not come in the way of the Court's awarding compensation in the cases of illegal arrest or detention. The High Courts in India have also been awarding compensation.

It is, therefore, recommended as under:-

After clause (2) in article 21 as proposed in para 3.9, a new clause (3) should be added on the following lines :-

"(3) Every person who has been illegally deprived of his right to life or liberty shall have an enforceable right to compensation."

Right to travel abroad and return to one's country

3.11 The Supreme Court has spelt out in articles 14 and 21 the right to travel abroad and return to one's country. Again, this right finds a place in article 13(2) of the Universal Declaration of Human Rights, 1948 as well as in articles 12(2),(3) and (4) of the ICCPR.

It is, therefore, recommended that after article 21, a new article, say article 21A, should be inserted on the following lines:-

"21A. (1) Every person shall have the right to leave the territory of India and every citizen shall have the right to return to India.

[3] 1997 (1) SCC 416

(2) Nothing in clause (1) shall prevent the State from making any law imposing reasonable restrictions in the interests of the sovereignty and integrity of India, friendly relations of India with foreign States and interests of the general public."

Right to Privacy

3.12 The Supreme Court has included[4] 'Right to Privacy' in the Right to 'Life' under article 21.

It is, therefore, proposed that a new article, namely, article 21-B, should be inserted on the following lines:

"21-B. (1) Every person has a right to respect for his private and family life, his home and his correspondence.

(2) Nothing in clause (1) shall prevent the State from making any law imposing reasonable restrictions on the exercise of the right conferred by clause (1), in the interests of security of the State, public safety or for the prevention of disorder or crime, or for the protection of health or morals, or for the protection of the rights and freedoms of others.

Right to Work

3.13.1 It is in the rural sector that widespread poverty, underemployment, malnutrition, lack of access to healthcare and oppressive social customs that bear down heavily on women and children create a social landscape of appalling misery. It is here that a major action plan has to be launched to create additional jobs, to enhance incomes of those at the bottom rung of the social ladder and to create the physical and social infrastructure of a vibrant economy.

3.13.2 **The Commission, therefore, recommends that a new article, say article 21-C, may be added to make it obligatory on the State to bring suitable legislation for ensuring the right to rural wage employment for a minimum of eighty days in a year.**

[4] Kharak Singh v. State of U.P., AIR 1963 SC 1295; R. Rajagopal v. State of Tamil Nadu, 1994 (6) SCC 632.

Preventive Detention

3.14.1 Article 22 (3)(b) permits 'preventive detention' and the rule in clause (2) of article 22 which requires production before the nearest magistrate within 24 hours does not also apply in such cases. No doubt, several preventive detention laws have been upheld by the courts. But, being detention without trial, there is a view that such a detention is a negation of the rule of law and the principles of fair trial. The arrest is supposed to be made on the basis of information that the person is likely to commit some serious offences. There are complaints that this law is misused quite frequently.

3.14.2 While the Commission does not propose to recommend deletion of clauses dealing with preventive detention under article 22, **it recommends the following changes :-**

(i) **The first and second provisos and Explanation to article 22(4) as contained in section 3 of the Constitution (44th Amendment) Act, 1978 should be substituted by the following provisos and the said section 3 of the 1978 Act as amended by the proposed legislation should be brought into force within a period of not exceeding three months :-**

"Provided that an Advisory Board shall consist of a Chairman and not less than two other members, and the Chairman and the other members of the Board shall be serving judges of any High Court :

Provided further that nothing in this clause shall authorize the detention of any person beyond a maximum period of six months as may be prescribed by any law made by Parliament under sub-clause(a) of clause (7)".

(ii) **In clause (7) of article 22 of the Constitution, in sub-clause (b), for the words "the maximum period", the words "the maximum period not exceeding six months" shall be substituted.**

Right to justice and legal aid

3.15.1 **The Commission recommends that after article 30, the following article should be added as article 30A:**

> **"30A: Access to Courts and Tribunals and speedy justice**
>
> **(1) Everyone has a right to have any dispute that can be resolved by the application of law decided in a fair public hearing before an independent court or, where appropriate, another independent and impartial tribunal or forum.**
>
> **(2) The right to access to courts shall be deemed to include the right to reasonably speedy and effective justice in all matters before the courts, tribunals or other fora and the State shall take all reasonable steps to achieve the said object."**

3.15.2 Legal aid is essential for effective implementation of the various rights included in Part III to help the needy and the indigent. **The Commission recommends that article 39A in Part IV be shifted to Part III as a new article 30B to read as under:-**

> **"39B. Equal justice and free legal aid: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."**

Right to property

3.16.1 After the 44th Amendment of the Constitution, right to property has ceased to be a fundamental right. Under article 300A, it has become a constitutional right. One other important aspect is with regard to deprivation or acquisition of agricultural and homestead land belonging to weaker sections. Before such deprivation takes place, the persons so deprived must be provided lands of quality as nearly as may be equal to the lands such persons were previously occupying or otherwise adequately rehabilitated.

3.16.2 The Commission recommends that article 300-A should be recast as follows:-

"300-A (1) Deprivation or acquisition of property shall be by authority of law and only for a public purpose.

(2) There shall be no arbitrary deprivation or acquisition of property:

Provided that no deprivation or acquisition of agricultural, forest and non-urban homestead land belonging to or customarily used by the Scheduled Castes and the Scheduled Tribes shall take place except by authority of law which provides for suitable rehabilitation scheme before taking possession of such land."

Article 31B and Ninth Schedule

3.17 A number of enactments unrelated to the rationale underlying articles 31B have come to be included in the Ninth Schedule with a view to keep them secure from attack on the ground that such enactment or a provision thereof is inconsistent with any provision of Part III of the Constitution. In the Consultation Paper[5] on 'Enlargement of Fundamental Rights', it was proposed that article 31B be suitably amended to provide that the laws to be included in the Ninth Schedule must, in pith and substance, relate to agrarian reforms or land reforms or laws to give effect to the directive principles in article 39(b) and 39(c). After further discussion, **the Commission recommends that in article 31-B, the following proviso should be added at the end, namely :-**

"Provided that the protection afforded by this article to Acts and Regulations which may be hereafter specified in the Ninth Schedule or any of the provisions thereof, shall not apply unless such Acts or Regulations relate –

(a) in pith and substance to agrarian reforms or land reforms;

[5] See Volume II (Book 1) of the Report.

1206 LJ&CA/2002—8A

(b) to reasonable quantum of reservation under articles 15 and 16;

(c) to provisions for giving effect to the policy of the State towards securing all or any of the principles specified in clause (b) or clause (c) of article 39."

Suspension of articles 17, 23, 24, 25 and 32 during emergency

3.18.1 Article 359 deals with "Suspension of the enforcement of the rights conferred by Part III during emergencies". Clause (1) permits suspension of the right to move court but excludes article 20 (retrospectivity of law relating to offences, double jeopardy and self-incrimination) and article 21 (Life and liberty not to be deprived except according to procedure established by law which after Maneka Gandhi's case[6] means fair, reasonable and just procedure).

3.18.2 **The Commission recommends that clauses (1) and (1A) of article 359 should be amended by substituting for "(except articles 20 and 21)", the following-**

"(except articles 17,20,21,23,24,25 and 32)"

Capital Punishment

3.19 Section 121 of the Indian Penal Code permits death sentence or life imprisonment to be imposed for the offences of waging war against the Government of India, or attempts to wage such a war or abetment of such a war. The Commission, after due deliberations, has not thought it appropriate to recommend, at this stage, any change in the existing law relating to imposition of death penalty.

Right to Education

3.20.1 At the time when the Commission released its Consultation Paper on the subject, Constitution (93rd Amendment) Bill was under consideration. But the proposed Amendment covers the Right to Free and Compulsory Education only

[6] AIR 1978 SC 597

between the years 6 and 14 years. The Commission is of the view that the Right to Free and Compulsory Education should also be extended to the children upto the age of fourteen years and that the right to education beyond the age of 14 years may depend upon the economic capacity and the stage of development of the State.

3.20.2 **The Commission feels that the constitutional commitment for free and compulsory education for all children until the age of fourteen should under no circumstances be diluted and the State should fulfill this solemn obligation to the nation. The responsibility for the universalisation of elementary education should be entrusted to Panchayats and local self government institutions. It is recommended that the relevant provisions in the Constitution (93rd Amendment) Bill, 2001 making the right to education of children from six years till the completion of fourteen years as a Fundamental Right should be amended and enlarged to read as under:-**

> **"30-C Every child shall have the right to free education until he completes the age of fourteen years; and in the case of girls and members of the Scheduled Castes and the Scheduled Tribes, until they complete the age of eighteen years.".**

Rights of Children

3.21.1 Article 39(e) in the Directive Principles in Part IV refers to the duty of the State to direct its policy to see that children of tender age are not abused. Article 39 (f) refers to a similar duty on the State to give opportunities and facilities to children to develop in a healthy manner and with dignity and in conditions which are free and where childhood and youth are protected against exploitation and moral and material abandonment.

3.21.2 **The Commission recommends that the following article should be added -**

"Art. 24A. Every child shall have the right to care and assistance in basic needs and protection from all forms of neglect, harm and exploitation."

Right to safe drinking water, clean environment, etc.

3.22.1 Gandhiji had once said that freedom for him would mean the availability of safe drinking water to every person in every village of India. This has still not become a reality.

3.22.2 Right to healthy environment and its protection and the right to development are group-rights and are loosely described as 'third generation rights'. The right to sustainable development has been declared by the UN General Assembly as an inalienable human right[7]. The Declaration recognizes that 'human being is the central subject of the development process and that the development policy shall make the human being the main participant and beneficiary of development'. "Development" is defined as a 'comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well being of the entire population in development and in the fair distribution of benefits therefrom[8]. The Rio Conference of 1992 declared human beings as centres of concern for sustainable development. Human beings are, it is said, entitled to a healthy and protective life in harmony with nature (Principle 1). "In order to achieve 'sustainable development' environmental protection shall constitute an integral part of the development process and cannot be considered in isolation of it". The 1997 Earth Summit meeting of 100 nations in New York affirmed these principles[9].

3.22.3 **The Commission recommends that after the proposed article 30-C, the following article may be added as article 30-D :-**

"Art. 30-D. Right to safe drinking water, prevention of pollution, conservation of ecology and sustainable development. -

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[7] See Declaration on the Right to Development, 1986.
[8] Development, Human Rights, etc. by. S.K. Verma, vol. 40, 1998 JILI, pp. 217 to 229.
[9] A.P. Pollution Control Board vs Prof. M.V. Nayudu [2001 (2) SCC 62].

Every person shall have the right –

(a) to safe drinking water;

(b) to an environment that is not harmful to one's health or well-being; and

(c) to have the environment protected, for the benefit of present and future generations so as to –

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.":

Right to Freedom of Religion

3.23.1 A number of institutions of Sikhs and Buddhists suggested certain changes in article 25(2). Explanation II to article 25 provides that reference to Hindus in sub-clause (b) of clause (2) should be construed as including a reference to Sikhs etc.

3.23.2 **The Commission, without going into the larger issue on which the contention is based, is of the opinion that the purpose of the representations would be served if Explanation II to article 25 is omitted and sub-clause (b) of clause (2) of that article is reworded as follows:-**

> **"(b) providing for social welfare and reform or the throwing open of Hindu, Sikh, Jaina or Buddhist religious institutions of a public character to all classes and sections of these religions."**

Special provision relating to language spoken by a section of population of a State

3.24 In order to make the rights available to minorities under articles 29 and 30 meaningful, the Commission feels that the provisions contained under article 347 need some modification. Before the President directs that use of any language spoken by a section of the population of a State be recognized in a State for such purposes as he may specify, he has to ensure that a substantial proportion of the population of that State so desires. The explanation "substantial proportion of

the population" had been a subject matter of controversy and different constructions have been placed up on it. **It shall be desirable that some optimum level of population with a view to take necessary action under this constitutional provision is prescribed. In article 347 of the Constitution, for the words "a substantial proportion of the population", the words "not less than ten per cent of the population" should be substituted.**

D. Directive Principles

Principles of Governance

3.25.1 It is only during the last two or three decades that there has been a perceptible shift in intellectual discourse in the academia towards problems and principles of good governance as contradistinguished from issues of government and politics. Our founding fathers, however, were far-sighted people. They realised even in the late 1940s the difference and in article 37 specifically spoke of certain "principles" being "fundamental" in the "governance of the country". Also, the State was enjoined "to apply these principles in making laws."

3.25.2 The founding fathers were conscious of the fact that mere political democracy, *i.e.*, getting the right to vote once in five years or so was meaningless unless it was accompanied by social and economic democracy. Political equality was not possible unless men were made equal on the social and economic plane as well. Right to vote for a hungry and illiterate man without clothing and shelter meant little. Dr. Ambedkar had said:

> "We do not want merely to lay down a mechanism to enable people to come and capture power. The Constitution also wishes to lay down an ideal before those who would be forming the government. That ideal is of economic democracy."

3.25.3 The Supreme Court has, in a number of judgements, referred to the importance of the Directive Principles. It has called these principles the

"conscience" of the Constitution and also as the core of the Constitution. These principles are the "goals" to be achieved by Part III of the Constitution. They are intended to ensure "distributive justice" for removal of inequalities and disabilities and to achieve a fair division of wealth amongst the members of the society. The Supreme Court held that the courts can look at the Directive Principles for the purpose of interpretation of the fundamental rights. The courts will adopt that interpretation which makes the fundamental rights meaningful and efficacious. The courts have to make every attempt to reconcile the fundamental rights with the Directive Principles remembering that the reason why the Directive Principles were left by the founding fathers as non-enforceable was to give the Government sufficient latitude to implement them.

3.25.4 The Directive Principles are indeed the precursor to the Economic, Social and Cultural Rights specified in the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR). They reflect the consensus on the intrinsic necessity of these means and envisage State action which would facilitate the transfer and distribution of power – leading to transmission of power to the citizens and this is loosely called "empowerment" of the people. Democracy will become real when in practice there is sharing of power and responsibility by all sections of the people and it becomes illusory when it is about pursuit of power by the dominant sections alone. The Directive Principles cannot be confined to mere rhetoric or to *ad hoc* policies of electoral appeasement or handouts.

3.25.5 The comparable provisions of the Directive Principles of State Policy enshrined in the Constitution of India and the ICESCR are given below :-

Articles of the Constitution	Articles of ICESCR
Article 39	Articles 3, 6 (1) and 7
Article 41	Article 6 and 7
Article 42	Articles 7 and 10.2
Article 43	Articles 11 (1), 11(2) and 15
Article 45	Articles 13 (1), (2)(a), (3) and (4) and

Articles of the Constitution	Articles of ICESCR
	14
Article 47	Articles 12(1), (2), (a) to (d)
Article 51	Articles 1.3 and 2 (1)

3.25.6 The concept of a division among human rights is no longer accepted in contemporary human rights discourse. Further, recent constitutional changes in the East European states have set at naught some of the reasons for the divide. Again, the description of the Civil and Political rights as 'negative' rights which prohibit the State from interfering with rights of the individuals and the description of the Economic, Social and Cultural rights as 'positive' rights which require affirmative action by the State is not accepted by jurists any longer. The theory that the former rights are justiciable and the latter rights are not justiciable has not also been accepted by scholars. The existence of any basis for such division is described as a 'myth' and inaccurate generalization[10].

3.25.7 The Vienna World Conference on Human Rights, 1993 reaffirmed that the Civil, Political and the Economic, Social and Cultural Rights are 'universal, interdependent and indivisible.' The European Social Charter 1961 (revised charter 1996) and Protocols; the American Convention on Human Rights, 1969 (effective from 1978); the African Charter of Human Rights and Peoples' Rights, 1981 (effective from 1986) and finally the Human Rights Act, 1998 (UK) (which incorporates several provisions of the European Convention) and the South African Convention, 1996 deal with Civil, Political and Economic, Social and Cultural Rights covering the whole gamut of rights.

3.25.8 The Father of the Nation, Mahatma Gandhi stated in the Second Round Table Conference in London, long before the UN Declaration of Human Rights, 1948 that his aim was "to establish a political society in India in which there

[10] See vols: 18 to 21 of Human Rights Quarterly for a number of articles; "International Covenant on Economic, Social and Cultural Rights' by Mathew Craven (1995); Economic, Social and Cultural Rights, edited by Ralph Baddard 199; special issue on these rights by International Commission of Jurists 1995; International Human Rights Context, 2nd Ed. Henry Steiner and Philip Alston, 1999.

would be no distinction between high class of people and low class of people, that women should enjoy the same rights as men; and dignity, justice, social, economic and political, would be ensured to the teeming millions of India."

3.25.9 In the Annual Report of the National Human Rights Commission 1997-98, this is what is stated about our country:

> "It is said that one third of the world's poor are Indians, who lacked clean drinking water, basic sanitation and minimum standards of health care, food and nutrition....Persistence of such a situation constitutes a failure of governance which had urgently to be remedied for it is on the pillars of good governance that promotion of human rights in the final analysis rests."

Justiciability and Enforceability

3.26.1 The judiciary is not suited, according to several writers to enforce some of the ICESCR rights. Where the resources of the nation are involved and a question of priority arises, the remedy cannot be judicial. However, the concept here is not "justiciability" at the instance of individuals in courts of law, but the concept is one of "enforceability" which means that the State must "recognize", and "take steps", by adopting "legislative" or other measures for the "full realisation" and "to the maximum of the State's available resources, both "individually and through international assistance and co-operation". These are the words actually used by the ICESCR and have been the subject matter of voluminous literature. These rights are described as "entitlements" of the people and give rise to "obligations" on the part of the State parties. The enforcement must first be of the "minimum core obligations" as stated in Para 10 of the General Comment No.3 of 1990 of the U.N. Committee on Economic, Social and Cultural Rights.

3.26.2 It is felt that an appropriate mechanism must be devised to oblige the State to take action step by step and progressively for the realisation of these rights to the maximum within the resources of the State.

3.26.3 **The Commission recommends that the heading of Part IV of the Constitution should be amended to read as "DIRECTIVE PRINCIPLES OF STATE POLICY AND ACTION".**

Right to Social Security and to Work

3.27.1 Article 41 directs the State to make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. This is social security in its widest sense. It is a measure of the distance the country still has to travel to build a good society. The present situation, as revealed by successive UNDP reports, is one of hardship and deprivation for very large sections of our people. Poverty eradication continues to be a major challenge for social and economic policy. The 'trickle-down' theory did not work but neither did the direct anti-poverty programmes.

3.27.2 Safety nets like the Public Distribution System (PDS), the Integrated Rural Development Programmes, and the targeted programmes for women and children have also not had the measure of success that was hoped for. Even the step up in growth rates following the introduction of the new economic strategy of liberalization has not succeeded in generating substantial increases in employment that alone would reduce poverty and increase the sense of security among the people. It is clear that a many-sided approach has to be developed to increase growth rates, to structure labour intensive projects spread through the length and breadth of the country and to help the vulnerable sections of the people to take advantage of government programmes intended for their welfare.

3.27.3 **The Commission, therefore, recommends the initiation of a strategic Plan of Action to create a large number of employment opportunities in five years to realize and exploit the enormous potential in creating such employment opportunities. The components of this plan may include:**

(1) **Improvement of productivity in agriculture that will activate a chain of activities towards increased income and employment opportunities.**
(2) **Integrated horticulture that will include production of fruits, vegetables and flowers, cut-flowers for export and medicinal plants as well as establishment of bio-processing industries aimed primarily at value-addition of agricultural products.**
(3) **Intensification of animal husbandry programs and production of quality dairy products.**
(4) **Integrated Program of Intensive Aquaculture including use of common property resources like village ponds and lakes.**
(5) **Afforestation and Wasteland Development to bring an additional 12 million hectares under forest plantation and contribute to rural asset building activity.**
(6) **Soil and Water Conservation to support afforestation and Natural Resource Conservation towards eco-friendly agriculture.**
(7) **Water Conservation and Tank Rehabilitation.**
(8) **Production and use of organic manures through vermiculture and other improved techniques and production of organic health foods from them.**

3.27.4 The State should provide opportunity to every person to gain his living by work which he freely chooses or accepts – which shall include the technical and vocational guidance and training programmes, polices and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual. The right to work does not mean that everybody is to be employed by the State. It only means that the State has to develop "employment opportunities" both in the public and private sector[11].

3.27.5 The resource requirement for the implementation of this plan can be met by integrating the plethora of government programmes and changing their focus towards employment generation and income enhancing activities. Institutionally, this plan of action can succeed only if programmes are people-oriented and developed in a participatory mode. A change in mindset where people are regarded as "partners in development" rather than "beneficiaries" is necessary.

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[11] Chapter V on 'Right to Work' by Mathew Craven in the International Covenant on Economic, Social and Cultural Rights, 1995, p.199 to 225; Human Rights and World of Work by Kamala Sankaran, vol. 40, 1998 JILI, pp. 284 to 294.

3.27.6 The foregoing considerations suggest a comp[illegible]e in emphasis insofar as growth strategy is concerned. What is important is how work, productive work, will enhance incomes for the individual and the community. It is essential to make a beginning toward making the right to work the integral component of growth and development strategy. The Commission has carefully examined the relevant economic data on the subject and has come to the conclusion that a realistic approach to the right to work is not only desirable, it is entirely feasible.

Right to Health

3.28.1 The right to health has been treated by the Supreme Court as part of the right to 'life' in article 21[12]. But, the right to health is not a right to be 'healthy'. It means a right both to certain 'freedoms' and 'entitlements'. The freedoms include the right to control ones' health and body, including sexual and reproductive freedom and the right to be free from interference, such as by non-consensual medical treatment and experimentation. Entitlements include a right to a system of health protection with equality of opportunity to enjoy the highest attainable level of health – a right to the enjoyment and availability of facilities, good services and conditions such as physical accessibility, economic accessibility and information accessibility. It must be qualitative and should include the right to healthy working conditions and preventive medicine.

3.28.2 The State has to "respect, protect and fulfill" its obligations in these areas for children, adults and those in old age[13]. As of today, free medical treatment in government hospitals is totally inadequate. Nor is it available always in close neighbourhood. It is not possible to deal extensively with the pathetic conditions of medical care provided by government hospitals in our country. It is a fact of life that the poorer and weaker sections of society are unable to afford the

[12] State of Punjab v. Mahinder Singh Chawla, AIR 1997 SC 1225.

[13] See General comment No. 14., 22nd Session of Committee on ICESCR Rights (IHRR, Vol. 8, No. 1 (2001), p.1.

extraordinary expense involved in the medical care provided by private hospitals. There is, therefore, an urgent need to see that, progressively, the State allocates adequate funds in this behalf[14].

Right to Food and Freedom from Hunger, Clothing and Housing or Shelter

3.29.1 The State must recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions; the State shall also have to recognize the right of everyone to be free from hunger. It shall then have to initiate programmes to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian system in such a way as to achieve the most efficient development and utilization of natural resources; and to take into account, the problem of both food-importing and food-exporting countries and to ensure an equitable distribution of world food supplies in relation to need.

3.29.2 It is well-known that while the godowns of the Food Corporation of India are overflowing and even rotting with excess food grains, there are reports of starvation deaths across the country. Further, quite a good percentage of food grains are lost due to inadequate conservation and also during distribution. This must be avoided by introducing proper systems.

3.29.3 The State must ensure right to housing or shelter. The Government of India formulated the National Housing Policy, 1988, 1994, and the National Housing and Habitat Policy, 1998. There are various schemes for weaker sections, slum developments, etc.[15]. As already stated, this right has been

[14] Chapter X in 'Right to Health' on Economic, Social and Cultural Rights by Ralpt Beddard, & Dilys' Hill. 1992; 'Towards an Improved Understanding of the International Human Right to Health by Brigit Toebes. vol. 21, (1999), Human Rights Quarterly, pp.661 to 679, for a detailed discussions.

[15] Right to Shelter, A Human Rights Perspective, by Prafulla C. Mishra; vol. 40 (1998), JILI, pp. 230 to 242.

recognized by the Supreme Court of India as part of the right to life under article 21[16].

3.29.4 The Commission is convinced that the realization of the right to food, clothing and housing requires the State to prepare long range and short range plans for proper allocation of necessary funds.

Right to Education

3.30.1 Article 45 under the Directive Principles had envisaged free and compulsory education within ten years for all children till the age of 14. The national goal of universalisation of elementary education has still not been reached. Education for all remains an objective with the target date being pushed forward after every review. Increase in literacy rates to 72 per cent by 2007 and to 80 per cent by 2012, and universal access to primary education by 2007, have been set as goals in the approach paper to the Tenth Plan.

3.30.2 It should also be laid down in article 45 that the State shall make provision for education beyond the age of fourteen years within the limits of its economic capacity and stage of development.

New Challenges to Education Policy

3.31.1 We live in an age of rapid social, economic and technological change. Educational policy and programmes have to reflect the changed requirements in content and techniques of delivery. There has been a paradigm shift from a teaching to a learning process. Information and communication technology have to be harnessed to the goal of achieving education for all. The need for autonomy, continuous review, flexibility and clarity have to be built into policy. The educational system should impart moral and ethical values essential for good citizenship.

[16] UP Avas Avam Vikas Parishad v. Friends Co-operative Hous ıg Society Ltd., AIR 1996 SC 114.

3.31.2 Autonomy for the education budget should be ensured. Some sanctity should be attached to the core provisions, such as teachers' salaries. There is a strong case for constitutional protection for the service conditions of teachers. Moreover, there is need to insulate educational institutions from needless litigation.

3.31.3 The Commission recommends that an independent National Education Commission should be set up every five years to report to Parliament on the progress of the constitutional directive regarding compulsory education and on other aspects relevant to the knowledge society of the new century. The model of the Finance Commission may be usefully looked into.

Control of Population

3.32 The Commission noted with concern that proper planning and monitoring of the socio-economic development of the country is considerably hampered and neutralized by the exponential growth of population.

The Commission, therefore, recommends that the following article should be added as a directive principle of state policy after article 47 of the Constitution:

> **"Art. 47A. Control of Population:- The State shall endeavour to secure control of population by means of education and implementation of small family norms."**

Right to Culture

3.33.1 Article 49 of the Directive Principles requires the State to protect monuments and places and objects of national importance. For the purpose of protecting culture in all its facets and in developing it, the State has to set apart necessary resources.

3.33.2 More than five decades of experience with the working of our Constitution and the laws has borne out that democracy in a meaningful sense, depends on a pluralistic ethos permeating the polity. Our national life must be accommodative of the myriad variegations that make up the unique mosaic of India's society. The framework of our many and elaborate structures of government must exemplify the architecture of an inclusive society and one of the means is to promote civil society initiatives for inter-religions and social harmony.

3.33.3 All considered, as advised by experience and by present and emerging needs, it is felt that a mechanism may be brought into being which can advance the cause of inter-faith harmony and solidarity. This can be done under the auspices of the National Human Rights Commission.

Promotion of Inter-Religious harmony and inter-faith values

3.34.1 Past experience indicates that in sensitive areas and localities of the country where inter-religious conflicts have sprung up out of trivial incidents resulting in conflagration, extensive damage to life and property. The setting up of "*Mohalla* Committees" with the participation of prominent members of different communities to take note of early warning symptoms and alerting the administration in preventing them have produced enduring beneficial results. In particular, the endeavours made in Bhiwandi, in the State of Maharashtra, after the tragic riots there, have emphasised the value of such measures.

3.34.2 **The Commission, therefore, recommends the setting up of an inter-faith mechanism to promote such civil society initiatives. In the Commission's view, this can be done under the auspices of the National Human Rights Commission set up under section 3 of the Protection of Human Rights Act, 1993** which, *inter* alia, provides for the participation of "the Chairpersons of the National Commission for Minorities, the National Commission for Scheduled Castes and Scheduled Tribes and the National Commission for Women" who shall be deemed to be the Members of the Commission for the discharge of functions specified in clauses (b) to (j) of the

section 12 of the said Act. The Chairpersons of the National Commission for Backward Classes and National Commission for Safai Karamcharis should be co-opted to this body. This body could, in addition to its other statutory functions, also function as mechanism for promotion of inter-religious harmony. With an appropriate statutory enablement by way of enlargement of section 12 of the said Act, the purpose could be achieved **without additional expenditure for setting up a separate mechanism. Section 12 of the said Act could be amended by the addition of clause (k), which shall read as under:**

> **"(k) promoting through civil society initiatives, inter-faith and inter-religious harmony and social solidarity".**

By this simple statutory enablement, **with consequential amendment in Section 3(3),** the Chairpersons of all the aforesaid Commissions who meet and interact would, in collaboration with the National Foundation for Communal Harmony (established under the Ministry of Home Affairs, Government of India), would be able to oversee the installation and working of "*Mohalla* Committees" and other civil society initiatives in sensitive areas which particularly require promotion of inter-faith harmony.

Mechanism for realisation of Directive Principles

3.35.1 The State should devise appropriate mechanisms for realisation of Directive Principles. The Commission does not propose to recommend a complaints procedure inasmuch as it is more concerned with a procedure which will ensure proper allocation of resources for the realization of the right to work, health, food, clothing, housing, education and culture. Domestic bodies in various countries have different composition, membership and powers.

3.35.2 **In the view of the Commission, there must be a body of high status which first reviews the state of the level of implementation of the Directive Principles and Economic, Social and Cultural Rights and in particular (i) the right to work, (ii) the right to health, (iii) the right to food, clothing and shelter, (iv) Right to Education upto and beyond the 14th year, and (v) the**

1206 LJ&CA/2002—9A

Right to Culture. The said body must estimate the extent of resources required in each State under each of these heads and make recommendations for, allocation of adequate resources, from time to time. For ensuring that the Directive Principles of State Policy are realized more effectively, the following procedure is suggested:-

(i) **The Planning Commission shall ensure that there is special mention/emphasis in all the plans and schemes formulated by it, on the effectuation/realization of the Directive Principles of State Policy.**

(ii) **Every Ministry/Department of the Government of India shall make a special annual report indicating the extent of effectuation/realization of the Directive Principles of State Policy, the shortfall in the targets, the reasons for the shortfall, if any, and the remedial measures taken to ensure their full realization, during the year under report.**

(iii) **The report under item (ii) shall be considered and discussed by the Department Related Parliamentary Standing Committee, which shall submit its report on the working of the Department indicating the achievements/failures of the Ministry/Department along with its recommendations thereto.**

(iv) **Both the above Reports *i.e.* (ii) and (iii) above shall be discussed by the Planning Commission in an interactive seminar with the representatives of various NGOs, Civil Society Groups, etc. in which the representatives of the Ministry/Department and the Departmental Related Parliamentary Standing Committee would also participate. The report of this interaction shall be submitted to the Parliament within a time bound manner.**

(v) **The Parliament shall discuss the report at (iv) above within a period of three months and pass a resolution about the action required to be taken by the Ministry/Department.**

3.35.3 **A similar mechanism as mentioned above may be adopted for the States.**

Credibility of Socio-economic Data

3.36 **The Report of the National Statistical Commission (2001) stresses the importance of availability of adequate, credible and timely socio-economic data generated by the statistical system, both for policy**

formulation and for monitoring progress of the sectors of economy and pace of socio-economic change. The Commission endorses the recommendations of the National Statistical Commission and stresses the importance of their implementation.

E. Fundamental Duties

The Background

3.37.1 Ten Fundamental Duties of the citizen are incorporated in article 51A, Part IVA of the Constitution. Inserted by the Constitution (Forty-second Amendment) Act, 1976 it was part of a large number of changes brought about during the Emergency. But after the end of the Emergency, when the new Parliament reviewed the whole position and in most cases restored the pre-emergency position, article 51A was one that emerged unscathed because it was considered by all parties to be an unexceptionable charter of principles which citizens could usefully absorb and practice.

3.37.2 Constitutions of some countries of the world contain provisions for Fundamental Duties. The inclusion of Fundamental Duties in our Constitution also brings it in line with Article 29(1) of the Universal Declaration of Human Rights which says: "Everyone has the duties to the community in which alone the free and full development of the personality is possible." Exercise of fundamental rights entails duties to the community which ensures the free and full development of human personality.

3.37.3 In the last quarter-century since the Amendment, several judgments of High Courts and the Supreme Court have quoted these Fundamental Duties, where applicable, to lend further support to their decisions.

3.37.4 A consultation paper on the subject of "Effectuation of Fundamental Duties" prepared for the Commission by the Citizenship Development Society was circulated for eliciting public opinion. Responses received were carefully

examined by the Commission along with the report of the Justice Verma Committee on Fundamental Duties.

3.37.5 The Government of India appointed the committee "to operationalise the suggestions to teach Fundamental Duties to the citizens of India" in the year 1998 under the chairmanship of Justice J.S. Verma. The Committee submitted its report in October 1999. The Commission feels that it is, therefore, not necessary for it to cover the same ground again. It finds itself in full agreement with the report of the Verma Committee. The salient recommendations of the Committee are at Annexure 1[17] to the Consultation Paper on "Effectuation of Fundamental Duties of Citizens".

Usefulness of Duties

3.38.1 Fundamental Duties of citizens serve a useful purpose. In particular, no democratic polity can ever succeed where the citizens are not willing to be active participants in the process of governance by assuming responsibilities and discharging citizenship duties and coming forward to give their best to the country. Some of the fundamental duties enshrined in article 51A have been incorporated in separate laws. For instance, the first duty includes respect for the National Flag and the National Anthem. Disrespect is punishable by law. To value and preserve the rich heritage of the mosaic that is India should help to weld our people into one nation but much more than article 51A will be needed to treat all human beings equally, to respect each religion and to confine it to the private sphere and not make it a bone of contention between different communities of this land. In sum, the Commission believes that article 51A has travelled a great distance since it was introduced in the Forty-second Amendment and further consideration should be given to ways and means to popularise the knowledge and content of the Fundamental Duties and effectuate them.

[17] *See* Volume II (Book 1) of the Report.

3.38.2 The most important task before us is to reconcile the claims of the individual citizen and those of the civic society. To achieve this, it is important to orient the individual citizen to be conscious of his social and citizenship responsibilities and so shape the society that we all become solicitous and considerate of the inalienable rights of our fellow citizens. Therefore, awareness of our citizenship duties is as important as awareness of our rights. Every right implies a corresponding duty but every duty does not imply a corresponding right. Man does not live for himself alone. He lives for the good of others as well as of himself. It is this knowledge of what is right and wrong that makes a man responsible to himself and to the society and this knowledge is inculcated by imbibing and clearly understanding one's citizenship duties. The fundamental duties are the foundations of human dignity and national character. If every citizen performs his duties irrespective of considerations of caste, creed, colour and language, most of the malaise of the present day polity could be contained, if not eradicated, and the society as a whole uplifted. Rich or poor, in power or out of power, obedience to citizenship duty, at all costs and risks, is the essence of civilized life.

Spirit of Harmony and Dignity of Women

3.39.1 Some further thought needs to be given to clauses (e) and (f) of article 51A. Article 51A(e) desires the promotion of harmony and the spirit of common brotherhood among all the people of India transcending religious, linguistic and regional or sectional diversities and renunciation of practices derogatory to the dignity of women. It is couched in broad terms but it should be clear that attacks on minority communities or minority opinions are frowned upon. Respect for both are essential and the wording lends support to a broad humanism to cover such differences as may exist or better still, co-exist. Two thoughts can be distilled. The first is that the objective will not be reached unless there is a determined effort to restrict religious practices to the home on the justified premise that one's religion is a personal matter and is not conducive to mass assertiveness. The other is the status of women.

3.39.2 Lip service is being paid to the doctrine of gender equality. The fact emains that generally women are still regarded as inferior both at home and workplace although the Commission has noticed an improvement, however dissatisfied it may be with the degree of the improvement.

3.39.3 It is necessary to separate religious precepts from civil law. Civil law as the name implies is a matter for society not for religious leaders and it would seem to us to be axiomatic that in matters of civil rights, laws of property and inheritance and marriage and divorce, although practices may differ, legal rights that accrue must be the same. For example, a marriage may be solemnised according to religious or social custom but the rights of a woman in the case of divorce must be the same no matter what her religion is. As the Supreme Court held in the *Shahbanoo case*, an abandoned wife is an abandoned wife and it does not matter whether she professes one religion or another. She is entitled to alimony. Progress in these directions will be slow but it is necessary that progress is seen to be made. The key lies in education.

3.39.4 Clause (e) of article 51A also seems to cover the need to regard all human beings equally. In this connection, it is necessary to consider the question of the upliftment of the Scheduled Castes and other disadvantaged sections of our society. The scourge must be eradicated. The Constitution gave us ten years to do the job; the provision has been extended to fifty years and we are in our sixth ten-year period but we are no nearer the goal. The discrimination is two-fold. It is economic-condemning whole sections of our society numbering millions to menial jobs as part of the evil of treating them as sub-human. We have provided for reservation of jobs to these people, we have even given them separate constituencies to represent them. It has created a vested interest in backwardness. The other adverse result is that it has had no effect on their status in society, which continues to be determined by birth and not human worth and human personality. It is this social stigma which still plagues our people and the struggle to restore to them basic human dignity has made no significant

progress. While the Commission appreciates the context in which affirmative action became necessary, it feels that reservation of jobs and seats in the legislatures will not help this aspect of the matter.

3.39.5 It is quite clear to the Commission that the disease of considering human beings as high or low based on the accident of birth is a disease rooted in the mind and it is in the mind that the defences of a society based on human dignity and equality must be constructed. Logically this leads directly to the conclusion that the key lies in education. The time to begin training our young people to respect the National flag and sing the National anthem, to respect women, to hold all religions equal and deserving of as much respect as one's own, to accept that all human beings are born equal and are entitled to equal treatment are among principles best taught by examples when the child is too young to understand but not too young to obey. The focus must, therefore, shift to education which has suffered from serious neglect. Schools restrict admissions on unacceptable criteria, teachers themselves are untrained and often politicised, as is the curriculum. Despite these hardships, many of our young people have done well.

Composite culture

3.40.1 Clause (f) of article 51A requires us to value and preserve the rich heritage of our composite culture. It follows that we may not break each other's places of worship, set fire to religious texts, or beat up one another's priests or obstruct those who exercise their Fundamental Right under article 25 to profess, practice and propagate religion. Composite culture means culture drawn from many strands. Here again education in its broadest and best sense can provide the corrective to the aberrations that have occurred.

3.40.2 Education is not confined only to the time spent in schools and colleges. Education begins at birth in the subconscious and continues till death. Anyone who says that he has nothing more to learn is already brain-dead. It follows that the influences that play on a child at home are of great importance. Parents

should understand that education begins at home, the examples they set, the environment of enlightenment and tolerance that is necessary to produce good citizens cannot be sub-contracted to formal schooling important though this is. Schemes should, therefore, be framed that include parents in social activities that have as their objective the country's age-old traditions, its welcome to the persecuted of every faith, its virtues of tolerance of and respect for all religions and a certain pride in belonging to this land and in being considered as Indian. The highest office in our democracy is the office of citizen; this is not only a platitude, it must translate into reality. The distinction is not illusory. This country has given far too much indulgence to an attitude of mind that acts on the question - what is there in it for me? Education and the process of inculcating unselfishness and a sense of obligation to one's fellowmen should inspire the question – where does my duty lie? The transformation has the potential to make our nation strong, invincible and able to command the respect of the world.

3.40.3 **(i) The Commission recommends that the first and foremost step required by the Union and State Governments is to sensitise the people and to create a general awareness of the provisions of fundamental duties amongst the citizens on the lines recommended by the Justice Verma Committee[18] on the subject. Consideration should be given to the ways and means by which Fundamental Duties could be popularized and made effective; (ii) right to freedom of religion and other freedoms must be jealously guarded and rights of minorities and fellow citizens respected; (iii) reform of the whole process of education is an immediate but immense need, as is the need to free it from governmental or political control; it is only through education that will power to adhere to our Fundamental Duties as citizens can be inculcated; and (iv) duty to vote at elections, actively participate in the democratic process of governance and to pay taxes should be included in article 51A. The Commission fully endorses the other recommendations of the Justice Verma Committee on**

[18] See Annexure 1 to the Consultation Paper on 'Effectuation of Fundamental Duties of Citizens' in Volume- II (Book 1) of the Report.

operationalisation of Fundamental Duties of Citizens and strongly suggests their early implementation.

3.40.4 **The Commission also recommends that the following should be incorporated as fundamental duties in article 51A of the Constitution -**

(i) **To foster a spirit of family values and responsible parenthood in the matter of education, physical and moral well-being of children.**

(ii) **Duty of industrial organizations to provide education to children of their employees**

CHAPTER 4

ELECTORAL PROCESSES AND POLITICAL PARTIES

CONTENTS

A. Electoral Processes

4.1 ➢ Objectives of the Founding Fathers

4.2 ➢ Provisions of the Constitution

4.3 ➢ Magnitude of the task

4.4 ➢ Successes and failures

4.5 ➢ Identifying the problem areas

4.6 ➢ Attempts at reforms

4.7 ➢ Suggested reform options

4.8 ➢ Electoral rolls and voter ID

4.9 ➢ Electronic Voting Machines (EVMs)

4.10 ➢ Booth capturing and rigging

4.11 ➢ Caste and communal hatred

4.12 ➢ Criminalisation

4.13 ➢ Corrupt practices and election petitions

4.14 ➢ High cost of elections and abuse of money power

4.15 ➢ Reducing the cost of elections

4.16 ➢ Question of representational legitimacy

4.17 ➢ Delimitation of constituencies

4.18 ➢ Defections

4.19 ➢ Oversized Council of Ministers

4.20 ➢ Problems of Instability

4.21 ➢ The eligibility of non-Indian born citizens to hold high offices

4.22 ➢ Appointment of the Election Commissioners and State Election Commissioners

4.23 ➢ Candidates owing Government dues

4.24 ➢ Office of profit

B. Political Parties

4.25 ➢ Background and objectives

4.26 ➢ Constitution and Law in relation to Political Parties

4.27 ➢ The present scenario

4.28 ➢ Studies and reports

4.29 ➢ Identifying the problem areas

4.30 ➢ Law for political parties

4.31 ➢ Recognition of parties

4.32 ➢ Rules and regulations

4.33 ➢ Needs for stability

4.34 ➢ Scourge of criminalisation

4.35 ➢ Funding political parties

4.36 ➢ Election returns

4.37 ➢ Educational training and developmental activities

4.38 ➢ Leadership conventions

CHAPTER 4

ELECTORAL PROCESSES AND POLITICAL PARTIES[1]

A. Electoral Processes

Objectives of the Founding Fathers

4.1 The founding fathers of our Republic conceived of representative parliamentary democracy as the polity most suited to India's ethos, background and needs. They envisaged equal participation of all the adult citizens in the democratic process without any discrimination. Selection of representatives of the people through universal adult franchise and free and fair elections was for them an act of faith. Universal adult franchise was a bold and ambitious political experiment and a symbol of the abiding faith that the founders reposed in the great masses of the country and in their innate wisdom.

Provisions of the Constitution

4.2 To achieve these objectives, article 326 of the Constitution enfranchises for all the adult citizens (not less than 18 years of age) and empowers them to vote at the elections to the Lok Sabha and the State Assemblies. Article 324 vests the superintendence, direction and control of the preparation of electoral rolls and conduct of elections in an independent Election Commission. Under articles 243K and 243ZA, elections to local bodies – Panchayats and Municipalities – are the responsibility of State Election Commissions.

Magnitude of the Task

4.3 A general election to Lok Sabha is a gigantic exercise. It has been said that holding general elections in India is equal to holding them for Europe, United

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[1] *See* also the Consultation Papers on "Review of the Working of Political Parties specially in relation to Elections and Reform Options" and "Review of Election Law, Processes and Reform Options" released by the Commission in Volume II (Book 1).

States, Canada and Australia all put together. Statistically, the number of voters in India is in excess of 600 million (60 crores). The number of polling booths all over the country adds up to about 900,000 (9 lakhs). To manage these polling booths about five million election personnel and an additional two million security personnel have to be mobilized. Taking State and local elections into account, the figures become more staggering. Today, India is unique in having upwards of about 3.2 million (32 lakhs) directly elected representatives of the people spread over various tiers of governance.

Successes and Failures

4.4 During the last half-a-century, there have been thirteen general elections to Lok Sabha and a much larger number to various State Legislative Assemblies. We can take legitimate pride in that these have been successful and generally acknowledged to be free and fair. But, the experience has also brought to fore many distortions, some very serious, generating a deep concern in many quarters. There are constant references to the unhealthy role of money power, muscle power and mafia power and to criminalisation, corruption, communalism and casteism.

Identifying the Problem Areas

4.5 More specifically, the Commission has found that the main problem areas may be identified to be as follows:

- Increasing cost of elections leading to unethical, illegal and even mafia provided electoral funding, corruption, criminalisation and black money generation in various forms.
- With the constituents/electors being the same for all directly elected representatives from the lowest Panchayat level to the Lok Sabha level, there are competing role expectations and conflict of perceptions *e.g.* the constituents expect even members of the Union Parliament to attend to their purely local problems.

- With the electorate having no role in the selection of candidates and with majority of candidates being elected by minority of votes under the first-past-the-post system, the representative character of the representatives itself becomes doubtful and their representational legitimacy is seriously eroded. In many cases, more votes are cast against the winning candidates than for them. One of the significant probable causes may be the mismatch between the majoritarian or first-past-the-post system and the multiplicity of parties and large number of independents.
- The question of defections and the Tenth Schedule.
- Inaccurate and flawed electoral rolls and voter identity leading to rigging and denial of voting rights to a large number of citizens.
- Booth capturing and fraudulent voting by rigging and impersonation.
- Use of raw muscle power in the form of intimidation of voters either to vote against their will or not to vote at all, thus taking away the right of free voting from large sections of society and distorting the result thereby.
- Involvement of officials and local administration in subverting the electoral process.
- Engineered mistakes in counting of votes.
- Criminalisation of the electoral process – increasing number of contestants with serious criminal antecedents.
- Divisive and disruptive tendencies including the misuse of religion and caste in the process of political mobilization of group identities on non-ideological lines.
- An ineffective and slow judicial process of dealing with election petitions, rendering the whole process quite often meaningless.
- Fake and non-serious candidates who create major practical difficulties and are also used indirectly to subvert the electoral process.
- Incongruities in delimitation of constituencies resulting in poor representation.

- Problems of instability, hung legislative houses and their relation to the electoral laws and processes.
- Last but not the least, loss of systemic legitimacy due to decay in the standards of political morality and decline in the spirit of service and sacrifice in public life.

Attempts at Reforms

4.6 The question of bringing about comprehensive changes in the election laws and electoral processes has been receiving the attention at various levels right from the time of the first general election. The most recent official exercises in this regard have been:

(1) The Goswami Committee on Electoral Reforms (1990)

(2) The Indrajit Gupta Committee on State Funding of Elections (1998)

(3) The Law Commission's report on Reform of the Electoral Laws (1999).

(4) The Election Commission's comments on the recommendations of the above three and its own proposals based on experience of ground realities.

Suggested Reform Options

4.7.1 After a review of various reports, research papers by activist organizations and concerned citizens, newspaper analyses, and other literature available on the subject of elections, a comprehensive consultation paper alongwith a Questionnaire and a Bibliography was prepared and issued by the Commission for generating debate and eliciting public response. One of the radical reform suggestions was that of the Gandhian model of decentralization whereunder village is at the centre and power flows upwards from the grassroots to concentric circles of multi-tier governance. The model envisages direct elections at the Panchayat and Nagarpalika levels and indirect elections to the District,

State and Union levels by all the lower tiers. The Commission carefully considered the strong presentations and representations made in support of the model but, as the consultation paper itself had anticipated and pointed out, in the present situation, the model is not feasible.

4.7.2. Some of the other suggestions for reform not found acceptable by the Commission on grounds of being either impracticable or unnecessary related to (i) negative voting, (ii) multi-member constituencies, (iii) recall, (iv) proportional representation, (v) list system, (vi) President's rule in the States during elections, (vii) putting a limit of two terms for any political position, (viii) prescribing literacy qualifications for legislators, (ix) direct election of the Chief Ministers in the States, etc.

4.7.3. **The Commission reached the conclusion that while some far reaching reforms in the electoral processes were necessary, no major constitutional amendment was called for. The necessary correctives could be achieved by ordinary legislation modifying the existing laws or, in many cases, merely by subordinate legislation and executive action.** The Commission is happy to note that some of the suggestions mentioned in the consultation papers released by it are already under implementation.

Electoral Rolls and Voter ID

4.8.1 The electoral process begins with the preparation of electoral rolls. If the rolls are incomplete or defective, the whole electoral process is vitiated. Any serious attempt at electoral reform, therefore, must first tackle the question of faulty electoral rolls. At present, the Election Commission (EC) is responsible for preparing the electoral rolls for assembly and parliamentary constituencies. The State Election Commissions are responsible for electoral rolls for local body elections. In some States, the EC and State Election Commissions (SECs) have agreed to coordinate the preparation of electoral rolls.

4.8.2 Given the technology today, an automated and well designed online system broken down to district level can be created without much hassle. The database would be centrally computerized by the EC and each voter/ adult citizen would have a unique bar-coded ID number. This ID number would be for life and in the long run the best bet against any impersonation. In course of time, possession of such an ID card should be made mandatory for all elections. It might even be possible to have hand held devices which would eliminate any invalid card automatically. This would improve public access to this, now hard to get, information and serve the objective of contributing to cleaning up the electoral process and curbing impersonation and rigging. Also, it would add to creating widespread trust in the fairness of our electoral process thereby providing it a high degree of institutional legitimacy.

4.8.3 **The Commission recommends a foolproof method of preparing the electoral roll right at the Panchayat level constituency of a voter and supplementing it by a foolproof voter ID card which may in fact also serve as a multi-purpose citizenship card for all adults. A single exercise should be enough for preparing common electoral rolls and ID cards. The task could be entrusted to a qualified professional agency under the supervision of the EC and in coordination with the SECs. The rolls should be updated constantly and periodically posted on the web site of the Election Commission and CD ROMs should be available to all political parties or anyone interested. Prior to elections, these rolls should be printed and publicly displayed at the post offices in each constituency, as well as at the panchayats or relevant constituency HQs. These should be allowed to be inspected on payment of a nominal fee by anyone. Facilities should also be provided to the members of the public at the post offices for submitting their applications for modification of the electoral rolls.**

Electronic Voting Machines (EVMs)

4.9 EVMs have been used successfully in limited areas in sensitive constituencies and in bye-elections. Any doubts about this technology were amply removed during the deliberations of the Goswami Committee. Not only were the EVMs satisfactorily demonstrated to all politician members, several electronic experts of the Government of India also testified that the machines could be used at all our elections without any misgivings. The advantages of EVMs in preventing large-scale rigging are quite apparent as the machine locks up and will permit only one hit every so many seconds. Wherever these EVMs have been used in urban and in rural areas, there have been no complaints of large scale rigging. This also makes counting easy and non-contestable and theoretically the results could be available within a very short time if the system wanted to make prompt announcement of the winning candidates.

The Commission recommends the introduction of EVMs in all constituencies all over the country for all elections as rapidly as possible.

Booth Capturing and Rigging

4.10 On the question of booth capturing, rigging and intimidation of voters, the proposals of the Goswami Committee to the effect that EC should be empowered to take more stringent action should be accepted and implemented in full.

The Commission recommends: (i) Under section 58A of the Representation of the People Act, 1951, the Election Commission should be authorised to take a decision regarding booth capturing on the report of the returning officers, observers or citizen groups. Also, the Commission should be empowered to countermand the election and order a fresh election or to declare the earlier poll to be void and order a re-poll in the entire constituency; (ii) EC should consider the use of tamper-proof video and other electronic surveillance at sensitive polling stations/ constituencies.

Caste and Communal Hatred

4.11 Campaigns which are crafted to create or exacerbate tensions between communities and/or to incite feelings of hatred on the basis of caste, community, religion, race or language attract disqualification at present but effective implementation of laws is lacking. This deserves the highest degree of attention.

The Commission recommends that any election campaigning on the basis of caste or religion and any attempt to spread caste and communal hatred during elections should be punishable with mandatory imprisonment. If such acts are done at the instance of the candidate or by his election agents, these would be punishable with disqualification.

Criminalisation

4.12.1 The entry of criminals in politics is a matter of great concern. The Vohra Committee appointed by the Government had stated in strong terms that the nexus between crime syndicates and political personalities was very deep. According to the Central Bureau of Investigation (CBI) report to the Vohra Committee: "all over India, crime syndicates have become a law unto themselves. ..... Even in the smaller towns and rural areas, muscle-men have become the order of the day. Hired assassins have become part of these organizations. The nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country." The Committee quoted other agencies to state that the Mafia network is "virtually running a parallel government, pushing the State apparatus into irrelevance." The report also says "in certain States like Bihar, Haryana and Uttar Pradesh, these gangs enjoy the patronage of local politicians cutting across party lines and the protection of the functionaries. Some political leaders become the leaders of these gangs/armed senas and over the years get themselves elected to local bodies, State assemblies and national parliament."

4.12.2 There were grave incongruities in the existing provisions of sub-sections (1), (2) and (3) of Section 8 of the Representation of the People Act, 1951 (RPA 1951), illustrating the case of a rapist, convicted and sentenced to ten years' imprisonment, being disqualified only for six years under sub-section (1) and while not able to vote, being free to contest elections even while serving the last four years of his sentence in prison.

The Commission recommends that the Representation of the People Act be amended to provide that any person charged with any offence punishable with imprisonment for a maximum term of five years or more, should be disqualified for being chosen as, or for being, a member of Parliament or Legislature of a State on the expiry of a period of one year from the date the charges were framed against him by the court in that offence and unless cleared during that one year period, he shall continue to remain so disqualified till the conclusion of the trial for that offence. In case a person is convicted of any offence by a court of law and sentenced to imprisonment for six months or more the bar should apply during the period under which the convicted person is undergoing the sentence and for a further period of six years after the completion of the period of the sentence. If any candidate violates this provision, he should be disqualified. Also, if a party puts up such a candidate with knowledge of his antecedents, it should be derecognised and deregistered.

4.12.3 Any person convicted for any heinous crime like murder, rape, smuggling, dacoity, etc. should be permanently debarred from contesting for any political office.

4.12.4 Criminal cases against politicians pending before Courts either for trial or in appeal must be disposed off speedily, if necessary, by appointing Special Courts.

4.12.5 A potential candidate against whom the police have framed charges may take the matter to the Special Court. This court should be obliged to enquire into and take a decision in a strictly time bound manner. Basically, this court may decide whether there is indeed a *prima facie* case justifying the framing of charges.

4.12.6 The Special Courts should be constituted at the level of High Courts and their decisions should be appealable to the Supreme Court only (in similar way as the decisions of the National Environment Tribunal). The Special Courts should decide the cases within a period of six months. For deciding the cases, these Courts should take evidence through Commissioners.

4.12.7 As per the provisions contained in sub-section (4) of section 8 of the Representation of the People Act, 1951, the disqualification referred to in sub-sections (1) and (2) of that section shall not take effect for a period of three months from the date of conviction if the person convicted is a member of Parliament or the Legislature of a State. However, if within the said three months an appeal or application for revision is brought in respect of the conviction or sentence, the disqualification will not operate until that appeal or application is disposed of by the court.

The Commission feels that the benefit of this provision should be available only for the continuance in office by a sitting Member of Parliament or a State Legislature. The Commission recommends that the aforesaid provision should suitably be amended providing that this benefit shall not be available for the purpose of his contesting fresh elections.

4.12.8 The Commission feels that the proposed provision laying down that a person charged with an offence punishable with imprisonment which may extend to five years or more should be disqualified from contesting elections after the expiry of a period of one year from the date the charges

were framed in a court of law should equally be applicable to sitting members of Parliament and State Legislatures as to any other such person.

Corrupt Practices and Election Petitions

4.13.1 Section 8A of the Representation of the People Act, 1951 (RPA) provides for disqualification on ground of corrupt practices. The current practice is that once the High Court hands out the judgement on an election petition holding the candidate guilty of corrupt practices, the case goes to the Secretary of the concerned State Legislature or the Secretary General Lok Sabha or Rajya Sabha, as the case may be. It is then forwarded to the President who in turn forwards it to the EC. Only then does the EC get jurisdiction to tender its opinion to the President based on which the disqualification order is issued.

The Commission recommends that in matters of disqualification on grounds of corrupt practices, the President should determine the period of disqualification under Section 8A on the direct opinion of the EC and avoid the delay currently experienced. This can be done by resorting to the position prevailing before the 1975 amendment to RPA, 1951.

4.13.2 Election petitions at present are considered by the High Court. The High Court is expected to give judgement on all election petitions within 6 months, but in actual practice, it takes much longer and often the petitions remain pending for years and in the meantime even the full term of the House expires. (For data on disposal of Election Petitions, see Consultation Paper, Table under para 15.2) In the opinion of many activists and eminent persons, all election-related petitions should be heard by a separate judicial set up and these petitions should be decided within a time bound period within 6 to 12 weeks by dedicated benches of special courts.

The Commission recommends that the election petitions also be decided by special courts proposed above. In the alternative, special

election benches may be constituted in the High Courts and earmarked exclusively for the disposal of election petitions and election disputes.

High Cost of Elections and Abuse of Money Power

4.14.1 One of the most critical problems in the matter of electoral reforms is the hard reality that for contesting an election one needs large amounts of money. The limits of expenditure prescribed are meaningless and almost never adhered to. As a result, it becomes difficult for the good and the honest to enter legislatures. It also creates a high degree of compulsion for corruption in the political arena. This has progressively polluted the entire system. Corruption, because it erodes performance, becomes one of the leading reasons for non-performance and compromised governance in the country. The sources of some of the election funds are believed to be unaccounted criminal money in return for protection, unaccounted funds from business groups who expect a high return on this investment, kickbacks or commissions on contracts etc. No matter how we look at it, citizens are directly affected because apart from compromised governance, the huge money spent on elections pushes up the cost of everything in the country. It also leads to unbridled corruption and the consequences of wide spread corruption are even more serious than many imagine. Electoral compulsions for funds become the foundation of the whole super structure of corruption.

4.14.2 The present provisions of law have a significant loophole in the shape of Explanation 1 to section 77(1) of the Representation of the People Act, 1951, under which the amounts spent by persons other than the candidate and his agent themselves, are not counted in his election expenses. This means that there can be never any violation of the expenditure limits. All extra expenditure, even when known and proven, can be shown to have been spent by the party or by any friends and it remains outside of the enforceable limits. In view of the increasing cost of the election campaigns, it is desirable that the **existing ceiling on election expenses for the various legislative bodies be suitably raised to**

a reasonable level reflecting the increasing costs. However, this ceiling should be fixed by the Election Commission from time to time and should include all the expenses by the candidate as well as by his political party or his friends and his well-wishers and any other expenses incurred in any political activity on behalf of the candidate by an individual or a corporate entity. Such a provision should be the part of a legislation regulating political funding in India. The Commission recommends that Explanation 1 to section 77(1) of the Representation of the People Act, 1951 should be deleted.

4.14.3 Transparency in the context of election means both the sources of finance as well as their utilization as are listed out in an audited statement. If the candidates are required to list the sources of their income, this can be checked back by the income tax authorities.

The Commission recommends that the political parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend. These accounts should be monitored through a system of checking and cross-checking through the income-tax returns filed by the candidates, parties and their well-wishers. At the end of the election each candidate should submit an audited statement of expenses under specific heads.

The EC should devise specific formats for filing such statements so that fudging of accounts becomes difficult. Also, the audit should not only be mandatory but it should be enforced by the Election Commission. Any violation or misreporting should be dealt with strongly.

4.14.4 The Commission recommends that every candidate at the time of election must declare his assets and liabilities along with those of his close relatives. Every holder of a political position must declare his assets and

liabilities along with those of his close relations annually. Law should define the term 'close relatives'.

4.14.5 In order to ensure that State funding of elections is not abused and misused, it is necessary to put in place an effective mechanism for audit of party funds and their combined funds. It is further necessary that Explanation 1 to section 77(1) of the Representation of the People Act, 1951 is deleted and a full foolproof mechanism to curb violations on the limits of election expenses is created.

The Commission recommends that any system of State funding of elections bears a close nexus to the regulation of working of political parties by law and to the creation of a foolproof mechanism under law with a view to implementing the financial limits strictly. Therefore, proposals for State funding should be deferred till these regulatory mechanisms are firmly in position.

4.14.6 All candidates should be required under law to declare their assets and liabilities by an affidavit and the details so given by them should be made public. Further, as a follow up action, the particulars of the assets and liabilities so given should be audited by a special authority created specifically under law for the purpose. Again, the legislators should be required under law for the purpose. Again, the legislators should be required under law to submit their returns about their liabilities every year and a final statement in this regard at the end of their term of office.

Reducing the Cost of Elections

4.15.1 There should be a systematic attempt under law to reduce election expenditure. Modes of electioneering which create public nuisance, namely, wall writings, campaign through loudspeakers, holding rallies on the roads and parks, creating traffic jams, etc. can very conveniently be curbed by making necessary provisions under law or the rules framed under the parent legislation. Ferrying

people on automobiles to the polling booths can very conveniently be curbed by making necessary provisions in law. There does exist some legal mechanism in these areas and what is needed is better enforcement of the provisions so made.

4.15.2 Wall writings, display of cut-outs, hoardings and banners, hoisting of flags (except at party offices, public meetings and other specified places), use of more than a specified number of vehicles for election campaign and for processions, announcements or publicity by more than a specified number of moving vehicles, holding of public meetings beyond the specified hours, display of posters at places, other than those specified by the district/electoral authorities, should be banned and strong penalty provided for violation of expenditure ceiling. A suitable law should be enacted providing penalties against damaging or desecrating public or private property by candidates, political parties or the agents, through painting of slogans or erecting cut-outs and hoarding or putting banners and buntings. The law should also provide for special courts to ensure strict compliance of the aforesaid provisions of law, should any dispute arise in respect of the alleged violations of provisions of law by any candidate, political party or his agents and well-wishers.

4.15.3. With a view to reducing election costs and strain on human and other resources, State and Parliamentary level elections, to the extent possible, should be held at the same time.

4.15.4 Campaign period should be reduced considerably.

4.15.5 Candidates should not be allowed to contest election simultaneously for the same office from more than one constituency.

4.15.6 The election code of conduct which should come into operation as soon as the elections are announced should be given the sanctity of law and its violation should attract penal action.

4.16.1 **Winning by minority vote**: The multiplicity of political parties, combined with our Westminster based first-past-the-post system results in a majority of legislators and parliamentarians getting elected on a minority vote. In other words, they usually win by obtaining less than 50% of the votes cast, i.e. with more votes cast against them than in their favour. There are States where 85% to 90% of the legislators have won on a minority vote. At the national level, the proportion of MPs who have won on a minority vote is over 67% at an average for the last three Lok Sabha elections. In extreme cases, some candidates have won even on the basis of 13% of the votes polled. (For relevant data, see Tables in Annexures to the Consultation Paper on the subject).

4.16.2 In a pluralistic society such as ours, some political parties have found it advantageous to develop a vested interest in progressively appealing to narrower and narrowing loyalties. Clearly, if a candidate can win on less than one-third share of the votes polled, he does not need to generate a wider appeal. By making caste and community a factor in political power play, we have made the divide even wider and deeper in the Indian society and made it nearly impossible for Babasaheb Dr. Ambedkar's vision of a casteless and classless society ever coming true.

4.16.3 It is strange that most people of the constituency do not vote for the particular candidate who becomes their representative. Whose representatives are such candidates when a majority of voters did not want them? The seriousness of this issue has generated suggestions from many quarters focussed primarily on some possibilities.

4.16.4 It has been suggested from several quarters that this principle of representativeness will be fulfilled if the elected representatives win on the basis of 50% plus one vote. If, in the first round, no body gets over 50% of the votes polled, then according to this view, there should be a run-off contest held the very next day or soon thereafter between the top two candidates so that one of them

will necessarily win on the basis of 50% plus one votes polled. Several representations from various organizations favoured this option to achieve the objective of better representative democracy. The Chief Election Commissioner is reported to have confirmed that the task of run-off elections can be managed. Actually, the run-off vote is analogous to a re-poll. There is no revision of electoral rolls, no fresh nominations, no fresh campaigning or the like. The Commission is of the view that there are substantial advantages of following the policy of 50% plus one vote. On the one hand, it resolves the problem of inadequate representation. On the other, it also makes it in the self-interest of various political parties themselves to widen their appeal to a wider electorate. It can help push political rhetoric in a direction of mobilizing language might take on comparative 'universal' tone as opposed to 'sectoral' tones of the present day. With the need to be more broad-based in their appeal, issues that have to do with good governance rather than with cleavages and narrow identities might start to surface in the country.

4.16.5 Despite the suggested merits of this system, the Commission refrains from making a positive recommendation for its acceptance straightaway, as the Commission cannot put out of consideration certain apprehensions expressed by several sections, particularly, in regard to the implications of a repoll. The pros and cons of the proposal need and merit a closer and more careful evaluation.

4.16.6 In the circumstances, the Commission while recognizing the beneficial potential of this system for a more representative democracy, recommends that the Government and the Election Commission of India should examine this issue of prescribing a minimum of 50% plus one vote for election in all its aspects, consult various political parties, and other interests that might consider themselves affected by this change and evaluate the acceptability and benefits of this system. The Commission recommends a careful and full examination of this issue by the Government and the Election Commission of India.

Delimitation of Constituencies

4.17 Since 1971, the number of seats in the Lok-Sabha allocated to different States has been frozen. No fresh Delimitation Commission has been formed.

The Commission recommends that intra-State delimitation exercise may be undertaken by the Election Commission for Lok Sabha and assembly constituencies and the Scheduled Castes and Non-Scheduled Area Scheduled Tribe seats should be rotated. The Delimitation Body should, however, reflect the plural composition of society.

Defections

4.18.1 The question of defections has now haunted the Indian polity for over three decades. This was sought to be eliminated by the Tenth Schedule but all that has happened is that while individual defections have become rare, *en bloc* defections are permitted, promoted and amply rewarded. Despite the Tenth Schedule, or because of it, countless defections have taken place without incurring any disqualification. In fact, on an average more defections per year took place after the Anti-defection Law as laid down in the Tenth Schedule came into force than ever earlier. What has been even more disconcerting is that some of the Speakers have tended to act in a partisan manner and without a proper appreciation - deliberate or otherwise - of the provisions of the Tenth Schedule. Almost everyone dealing with this subject agrees that defections flout people's mandate and cannot and should not be permitted, neither singly nor in a group. The fact is that most candidates get elected on the basis of the party that has given them a ticket. Defections allow these candidates to theoretically go to the pole opposite of this party, which is not the basis on which people elected them. Simply because there is no accountability *vis-à-vis* the people, such a practice continues unabated. Defections encourage corruption at the highest levels. Defectors usually are rewarded with political positions and other such perquisites so openly that it really makes a mockery of our democracy.

4.18.2 The Commission recommends that the provisions of the Tenth Schedule of the Constitution should be amended specifically to provide that all persons defecting - whether individually or in groups - from the party or the alliance of parties, on whose ticket they had been elected, must resign from their parliamentary or assembly seats and must contest fresh elections. In other words, they should lose their membership and the protection under the provision of split, etc. should be scrapped. The defectors should also be debarred to hold any public office of a minister or any other remunerative political post for at least the duration of the remaining term of the existing legislature or until, the next fresh elections whichever is earlier. The vote cast by a defector to topple a government should be treated as invalid. The Commission further recommends that the power to decide on questions as to disqualification on ground of defection should vest in the Election Commission instead of in the Chairman or Speaker of the House concerned.

Oversized Council of Ministers

4.19. The practice of having oversized Council of Ministers must be prohibited by law. A ceiling on the number of Ministers in any State or the Union government be fixed at the maximum of 10% of the total strength of the popular house of the legislature. In this connection, reference is also invited to clause 4 of article 239AA of the Constitution, which limits the size of the Council of the Ministers to not more than 10% of the total number of members in the Legislative Assembly of the National Capital Territory of Delhi.

Also, the practice of creating a number of political offices with the position, perks and privileges of a minister should also be discouraged and at all events their number should be limited to 2 per cent of the total strength of the lower house.

Problems of Instability

4.20.1 The last few decades have seen a great deal of political instability in India. During ten years, there were seven governments at the Union level. Being minority governments, these were unable to provide stable administration and stable policies. The reasons are not far to find. We adopted the Westminster model of FPTP system of elections but forgot that it works mainly in communion with a two party system or a limited number of parties. The political system and the politicization of caste and communal identities have proved to be very divisive of society and disruptive of the national ethos. It has become increasingly difficult to get a workable majority to form a government and make a success of coalition arrangements.

4.20.2 This has had very negative repercussions on the quality of governance because to cobble up a workable majority to form government, compromises had to be made and ideology or notions of quality of governance sometimes might have taken a back seat. The consequences are severe. Law and order suffers because control mechanisms break down or become very loose. It becomes difficult to take strong measures to curb corruption and provide clean and quality governance. In the end, it is the citizen who is the victim of all the misgovernance.

4.20.3 Out of 1900 independent candidates who contested the general election in 1998, only 6(0.65%) succeeded, 885(47%) lost their deposits. Likewise out of the 10635 candidates, who contested the 1996 Lok-Sabha elections, only 9(0.08%) won and 10,603(99.7%) lost their deposits. It is also known that most of these so-called independent candidates are in fact dummy candidates or defectors from their parties on being denied party tickets. These candidates only vitiate the sanctity of the electoral process and involve waste of resources. This was carried to ridiculous limits when a Lok Sabha constituency in Andhra

Pradesh (Nalgonda, in 1996) had 480 contestants. Similarly there have been assembly constituencies reaching over 1000 candidates.

The Commission recommends that independent candidates be discouraged and only those who have a track record of having won any local election or who are nominated by at least twenty elected members of Panchayats, Municipalities or other local bodies spread out in majority of electoral districts in their constituency should be allowed to contest for Assembly or Parliament.

4.20.4 **In order to check the proliferation of the number of independent candidates and the malpractices that enter into the election process because of the influx of the independent candidates, the existing security deposits in respect of independent candidates may be doubled. Further, it should be doubled progressively every year for those independents who fail to win and still keep contesting elections. If any independent candidate has failed to get at least five percent of the total number of votes cast in his constituency, he/she should not be allowed to contest as independent candidate for the same office again at least for 6 years.**

4.20.5 **An independent candidate who loses election three times consecutively for the same office as such candidate should be permanently debarred from contesting election to that office.**

4.20.6 **The minimum number of valid votes polled should be increased to 25% from the current 16.67% as a condition for the *deposit* not being forfeited. This would further reduce the number of non-serious candidates.**

4.20.7 **In the considered view of the Commission, it should be possible without any constitutional amendment to provide for the election of the Leader of the House (Lok Sabha/State Assembly) along with the election of the Speaker and in like manner under the Rules of Procedure. The person so elected may be appointed the Prime Minister/Chief Minister.**

1206/LJ&CA/2002—11A

The eligibility of non-Indian born citizens to hold high offices

4.21. It was suggested that the highest offices in the realm such as President, Vice-President, Prime Minister and Chief Justice of India should be open only to natural born citizens of India or those whose parents or grandparents were citizens of India. The matter was discussed at more than one sittings of the Commission. The Commission found that the said suggestion was not without force. At the same time, the other point of view put forward was that denial of the said high offices solely on account of the fact that the person was not a natural born citizen of India or his parents or grand-parents were not citizens of India, might deprive some citizens from occupying these high offices even if they were otherwise worthy and acceptable. The opinion in the Commission was equally divided. **The Commission recommends that this issue be examined in depth through a political process after a national dialogue.**

Appointment of the Election Commissioners and State Election Commissioners

4.22 The Commission recommends that the Chief Election Commissioner and the other Election Commissioners should be appointed on the recommendation of a body consisting of the Prime Minister, Leader of the Opposition in the Lok Sabha, Leader of the Opposition in the Rajya Sabha, the Speaker of the Lok Sabha and the Deputy Chairman of the Rajya Sabha. Similar procedure should be adopted in the case of appointment of State Election Commissioners.

Candidates owing Government Dues

4.23 It is recommended that all candidates should be required to clear government dues before their candidatures are accepted. This pertains to payment of taxes and bills and unauthorised occupation of accommodation and availing of telephones and other government facilities to which they

1206 LJ&CA/2002—11B

are no longer entitled. The fact that matters regarding Government dues in respect of the candidate are pending before a Court of Law should be no excuse.

Office of Profit

4.24.1 Article 102 (1)(a) of the Constitution, *inter alia*, provides that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder. There are similar provisions in relation to State Legislatures in article 191 (1)(a). Thus the Parliament or a State Assembly, as the case may be, can provide by law certain offices not to be offices of profit. However, the Constitution nowhere provides as to what offices shall be deemed to be offices of profit. This has led to great amount of uncertainty and avoidable disputes.

4.24.2 The Commission received suggestions to the effect that the Constitution may be suitably amended with a view to provide necessary power in the Election Commission to identify/provide from time to time the offices which shall be deemed to be offices of profit under the Government of India or the Government of any State.

4.24.3 **In order to obviate the uncertainty, the Commission recommends that by suitable amendment in the Constitution, the Election Commission may be empowered to identify and declare the various offices under the Government of India or of a State to be offices of profit for the purposes of being chosen, and for being, a member of the appropriate legislature.**

B. Political Parties

Background and Objectives

4.25 Political parties are an essential concomitant of elections in a representative parliamentary democracy. The quintessential precondition for the success of the Westminster model is a political system of two major parties based on ideological and programmatic orientation. The origin and growth of political parties in India can be traced to the days of her struggle for freedom. The overriding passion with the fighters for India's freedom and the founding fathers of her Constitution was to build a united nation and an integrated society while retaining its rich diversity and pluralism. They expected that an ideologically oriented healthy party system would soon evolve in independent India and that it would contribute to societal integration, nation building and strengthening the edifice of democracy. Unfortunately, this did not happen. The source of many of our troubles during the post independence period has been our failure to evolve a healthy party system based on a just and widely acceptable political-economic national agenda.

Constitution and Law in relation to Political Parties

4.26.1 Although political parties were not mentioned in the Constitution until the fifty-second constitutional amendment of 1985, the existence of some well-organised political parties was presumed as these were already functioning. The Constitution only guaranteed freedom of association as a fundamental right. Section 29A of the Representation of the People Act, 1951 provides for registration with the Election Commission of associations and bodies of individual citizens of India as political parties. The Tenth Schedule to the Constitution which was added by the Constitution (52nd Amendment) Act, 1985 mentions political parties only for the specific purpose of considering disqualification of a person for membership of either House of Parliament or of the Legislative Assembly or Legislative Council of a State on the ground of defection from his

political party. With that exception, even today, there is no law governing the formation, registration, functioning or regulation of political parties.

4.26.2 The Election Commission accords recognition to political parties as national or state parties in accordance with the norms laid down in the Election Symbols (Reservation and Allotment) Order, 1968. This is for the very limited purpose of allocation of symbols. The number of parties recognised as national parties has been varying from 14 to 4 owing to continuous review of the status based on their performance at the polls.

The Present Scenario

4.27.1 The evolution of party system after independence is a picture of transformation from one-party dominant system to a complex of multi-party system in which strong trends of fragmentation, factionalism and regionalism coupled with the desire to form alliances for seeking a share in power are increasingly occurring. This trend culminated in 'hung' Houses after last few general elections. Another significant development affecting the party system is the emergence of coalition politics.

4.27.2 In recent years, there has been sharp increase in political mobilization of the electorate on the basis of social cleavages based on ascriptive identities, in particular of religion and caste. Casteism, communalism and personality domination have been the main planks around which the fragmentation of political parties has taken place. Political parties have invariably exploited these sentiments for gaining support of the voters. These developments have necessitated a need for a review of the working of the political parties and their role and performance in the scheme of Indian polity and Constitution.

Studies and Reports

4.28 The Commission had the opportunity to examine the suggestions made by a number of academic and research institutions, political observers and analysts, scholars, journalists and academicians and Committees and Commissions appointed by the Government of India. These included the studies conducted by

Centre for Policy Research (Lok Raj Baral on Party Reforms, 2000), V.M. Tarakunde Committee (1974-75), Dinesh Goswami Committee Report (1990), Justice V.R. Krishna Iyer Committee (1994) and 170th Report on "Reform of the Electoral Laws" (1999) of the Law Commission. The Consultation Paper[2] on "Review of the Working of Political Parties specially in relation to Elections and Reform Options" makes a brief survey of the various issues and the recommendations discussed in these studies and in the large number of representations and memoranda received by the Commission from eminent persons, political parties, institutions and the general public.

Identifying the Problem Areas

4.29 Having regard to the prevailing political scenario in the country and the hard fact that no electoral reforms can be effective without reforms in the political party system, the Commission identified the following as some of the areas of immediate concern:-

- Institutionalization of political parties - need for a comprehensive legislation to regulate party activities, criteria for registration as a national or State party - de-recongition of parties.
- Structural and organizational reforms - party organizations - National, State and local levels - inner party democracy - regular party elections, recruitment of party cadres, socialization, development and training, research, thinking and policy planning activities of the party.
- Problems of party funding - need for a legislation to regulate party funds - distribution and spending of party funds during non-election and election times.
- Maintenance of regular accounts by the political parties - auditing and publishing - making audited accounts available for open inspection.

[2] *See* Volume II (Book 1) of the Report.

- To what extent and in what way party system could be reformed so as to pave the way for the establishment of stable governments based on the concept of two party system or dual party alliance system.
- Steps to check criminalisation of political parties.
- Steps to curb the role of casteism and communalism.
- Steps to encourage gender participation in the political organizations.
- Party system and governance – Mechanisms to make parties viable instruments of good governance?

Law for Political Parties

4.30.1 **The Commission recommends that there should be a comprehensive legislation [may be named as the Political Parties (Registration and Regulation) Act], regulating the registration and functioning of political parties or alliances of parties in India.**

4.30.2 The proposed legislation should provide for compulsory registration for every political party or pre-poll alliance. It should lay down conditions for the constitution of a political party or alliance and for registration, recognition and de-registration and derecognition.

4.30.3 **The Commission recommends that every political party or alliance should, in its Memoranda of Association, Rules and Regulations provide for its doors being open to all citizens irrespective of any distinctions of caste, community or the like. It should swear allegiance to the provisions of the Constitution and to the sovereignty and integrity of the nation, regular elections at an interval of three years at its various levels of the party, reservation/representation of at least 30 percent of its organizational positions at various levels and the same percentage of party tickets for parliamentary and State legislature seats to women. Failure to do so should invite the penalty of the party losing recognition.**

4.30.4 **The law should make it compulsory for the parties to maintain accounts of the receipt of funds and expenditure in a systematic and regular way.** The form of accounts of receipt and expenditure and declaration about the sources of funds may be prescribed by an independent body of Accounts & Audit experts, created under the proposed Act. **The accounts should also be compulsorily audited** by the same independent body, created under the legislation which should also prepare a report on the financial status of the political party which along with the audited accounts **should be open and available to public for study and inspection.**

4.30.5 **The Commission recommends the enactment of an appropriate provision making it compulsory for the political parties requiring their candidates to declare their assets and liabilities at the time of filing their nomination before the returning officers for election to any office at any level of government.**

4.30.6 The authority for registration, de-registration, recognition and derecognition of parties and for appointing the body of auditors should be the Election Commission whose decisions should be final subject to review by the Supreme Court on points of law.

Recognition of Parties

4.31.1 It is a desirable objective to promote progressive polarisation of political ideologies and to reduce less serious political activity. The process of recognition of political parties by the Election Commission is an important and effective tool in this task. While proliferation of smaller political parties add to political confusion, at the same time the Commission is aware that 'political parties, with all their well-known human and structural shortcomings, are the only devices (that can) generate countervailing collective power on behalf of the many individually powerless against the relatively few who are individually – or organizationally – powerful'. The approach, therefore, needs to balance

considerations of stability on the one hand and the need to reflect the aspirations of a plural society, on the other.

4.31.2 At present, for the allotment of an exclusive symbol, State Parties need 6% of the votes polled **plus** 2 members in the Legislative Assembly. The alternative criteria for recognition is at least 3% of the seats in the Lower House. At the national level such a recognition would require 6% of the votes polled in at least 4 States **plus** 4 members in the Lok Sabha, or alternatively at least 2% of membership of the Lok Sabha drawn from at least 3 States.

The Commission recommends that the Election Commission should progressively increase the threshold criterion for eligibility for recognition so that the proliferation of smaller political parties is discouraged. Only parties or a pre-poll alliance of political parties registered as national parties or alliances with the Election Commission be allotted a common symbol to contest elections for the Lok Sabha. State parties may be allotted symbols to contest elections for State Legislatures and the Council of States (Rajya Sabha).

Rules and Regulations

4.32 The rules and by-laws of the parties seeking registration should include provisions for:

(a) a declaration of adherence to democratic values and norms of the Constitution in their inner party organizations,

(b) a declaration to shun violence for political gains,

(c) a declaration not to resort to casteism and communalism for political mobilisation, but to adhere to the principles of secularism in the achievement of their objectives,

(d) a provision for party conventions to nominate and select candidates for political offices at the grass root and State levels,

(e) a code of conduct (which each political party should evolve for itself),

(f) some institutional mechanism for planning, thinking and research on crucial socio-economic issues facing the nation and educational cells for socializing their party cadres and preparing them for responsibilities of governance,

(g) implementation of legal provisions regarding representation to women and weaker sections of society in party offices and in candidacy for elections to Houses of Legislatures.

Needs for Stability

4.33.1 In a situation where no single political party or pre-poll alliance of parties succeeds in securing a clear majority in the Lok Sabha after elections, instead of involving the highest office of the President in the controversies of finding out who could command the confidence of the House, it would be best to leave it to the House itself to determine majority support to a leader. It would remove uncertainty and also obviate the need for the President asking his appointee as Prime Minister to seek a vote of confidence within certain number of days.

4.33.2 **The Commission, therefore, recommends that in a situation where no single political party or pre-poll alliance of parties succeeds in securing a clear majority in the Lok Sabha after elections, the Rules of Procedure in Lok Sabha may provide for the election of the Leader of the House by the Lok Sabha along with the election of the Speaker and in the like manner. The Leader may then be appointed as the Prime Minister. The same procedure may be followed for the office of the Chief Minister in the State concerned.**

4.33.3 The Commission further recommends an amendment in the Rules of Procedure for adoption of a system of constructive vote of no confidence. **For a motion of no-confidence to be brought out against a government at least**

20% of the total number of members of the House should give notice. Also, the motion should be accompanied by a proposal of alternative Leader to be voted simultaneously.

Scourge of Criminalisation

4.34 **The Commission recommends that the proposed law on political parties should provide that no political party should sponsor or provide ticket to a candidate for contesting elections if he was convicted by any court for any criminal offence or if the courts have framed criminal charges against him. The law should specifically provide that if any party violates this provision, the candidate involved should be liable to be disqualified and the party deregistered and derecognised forthwith.**

Funding Political Parties

4.35.1 The problem of political funding is a complex one and there are no panaceas. Political parties need hefty contributions from companies and from other less desirable sources. The greater the contribution, the greater the risk of dependence, corruption and lack of probity in public life. The demand for transparency must be conceived as a democratic value in itself, a tool designed to avoid any wrongful influences of money in politics. If laws are intended to be effective with regard to transparency, they should be general in nature and enforced with respect to everyone, and not just political parties or candidates, but also to the donors as well. Otherwise, alternate or indirect ways to evade control will be devised. In fact, while it is essential to strengthen regulation and the mechanisms and capabilities of supervision and controlling entities, all this only addresses part of the problem. Quite often, funding and commitments do not reach the parties, but rather go directly to the candidate and his/her inner circle of supporters. This is truer today in the context of the image and credibility crisis that party organisations have been undergoing, and the emergence of regional leaders due to the regionalisation process. This usually tends to make

transactions between donors and beneficiaries become even more secretive. Hence; the senior leaders or party members may often not be aware of private contributions (many of them dubious in origin and in quite large sums). Consequently, any proposals for reforms concerning political funding should revolve, among other things, around the following four main objectives:

(i) reducing the influence of money by diminishing its impact (by shortening campaigns, establishing ceilings on expenditure and limiting individual contributions);

(ii) improving the use of money by investing it on more productive activities for the sake of democracy, and not just squandering it on propaganda and negative campaigns;

(iii) stopping, or at least curtailing, as much as possible, current levels of influence peddling and political corruption; and

(iv) strengthening public disclosure and transparency mechanisms with respect to both the origin and the use of funds.

4.35.2 At present, different Acts regulate the flow of funds to political parties both from internal as well as external sources. **The Commission recommends that a comprehensive legislation providing for regulation of contributions to the political parties and towards election expenses should be enacted by consolidating such laws. The new law should aim at bringing transparency into political funding. It should permit corporate donations within higher prescribed limits and keep them transparent. It should make all legal and transparent donations upto a specified limit tax exempt and treat this tax loss to the state as its contribution to state funding of elections.** For example, tax exemptions could be limited to say Rs.25,000 for individuals and Rs.10,00,000 for companies provided that the contributions are made to party funds and not to individuals. In the case of corporate contributions, the Board of Directors may approve up to say Rs.10,00,000 and anything over this amount may be approved by the shareholders. Political funding should be a separate head in the accounts and annual reports of the company. This will ensure

transparency. This will be in addition to the existing conditions laid down in the Companies Act, 1956 for making donations to political parties.

4.35.3 **The law should contain provisions for making both donors and donees of political funds accountable. The Government should encourage the corporate bodies and agencies to establish an electoral trust which should be able to finance political parties on an equitable basis at the time of elections.**

4.35.4 **Audited political party accounts like the accounts of a public limited company should be published yearly with full disclosures under predetermined account heads.**

Election Returns

4.36 **The proposed law should provide for immediate de-recognition of the party and enforcement of penalties for filing false or incorrect election returns.**

Educational Training and Developmental Activities

4.37 Political parties should in their rules and regulations provide for establishing some institutional mechanism for planning, thinking and research on crucial socio-economic issues facing the nation and educational cells for socializing their party cadres and preparing them for responsibilities of governance.

Leadership Conventions

4.38 Parties should seriously consider adopting the leadership convention system. This would have the advantage first, of making the leadership election process more open, democratic and federal. Second, the people will know in advance of the prospective Prime ministerial candidates. Third, it would introduce a nationally aggregative mechanism in major parties and curb the

tendency of regionalisation and fragmentation. If the national convention is found too expensive, a series of staggered State conventions may be held by major parties with their respective slates of candidates (common for all the States in one party). This will go a long way in making parties aggregative and thus more functional in a parliamentary federal system of governance.

CHAPTER 5

PARLIAMENT AND STATE LEGISLATURES

CONTENTS

5.1	➢ Need for Review	5.12	➢ Orientation Programmes for New Members
5.2	➢ Cause for Concern	5.13	➢ Parliamentary Control through PAC
5.3	➢ Aim and objective	5.14	➢ Parliamentary Control over Borrowing
5.4	➢ Instability and Defections	5.15	➢ Parliamentary Privileges
5.5	➢ Hung Houses	5.16	➢ Comptroller and Auditor General (C&AG) and Constitution of Audit Board
5.6.1	➢ Strengthening the Committee System	5.17	➢ Accountability of the C&AG
5.7	➢ Nodal Standing Committee on Economy	5.18	➢ C&AG and Economic Reforms
5.8	➢ The Constitution Committee	5.19	➢ M.P. LAD Scheme
5.9	➢ Rationalising the Parliamentary Committees	5.20	➢ Secretariats of Parliament
5.10	➢ Planning of Legislation and Improving its Quality	5.21	➢ Other Procedural Reforms
5.11	➢ Image of the Parliament	5.22	➢ Conclusion

CHAPTER 5

PARLIAMENT AND STATE LEGISLATURES[1]

Need for Review

5.1 Parliament is the pivotal institution of our representative parliamentary democratic polity. Its role in navigating India's voyage in the post-independence period of momentous developments stands in comparison with the best of legislatures anywhere in the world. We can take legitimate pride and comfort from the impressive record of the uninterrupted continuity of our parliamentary institutions for over half a century. However, like all living institutions, Parliament needs to keep under constant review its structural-functional requirements as also the entire gamut of its operational procedures. Also, it has to be remembered that in parliamentary democracy just as Government is responsible to Parliament, Parliament is also responsible to the people who are the supreme sovereign.

Cause for Concern

5.2 If there is a sense of unease with the way the Parliament and the State legislatures are functioning, it may be due to a decline in recent years in both the quantity and quality of work done by them. Over the years the number of days on which the houses sit to transact legislative and other business has come down very significantly. Even the relatively fewer days on which the houses meet are often marked by unseemly incidents, including use of force to intimidate opponents, shouting and shutting out of debate and discussion resulting in frequent adjournments. There is increasing concern about the decline of

[1] See also the Consultation Papers released by the Commission on "Immunity of Legislators: What do the words 'in respect of anything said or any vote given by him' in article 105(2) signify?" and "Efficacy of Public Audit System in India: C&AG" in Volume II (Book 1). Also see the background papers on "Working of Parliament and Need for Reforms" and "Fiscal and Monetary Policies" in Volume II (Book 3).

1206 LJ&CA/2002—12A

Parliament, falling standards of debate, erosion of the moral authority and prestige of the supreme tribune of the people. Corrective steps are urgently needed to strengthen Parliament's role as the authentic voice of the people as they struggle and suffer to realise the inspiring vision of a free and just society enshrined in the Constitution. Also, it is of the utmost importance for survival of democracy that Parliament continues to occupy a position of the highest esteem in the minds and hearts of the people.

Aim and objective

5.3 The most important function of the Parliament and the State legislatures is to represent the people. It is, however, important to remember that in parliamentary polity the legislature has also to provide from within itself a representative, responsible and responsive government to the people. One way to judge whether the system is working well or not is to see whether it has brought into being governments that last their terms and succeed in providing good governance to the community. The overriding objective has to be to make both government and parliament relevant to meet today's challenges which bear little comparison to those faced by our society in the middle decades of the twentieth century. The fundamental challenges are economic and technological. Parliament has a decisive role in refashioning the national economy, keeping in the forefront the ideals of a self-reliant economy that serves the real needs and aspirations of our vast masses. Parliament can play this historic role only if it consciously reforms its procedures and prioritizes its work.

Instability and Defections

5.4 At the State level since the late sixties and in recent years at the Union level also, we have been faced with the phenomena of governmental instability resulting from hung houses and/or unprincipled defections by legislators. For governments all the time preoccupied with the struggle for their survival, it is unfair to expect good governance in the interests of the people. The anti-

defection law in the Tenth Schedule of the Constitution sought to bring about some stability by providing for disqualification of defectors but it failed to solve any problem. Whereas individual defection was penalised, group defection was not. Indeed splits and mergers, defections by other names, were not only not frowned upon, but were encouraged by the lure of ministerial offices to political adventurers and entrepreneurs resourceful enough and adventurous enough to organise group crossovers. The Commission has dealt with this issue in an earlier chapter (Chapter 4) and made a recommendation to ban all defections[2] whether as individuals or in groups.

Hung Houses

5.5 Since 1989, there have been five general elections for Lok Sabha. In all these elections, no single party emerged with a majority of seats in the House. This has aroused considerable concern about political stability, especially in the context of the needs of national development efforts and the far-reaching changes in international economic and security paradigms. The Commission has analysed this issue also in an earlier chapter (Chapter 4) and made its recommendations[3] for amending the relevant Rules of Procedure to provide for the election of the Leader of the House (Prime Minister) by the Lok Sabha and for the removal of the Council of Ministers only on a constructive vote of no-confidence.

Strengthening the Committee System

5.6.1 The initiative first taken in 1989 culminated in 1993 in seventeen Departmental Standing Committees of Parliament. It was a path-breaking innovation that provided the Parliament with the wherewithal to handle complex economic and social issues with growing levels of competence and sophistication. It is in these committees that the demands for grants of the ministries and departments can be examined in depth in an atmosphere of

[2] See para 4.18 supra.
[3] See paras 4.20.7 and 4.33.3 supra

objectivity and freedom from partisan passions. It is here that the legislative proposals of the government can be scrutinised to ensure their consistency with policy objectives and aims and long-term perspectives assessed for their suitability to serve the societal goals. But, more energy and effort would have to go into the task of making these Committees work. Given the enormous importance of these Committees for the effective functioning of the Parliament, it is obvious that a conscious, coordinated and sustained reform of the committee system is the only way of making Parliament a relevant factor in the democratic set up of the future.

5.6.2 The Departmental Committee system as it is functioning today has many shortcomings. The Committees have too many members - each has 45. There is large scale absenteeism; in 1997-98, for example, average attendance was reported to have been less than 50 percent. Most committees oversee more than one ministry, thus preventing more focussed work. Most political parties do not follow any norms while nominating members to these committees. They are also handicapped by lack of specialist advisers. Every committee has tenure of one year. This means members have no opportunity of specialising in a particular subject or group of subjects unless they can persuade their whips to let them continue to serve on a particular committee. This adhocism tells on the quality of work done by the committees whose reports suffer from absence of critical analysis of the work of the ministries under their supervision. Parliamentary oversight, essential for enforcing accountability of the executive, is worse than useless if it degenerates into a meaningless routine. Then it is only adding to the cost of parliament without any benefit to the people. [For a Background Paper on the subject of 'Parliamentary Reforms' including suggestions regarding these committees, see Vol.2].

5.6.3 **The Commission recommends that presiding officers, the minister for parliamentary affairs, and the chief whips of parties should periodically meet to review the work of the departmental parliamentary committees and**

take remedial action. It should be entirely possible for the Parliament to sanction budgets to secure the services of specialist advisors to assist these committees in conducting their inquiries, holding public hearings, collecting data about legislation and administrative details pertaining to countries which have relevance to our conditions.

Nodal Standing Committee on Economy

5.7 In view of the fact that economic policy is the most important topic for the future of our society, it is a major gap in our institutional set up that we do not have a powerful and prestigious committee of parliament to oversee major macroeconomic issues of fiscal, monetary, financial, industrial and trade policies in an integrated manner. Government's handling of critical macroeconomic issues escapes a thorough and well-informed analysis by the Parliament which does not have the benefit of airing of different points of view and perspectives in the context of the data made available by government. The parliament has only the mainstream government view to go by. It has no opportunity to question the major actors on the official scene like the Governor of the Reserve Bank of India or the Chief Economic Adviser to the Government on the major trends in the economy. Due to this lacuna, parliamentary interventions are confined to invocations of the themes of inflation and the like. Most of the members are satisfied by raising issues pertaining to their constituency or at most to their region in their State. This gap needs to be filled.

The Commission recommends that immediate steps be taken to set up a Nodal Standing Committee on National Economy with adequate resources in terms of both in house and advisory expertise, data gathering and computing and research facilities for an ongoing analysis of the national economy for assisting the members of the Committee to report on a periodic basis to the full House. These reports would gradually come to claim the same degree of respect and attention that now attaches to the Economic Survey published annually by the Department of Economic Affairs and

would constitute a valuable reference point for analysts, commentators, researchers, political activists and social workers throughout the country. Since it would be a parliamentary publication, its findings and observations need not be identical with those of the Economic Survey. It would help both government and parliament in orchestrating opinion on important policy issues for building a national consensus, especially in areas where vital national interests have to be forcefully articulated in international fora like the WTO, the IMF and the G-15 or the G-77.

The Constitution Committee

5.8.1 While executive power of the Union is coextensive with its legislative power, the constituent power under the Constitution belongs exclusively to Parliament. The responsibility of Parliament therefore becomes much greater in the case of Constitution (Amendment) Bills. At present all Constitution (Amendment) Bills are introduced in Parliament like ordinary pieces of legislation, often at short notice. Sometimes an important amendment bill may be rushed through the two Houses of Parliament without even a cursory discussion. This does not speak well of the way parliament is exercising its constituent power.

5.8.2 In view of the importance to be attached to the fundamental law of the country, it stands to reason that the process of amending the Constitution should begin with the Parliament. **The Parliament should be associated with the initial stage itself in the matter of formulating proposals for constitutional amendment. The actual drafting should be taken up only after the principles underlyng the amendment have been thoroughly considered in a parliamentary forum and subjected to a *priori* scrutiny by the constituent power.** The proposed involvement of Parliament and a *priori* scrutiny can be achieved through the device of a Standing Constitution Committee. This process will enhance the legitimacy and acceptability of constitutional change. As an alternative, after a Constitutional Amendment Bill has been formulated but before it has been introduced, it may be subject to a *priori* scrutiny of the Constitution

Committee.

5.8.3 The Committee is important from another angle as well. Many laws are struck down as being *ultra vires* the Constitution. It can examine legislation from the point of view of constitutional validity. Furthermore, scrutiny by a parliamentary committee will ensure that legislation purporting to be in furtherance of the Directive Principles does, in fact, have a reasonable nexus with the objectives in view and does not curtail the fundamental rights beyond what is reasonable. **The Commission recommends the setting up of a Standing Constitution Committee of the two Houses of Parliament for a *priori* scrutiny of amendment proposals.**

Rationalising the Parliamentary Committees

5.9.1 **With the proposed establishment of three new Committees, namely, the Constitution Committee, the Committee on National Economy and the Committee on Legislation, it may not be necessary to continue the existing Committees on Estimates, Public Undertakings and Subordinate Legislation.** The topics covered by them could be covered either by the Departmental Standing Committees or by the three proposed Committees. This would rationalise the Parliamentary Committee structure. The development of an integrated system of committees would reduce the pressures on floor time and strengthen parliamentary surveillance over the functioning of the executive and contribute to overall efficiency of public administration.

5.9.2 **The Petitions Committee of Parliament has tremendous potential as a supplement to the proposed Lok Pal institution. It should be made more widely known and used for ventilation, investigation and redressal of people's grievances against the administration.**

5.9.3 **The Commission also recommends that major reports of all Parliamentary Committees ought to be discussed by the Houses of**

Parliament especially where there is disagreement between a Parliamentary Committee and the Government.

Planning of Legislation and Improving its Quality

5.10.1 Our legislative enactments betray clear marks of hasty drafting and absence of parliamentary scrutiny from the point of view of both the implementers and the affected persons and groups. It is as true of the taxation Bills whose intent and exact implications are sometimes not clear even to those who pilot the legislation, as it is of other categories of laws. The bills are often rushed through Parliament with unbelievable speed and then found wanting in one respect or another. **A more systematic approach to the planning of legislation is needed to provide adequate time for consideration in committees and on the floor of the house as also to subject the drafts to thorough and rigorous examination by experts and laymen alike. It is important to ensure that all major social and economic legislation should be circulated for public discussion by professional bodies, business organistions, trade unions, academics and other interested persons.**

5.10.2 The Commission recommends (a) streamlining the functions of the Parliamentary and Legal Affairs Committee of the Cabinet; (b) making more focussed use of the Law Commission; (c) setting up of a new Legislation Committee of Parliament to oversee and coordinate legislative planning; and (d) referring all Bills to the Departmental Related Parliamentary Standing Committees for consideration and scrutiny after public opinion has been elicited and all comments, suggestions and memoranda are in. The Committees may schedule public hearings, if necessary, and finalise with the help of experts the second reading stage in the relaxed Committee atmosphere. The time of the House will be saved thereby without impinging on any of its rights. The quality of drafting and the content of legislation will necessarily be improved as a result of following these steps.

5.10.3 The Commission had issued a consultation paper on Treaty Making

Powers for eliciting public opinion. After examining the responses and full deliberations, the Commission decided to drop the proposals contained in the consultation paper. However, **the Commission recommends that the Parliament may consider enacting suitable legislation to control and regulate the treaty-power of the Union Government whenever appropriate and necessary after consulting the State Governments and Legislatures under article 253 "for giving effect to international agreements".**

Image of the Parliament

5.11.1 **The Parliamentarians have to be like Caesar's wife, above suspicion. They must voluntarily place themselves open to public scrutiny through a parliamentary ombudsman. Supplemented by a code of ethics which has been under discussion for a long time, it would place Parliament on the high pedestal of people's affection and regard.**

5.11.2 Mass media should be encouraged to accurately reflect the reality of Parliament's working and the functioning of Parliamentarians in the Houses. Televising all important debates nationwide in addition to the Question Hours, publication of monographs, handouts, radio, TV, press interviews, use of audio-visual techniques, especially to arouse curiosity and interest of the younger generation, and **regular briefing of the press will go a long way in making people better acquainted with the important national work that is being done inside the historic parliament building.**

5.11.3 A matter affecting the image of our legislators concerns the salaries, allowances and perks that from time to time they vote for themselves. There may be different views on whether our legislators are under-paid or cost too much. **It is a legitimate public expectation that membership should not be converted into an office of lucrative gain but remain an office of service. The Commission feels that the question of salaries, allowances, perks and pensions of law makers should be looked into on a rational basis and**

healthy conventions built.

5.11.4 To ensure that the Parliament and the State Legislatures assemble and transact business for not less than a minimum number of days, **the Commission recommends that the Houses of State Legislatures with less than 70 members should meet for at least 50 days in a year and other Houses for at least 90 days while the minimum number of days for sittings of Rajya Sabha and Lok Sabha should be fixed at 100 and 120 days respectively.**

5.11.5 Recently a parliamentary legislation was initiated seeking to do away with the domiciliary qualification for being chosen as a representative of any State or Union Territory in the Council of States.

The Commission is of the view that the basic federal character of the Council of States (Rajya Sabha) will be affected by this move.

The Commission, therefore, recommends that in order to maintain basic federal character of the Rajya Sabha, the domiciliary requirement for eligibility to contest elections to Rajya Sabha from the concerned State is essential.

Orientation Programmes for New Members

5.12 **Better and more institutionalized arrangements are necessary to provide the much needed professional orientation to newly elected members.** The curriculum should include, among other things, adequate knowledge of the political system, the Constitution, the rules of procedure and conduct of business, practices and precedents, mechanisms and modalities of working of the Houses and the Parliamentary Committees, the rules of parliamentary etiquette, and, what is even more important, the unwritten rules of parliamentary conduct and speech. **The emphasis should be on imparting practical knowledge on how to be an effective member.**

Parliamentary Control through PAC

5.13. At the national and State levels the Public Accounts Committees are the keystone of the arch of parliamentary control of public finances. If the PACs do not function well, financial discipline and accountability will suffer. At present, only a miniscule fraction of the reports submitted to these committees are considered and reported on. It is imperative to evolve a system whereby the PACs consider all reports submitted to them and report to the legislature within a time limit of 12 to 18 months. If necessary, the burden can be shared with the departmental standing committees of the legislature so that the time frame may be observed. For this to happen the number of reports has to be reduced and their content and quality have to be considerably improved. They have to concentrate on substantive issues of critical importance to the financial administration of the country. **The Commission recommends that the findings and recommendations of the PACs be accorded greater weight. A convention should be developed with the cooperation of all major parties represented in the legislature to treat the PACs as the conscience-keepers of the nation in financial matters.**

Parliamentary Control over Borrowing

5.14 Article 292 provides that Parliament may set limits from time to time on the extent of governmental borrowing and guarantees that the Union may resort to on the security of the Consolidated Fund of India. There is a corresponding provision in article 293 relating to States. The Fiscal Responsibility Bill (FRB) currently before the Parliament deals with the set of issues that have posed a threat to financial stability in India. It is a major step in recognizing the gravity of the situation and initiating action to restore the norms of fiscal prudence that had characterized India's policy since Independence. **The Commission endorses the approach contained in the Fiscal Responsibility Bill and would request**

the Parliament to enact it as expeditiously as possible. It seems to the Commission that it may not be necessary to provide for express authority to Parliament to legislate the purposes for which borrowings should be made inasmuch as the FRB does not go beyond the ambit of article 292. The Commission would request the State Assemblies to enact similar legislation as provided in article 293 to put their respective fiscal houses in order. The Commission does not favour any further amendment of article 293(3) with a view to curbing lapses that may have been noticed in regard to borrowings at the State level.

Parliamentary Privileges

5.15.1 Article 105 of the Constitution defines the powers, privileges and immunities of the Houses of Parliament and of the members and committees of the two Houses. The more important of the privileges, namely, freedom of speech in Parliament and immunity of members from any proceedings in any court of law in respect of anything said or any vote given by them in Parliament, are specified in this article. In other respects, powers and privileges of each House, its Committees and its members are, in effect, identical to the powers and privileges enjoyed by the British House of Commons as on 26 January 1950.

5.15.2 The basic law is that all citizens including members of Parliament are equal before the law. The members of Parliament have the same rights and privileges as ordinary citizens except when they perform their duties in Parliament. The privileges do not exempt the members from their normal obligations to society.

5.15.3 The founding fathers envisaged codification of parliamentary privileges by Parliament by law. But so far no law has been made and these privileges remain undefined. It is a somewhat curious situation that even after more than 50 years after the commencement of the Constitution we are unable to lay down precisely by law when a Member of Parliament is not subject to the same legal

obligations as any ordinary citizen is. The only idea behind parliamentary privileges is that members who represent the people are not in any way obstructed in the discharge of their parliamentary duties and are able to express their views freely and fearlessly inside the Houses and Committees of Parliament without incurring any legal action on that account. Privileges of Members are intended to facilitate them in doing their work to advance the interests of the people. They are not meant to be privileges against the people or against the freedom of the press. **The Commission recommends that the time has come to define and delimit privileges deemed to be necessary for the free and independent functioning of Parliament. It should not be necessary to run to the 1950 position in the House of Commons every time a question arises as to what kind of legal protection or immunity a Member has in relation to his or her work in the House.**

5.15.4 The law of immunity of members under the parliamentary privilege law was tested in *PV Narsimha Rao Vs. State (CBI/SPE), (AIR 1998 SC 2120).* The substance of the charge was that certain members of Parliament had conspired to bribe certain other members to vote against a no-confidence motion in Parliament. By a majority decision the Court arrived at the conclusion that while bribe-givers, who were members of Parliament, could not claim immunity under article 105, the bribe-takers, also members of Parliament, could claim such immunity if they had actually spoken or voted in the House in the manner indicated by the bribe-givers. It is obvious that this interpretation of the immunity of members of Parliament runs counter to all notions of justice, fair play and good conduct expected from members of Parliament. Freedom of speech inside the House cannot be used by them to solicit or to accept bribes, which is an offence under the criminal law of the country. The decision of the court in the aforesaid case makes it necessary to clarify the true intent of the Constitution. To maintain the dignity, honour and respect of Parliament and its members, it is essential to put it beyond doubt that the protection against legal action under article 105 does not extend to corrupt acts.

5.15.5 A second issue that was raised in this case concerned the authority competent to sanction prosecution against a member in respect of an offence involving acceptance of a consideration for speaking or voting in a particular manner or for not voting in either House of Parliament. A Member of Parliament is not appointed by any authority. He is elected by his or her constituency or by the State Assembly and takes his or her seat on taking the oath prescribed by the Constitution. While functioning as a Member he or she is subject to the disciplinary control of the presiding officer in respect of functions within the Parliament or in its Committees. It would, therefore, stand to reason that sanction for prosecution should be given by the Speaker or the Chairman, as the case may be.

5.15.6 **The Commission recommends that article 105(2) may be amended to clarify that the immunity enjoyed by Members of Parliament under parliamentary privileges does not cover corrupt acts committed by them in connection with their duties in the House or otherwise. Corrupt acts would include accepting money or any other valuable consideration to speak and/or vote in a particular manner. For such acts they would be liable for action under the ordinary law of the land. It may be further provided that no court will take cognisance of any offence arising out of a Member's action in the House without prior sanction of the Speaker or the Chairman, as the case may be. Article 194(2) may also be similarly amended in relation to the Members of State Legislatures.**

Comptroller and Auditor General (C&AG)

5.16.1 Public audit is a powerful instrument of good governance. It ensures parliamentary control over expenditures voted by the legislature and renders public authorities accountable for the public moneys raised and spent by them to implement policies and programmes approved by the legislature. Accountability and transparency, the two cardinal principles of good governance in a democratic

set-up, depend for their observance, to a large extent, on how well the public audit function is discharged. It is for this reason that the C&AG has been given special status by the Constitution in articles 148 to 152. It is his responsibility to ensure that money is spent and revenue raised not only in accordance with the law, but also with due regard to economy, efficiency and effectiveness. The C&AG is the constitutional authority entrusted with the high responsibility of maintaining probity in the use of public funds.

5.16.2 A view has been expressed that there is excessive centralisation of authority in the existing organisation of the C&AG and that it should be addressed by constituting an Audit Board, comprising of the Comptroller and Auditor-General of India as the Chairperson and such number of members as the President may determine from time to time to facilitate a territorial and/or functional distribution of functions and powers with a view to enhancing the efficiency and effectiveness of the office of the C&AG. **The Commission recommends the constitution of an Audit Board for better discharge of the vital function of public audit, but the number of members to be appointed, the manner of their appointment and removal and other related matters should be dealt with by appropriate legislation, keeping in view the need for ensuring independent functioning of the Board.**

5.16.3 A fairly persuasive school of thought has argued that to uphold transparency and integrity in public life, the appointment of the C&AG should not be the exclusive preserve of the executive but a committee consisting of the Prime Minister, the Union Finance Minister, the Speaker of the Lok Sabha, the Leader of the Opposition and the Chairman of the Public Accounts Committee should be empowered to make the appointment. It is, however, felt that in our situation it would be counter-productive to undermine the constitutional and moral authority of the Prime Minister by stipulating a mechanism that would supplant his decision-making. **The Commission is of the view that no change is needed in the existing provisions of the Constitution insofar as**

appointment of the C&AG and other related matters are concerned. The Commission would, however, recommend that a healthy convention be developed to consult the Speaker of the Lok Sabha, before the Government decides on the appointment of the C&AG so that the views of the P.A.C. are also taken into account.

5.16.4 The considerations that apply at the central level in regard to the functioning of the office of C&AG apply with equal force at the State level. A vast country like ours can ill afford to neglect the legislative oversight of State finances; which in turn requires appropriate legal recognition of the important role of the Accountants General (AGs) to enable them to perform their duties as the friends, guides and philosophers of the State Public Accounts Committees. **The State AGs need to be given greater authority by the C&AG, while maintaining its general superintendence, direction and control to bring about a broad uniformity of approach in the sphere of financial discipline. By the same token, the C&AG should evolve accounting policies and standards and norms for all bodies and entities that receive public funds, such as autonomous bodies and the Panchayat Raj institutions.**

5.16.5 In regard to proposals mooted to confer quasi-judicial powers on audit officers to summon witnesses, to record evidence on oath and to ask delinquent officials to make good the loss sustained by public organizations, authorities or institutions, the Commission feels that the infirmities and deficiencies of the present system in obtaining precise and accurate information in regard to questions and issues formulated by the audit organizations, and subsequent lack of disciplinary action in respect of officials shown to have caused loss of public money, is not so much on account of lack of legal powers of the audit agencies as due to a general atrophy of administrative organisations. Merely providing more legal powers for the present audit functionaries will not restore administrative vitality and vigour needed for prudent and effective implementation of policies in the public realm. This is an issue that is better addressed by

administrative reform than by accumulation of legal powers in the hands of authorities that have not used their already existing powers as well as they should have.

Accountability of the C&AG

5.17 The operations of the office of the C&AG itself should be subject to scrutiny by an independent body. **To fulfil the canons of accountability, the Commission recommends that a system of external audit of C&AG's organization be adopted for both the Union and the State level organizations.**

C&AG and Economic Reforms

5.18 It is necessary to consider what changes are needed in the policies and procedures governing public audit in the light of far-reaching changes that have taken place in the economic policy environment in our country. The growing role of market economy, liberalization of price and exchange controls, beginnings of diversified ownership patterns in entities formerly owned by the State, privatization of State-owned entities, entry of the private sector in areas formerly reserved for State monopolies and the appointment of regulators with authority to lay down tariffs in such areas as power and telecom, operations of public sector undertakings in a competitive environment, demand a new approach. The Commission, however, makes no recommendation in this regard and would only like to draw the attention of the policy makers to it.

M.P. LAD Scheme

5.19.1 The M.P. LAD Scheme places two crores of rupees each year at the disposal of every member of Parliament to be spent on what is called Local Area Development (LAD) at his/her discretion. Similar schemes have been started for state level legislators also. The amount involved is believed to be about three thousand crores of rupees each year. Adverse remarks about the misutilization

1206 LJ&CA/2002—13A

or non-utilization of these funds have been made in the reports of the C&AG. Insofar as these schemes involve the legislators in exercise of executive powers, they militate against the demarcation of responsibilities between the legislature and the executive. Also, almost all the items on which the funds under the MP LAD Scheme are to be spent are in the State List and, in fact, many are in the Eleventh and the Twelfth Schedules. The role of a Member of Parliament must undergo some change as a result of Panchayat Raj institutions taking charge of some local matters. The MP LAD Scheme is inconsistent with the spirit of federalism and distribution of powers between the Union and the States. It also treads into the areas of local government institutions.

5.19.2 **The Commission recommends immediate discontinuance of the MP LAD Scheme as being inconsistent with the spirit of the Constitution in many ways.**

Secretariats of Parliament

5.20.1 No law has so far been passed under article 98(2) to regulate the recruitment and the conditions of service of persons appointed to the secretarial staff of either House of Parliament. The Constitution provides for such a law being passed and it would be desirable to do so. **The Commission recommends that legislation envisaged in article 98(2) be undertaken to reorganise the Secretariats as independent and impartial instruments of Parliament, with special emphasis on upgrading professional competence.** Parliament does not need a big staff. It needs a small staff of high calibre. If this matter is not taken in hand now, chances are that the professional quality of staff recruited to serve Parliament will suffer. Moreover, their independence and impartiality may on occasions be questioned.

Other Procedural Reforms

5.21.1 Some of the archaic practices and time-consuming procedures may not be

1206 LJ&CA/2002—13B

suitable to present day needs of parliamentary institutions. A number of small but effective reforms can be carried out to make the functioning of Parliament more efficient and economical. These are not spectacular things that catch headlines, but solid, modest steps that build up to an efficient use of time and to a bigger focus on substantive discussions on policy and legislation. They have to do with reorganisation of parliamentary time table, the question hour, the 'Zero Hour', adjournment motions, absenteeism etc.

5.21.2 It would be useful to reform the budgetary procedure for streamlining the work of Parliament.

5.21.3 The number of days on which voting is considered essential should be reduced to the barest minimum and the time for such voting in a given session be fixed in advance with appropriate whips requiring full attendance of members.

5.21.4 Also, to ensure better scrutiny of administration and accountability to Parliament, parliamentary time in the two houses may be suitably divided between the government and the opposition.

5.21.5 As a general guideline, members have to ensure that the houses of Parliament are allowed to run and conduct their business with dignity and decorum in order to most vigorously exercise vigilance, surveillance and control over the government. Anything that makes the houses dysfunctional is a disservice to the basic values of parliamentary polity. At the same time it has to be realised and accepted by all concerned that the purpose of rules of procedure etc. is to enable and facilitate members to freely and fearlessly express themselves on the floor of the house. It is not to prevent them from having their say. **The best way to deal with issues of procedural reforms in a professional (and not political) manner is to have them studied by a Study Group outside Parliament as was done in U.K. The conclusions and suggestions of the Group can be considered by the Rules Committees of**

the houses of Parliament. The Commission recommends the setting up of a study Group of Parliament outside Parliament.

5.22 ***Conclusion:*** Our parliamentary institutions have much to be proud of. They have come through periods of exceptional stress and strain with positive achievements. One of the most important gains of the working of the Constitution during the last half-a-century and more has been that the habit of parliamentary institutions and democracy have struck deep roots in our country and society. Parliament has played the role of a great unifier amid all the diversities. The Parliament is the guardian of our great traditions of national unity, democracy and secularism. The Commission cognisant of this vital truth has ventured to suggest only for the consideration of Parliament a few areas of action to strengthen its hands for the challenging tasks that lie ahead.

CHAPTER 6

EXECUTIVE AND PUBLIC ADMINISTRATION

CONTENTS

6.1 ➢ The Constitution and articulation of goals of governance

6.2 ➢ Conceptual Weaknesses & failure to ensure socio-economic goal

6.3 ➢ Devolution, Decentralization and Democratization

6.4 ➢ District as the unit of Development Administration and Planning

6.5 ➢ Civil Society

6.6 ➢ Administrative Reforms and All India Services

6.7 ➢ Modernizing the Civil Services – Creation of new Services and curtailment of undue safeguards

6.8 ➢ Central Administrative Tribunal

6.9 ➢ Union Public Service Commission

6.10 ➢ The Right to Information

6.11 ➢ Freedom of Information Bill, 2000

6.12 ➢ Challenge of Globalisation

6.13 ➢ Common Market

6.14 ➢ Duality in Foreign and Domestic Policies

6.15 ➢ The Institution of the Prime Minister

6.16 ➢ Probity in Governance

6.17 ➢ Misfeasance in Public Office

6.18 ➢ Liability in Tort

6.19 ➢ Benami Transactions (Prohibition) Act, 1988

6.20 ➢ Confiscation of illegally acquired assets

6.21 ➢ Lok Pal Bill

6.22 ➢ Central Vigilance Commission

6.23 ➢ Status of Lokayuktas

6.24 ➢ Commissions of Inquiry

CHAPTER 6

EXECUTIVE AND PUBLIC ADMINISTRATION[1]

The Constitution and articulation of goals of governance

6.1 The Constitution of India has clearly articulated the social and economic goals and has specified agents for achieving the promised social revolution. Matters concerning formation and working of the executive agencies (both political and civil) are spelt out. Citizens have been assured that the Executive together with other organs of the State (Legislature & Judiciary) would uphold their rights and remove the inequities from which the anti-democratic forces derive their sustenance. Good Governance, it was hoped, would transform the social, political and economic life of the people, within the framework of democracy.

Conceptual Weaknesses & failure to ensure Socio-Economic goals

6.2.1 In the beginning the constitutional arrangements relating to governance worked more or less to general satisfaction and provided the people with a fairly safe and secure life. However, as time passed their inadequacies have become evident and Government has lost its élan as it has failed to live up to the expectations of the Constitution to give real substance to the policies designed to promote social well being. Even the most modest expectations have remained unfulfilled.

6.2.2 The present situation is characterised by a pervasive disenchantment with the way things have worked out. It is futile to debate whether it is the institutions provided by the Constitution that have failed or whether the men who work these institutions have failed. While we cannot abolish the men and the women who command the strategic heights of governance, we can

[1] See also the Consultation Papers on "Efficacy of Public Audit System in India : C&AG", "Probity in Governance" and "Liability of State in Tort" in Volume II (Book I) and the Background Paper on "Some ideas in Governance" in Volume II (Book-3).

improve and update the present Institutions, which have developed visible fault lines.

6.2.3 Inability to ensure the socio-economic goals cannot be attributable to scarcity of resources but to the failure of Governance. It is the insufficient attention paid to such a transformation that has deepened the fissures between the people and the administration. The failure to regenerate society lay in the basic conceptual weakness that encouraged the untested assumption that people are best served when the ruling classes originate, execute and administer policies, plans and programmes for their welfare from above. This misconceived paternalism has reinforced the tyranny of the *status quo* and has gravely weakened forces of change. The 'Law and Order' pre-occupation of the bureaucratic mind has led to the entrenchment of the system that the Constitution had promised to transform.

6.2.4 Another fundamental flaw vitiating governance emanated from the lack of conviction that the consent of the people is the basis of democratic government. The over-arching theme, a legacy from the colonial days, that people remain a passive category subjects rather than citizens remained firmly rooted on official mind. People were aroused only at intervals of five years or there about to choose their rulers and to go back again to a life of political passivity. Political mobilisation of masses mostly remained neglected. This produced all manner of infirmities and has given rise to alienation of the people from the political system.

6.2.5 Rights of the people are inalienable. The words **"We, the people"** signify not only the moral and historical insight of founding fathers but they serve to reaffirm they are the source of all constitutional authority and that the test of Good Governance was measure of people's well being. However, the functionaries of the State have failed to realize that they are servants of the people and not their masters. Test of a vibrant democracy is the degree of success in calling its Executive to be accountable to the people.

6.2.6 The new administrative class, working under the mesmeric spell of colonial attitudes, was reluctant to consider the people as citizens. They continued to treat them as subjects or '*ryots*' both owing allegiance to a superior master. This denial robbed them of power and made it possible for the Executive to diminish the significance of the people. It is the possession of power that gives people control over their destiny and authority over those whom they have chosen to serve them.

6.2.7 Another fundamental flaw in governance outlined above is inherent in the centralized nature of the Indian State which lays down the parameters of the administration. There is an indissoluble link between the two. This was evident when the norms of colonial administration, with their long ancestry, came early to stamp their features on the post-independence dispensation. Colonial administration had created a top-down system of command and obedience in which State and local units of government were treated as subordinate to the Central Government. There is no reason why the Central Government should have large and unwieldy ministries handling subjects like education, health, agriculture, rural development, social welfare, industry, power, etc. when these areas can more conveniently and appropriately be handled at the State, regional or district levels. The Centre can at best be a clearing house of ideas and knowledge but for it to be actually involved in shaping policy and in allocation of resources is an over-lapping of jurisdiction. Reallocation of subjects from the three Lists given in the Seventh Schedule could be looked into in this context. Downsizing of the Government should also follow. Big Governments are not always conducive to efficiency and promptness. People should know where the buck stops. But it should always be kept in view that when the Centre does not hold, societies become polarised.

6.2.8 Democracy implies intellectual acceptance of the position that self government is better than even good governance. Unless self government is ensured by clear devolution of power from the centre to the periphery, people are prevented from participation in Governance. They can not eliminate arbitrariness in executive actions which generally tilts the balance in favour of

the privileged. Moreover the 'top-down' state of affairs does not legitimise self-government' which is of primordial value. 'Top-down' administration stifles public initiative. To make people effective they must consciously enjoy and assert their constitutional entitlements and not be mere supplicants for or objects of administrative largesse. That is the rationale of the 73rd and 74th amendments to the Constitution. A strong sense of public duty comes from empowerment. People's attitude changes from one of obedience to authority to active participation in governance. It is only when the gap between the executive and the people is narrowed down through decentralisation that democratisation can occur. The whole configuration of governance changes if democratic order is conceived not as a 'once in five year ritual' of changing the guard but as a continuous renewal of democratic life from a knowledgeable and participative citizen body. A citizen as a political and social unit could alone take responsibility for transformation of the state of the society. The essence of the matter is that there should be effective participative democracy at all levels; once people become the fountainhead of power, their role in governance becomes meaningful and effective. It encourages an active sense of public duty, replacing emphasis from authority and obedience to active participation. **The Commission holds that while improving the nature and institutional response of administration to the challenges of democracy is imperative, the system can deliver the goods only through devolution, decentralisation and democratisation thereby narrowing the gap between the base of the polity and the super structure.**

Devolution, Decentralisation and Democratisation

6.3 The new architecture of governance has to be built on the basis of devolution of authority, responsibility and resources to appropriate levels. If corresponding dispersion of resources and personnel is not accompanied with devolution of authority it perpetuates mentality of dependency. Resources do not mean only financial resources. Human resources are as important. Experience shows that monitored and supervised by the local authorities, who are also their employers, the professionals at the district and

local levels have performed better. If a primary school teacher looks to a distant education director for his promotion or any other improvement in his conditions of service, he is not going to be accountable and responsive to the needs of the local community he is supposed to serve. This simple example brings to the fore the question of the present structure of social and economic services and how it needs to be remodelled or refashioned to bring it in line with the requirements of the age of decentralization. There is no reason why the District Councils cannot recruit, train, manage cadres of school teachers, supervisors, administrators for primary and secondary education leaving the areas of high speciality to professionals like curriculum developers. Coordination functions can be handled by regional or state level bodies. Similar logic can be applied in regard to other services which are needed at the district levels and it can be extended upwards to the State level.

District as the unit of Development Administration & Planning

6.4.1 What is urgently required at this juncture is a straightforward recognition at the highest policy level that a district is a basic unit of planning for development – social, cultural, economic and human. **Functions, finances, and functionaries relating to such programmes would have to be placed under the direct supervision and command of elected bodies at the district levels of operation to give content and substance to the different programmes of development and public welfare. This would to a substantial degree, correct the existing distortions and make officials directly answerable to the people to ensure proper implementation of development programmes under the direct scrutiny of people.**

6.4.2 Land is the most valuable natural resource whose planning and development offer major prospects for increases in output and incomes for the people, especially for those who are near or below the poverty line. For efficient land planning and optimum use, it is essential that there be clarity and certainty about title to land. In India land records are in a very poor shape and there is maximum litigation in the rural areas about ownership. It has been estimated by reputed agencies that India loses 1.3 per cent

economic growth as a result of disputed land titles, which inhibits supply of capital and credit for agriculture. It is therefore exceedingly important that a fundamental change is brought about in the way land records are maintained. At present land records are presumptive in character. In August 1989, the Supreme Court stated that "revenue records are not documents of title". Millions of productive man-hours are lost in time consuming litigation. **The Commission recommends that we move to a system where the State guarantees the title to land after carrying out extensive land surveys and computerizing the land records. It will take some time but the results would be beneficial for investment in land. This will be a major step forward in revitalizing land administration in the country as it would enable Right to access, Right to use, Right to enforce decisions regarding land. Similar rationalization of records relating to individuals rights in properties other than privately held lands (which are held in common) would improve operational efficiency which left unattended foment unrest. The Commission is of the view that a coherent public policy addressed to the modern methods of management would contribute to better use of assets and raise dynamic forces of individual creativity. Run away expansion in bureaucratic apparatus of the State would also get curtailed by new management system.**

Civil Society

6.5.1 Dispersal of power through local autonomy maximizes opportunities for popular participation and helps change the nature of the relationship between the State and civil society. Instead of being merely passive recipients of welfare, citizens become active agents. A democratic society cannot function properly if everything in it is left only to the State or even to statutory bodies. Statutory action itself will be infructuous if it is not underpinned by voluntary action. The exercise of political power through civil society opens the way for concomitant democracy. Civil society consists of open and secular institutions that mediate between the citizen and the State. In the absence of civil society, the State machinery and civil servants become the dominant repository of power. The modern idea of civil government requires

emergence of civil society which would make people self-reliant rather than remain dependent on State institutions and subject to their all pervasive control.

6.5.2 One of the marked weakness of the present regime has been its failure to effectively play its role in the socializing process. It has failed to use the machinery of the state to create a society of equals founded on the principles of social justice, secularism and eradication of casteism. In this regard, the situation of the Dalits and backward castes points to glaring failure of the state. In spite of several programmes launched by it, the state has failed to energetically lift up the Dalits and members of other lower castes and also failed to liberate a large sections of society from gender discrimination. As the executive has overwhelmingly identified itself with the stratified sections of the privileged few, it remained insensitive to the calamities that befell the weaker sections of the society and reluctantly took steps to repel the most injurious actions perpetrated against them. Large sections of these people remained docile, submissive, passive and tame. Piecemeal changes improved the conditions slightly, but the very spirit of the people by which the Constitution was to be sustained continued to rap.

6.5.3 It is the civil society that has to take the lead in helping create a society based on principles of social justice, secularism and non-casteist approaches to social action. It should be one of the serious endeavours of civil society to strengthen the mosaic of India's pluralism and not let it be broken up lest endless tensions and increasing violence come in the way of peoples' progress. In India the relationship between the civil society and the State may have moved some distance from distrust and antagonism to a more tolerant status but the continuing ambivalence comes in the way of a full blown cooperation for chosen ends.

6.5.4 The procedures and the processes adopted for executing policies supposedly designed to help the poorer sections to regain control over their social and economic circumstances have accentuated the distance between the haves and the have-nots. The barriers come not only from old vested interests but also from new sources of privilege. The instrumentalities of the

State appear substantially inadequate to cope with the challenge of change. In fact some of the institutional devices intended to be remedial measures against inequities had regressive consequences reinforcing socio-economic barriers. In several cases, programmes adopted by the administration to handle issues of inequity failed to deliver. Bureaucracy cannot deliver unless countervailing power of the interest group most directly involved is harnessed. **The Commission recommends that energetic efforts be made to establish a pattern of cooperative relationship between the State and associations, NGOs and other voluntary bodies to launch a concerted effort to regenerate the springs of progressive social change. State and civil society are not to be treated antithical but complementary.**

Administrative Reforms and All India Services

6.6.1 The structural problem of two of the All India Services, namely, the Indian Administrative Service and the Indian Police Service, is that they were founded on the imperial idea of territorial control. It was at the district level that the Raj became an operational reality. This colonial idea was not abandoned when the country became independent for reasons which emerge clearly from the Constituent Assembly debates. Thus the present structure of the All India Services would appear to be incompatible with the development of full fledged democratic representative government at the district level. In plain language it means that 'law and order' has also to be brought within the ambit of the elected district panchayat which is constitutionally entrusted with responsibility for developmental activity. It is only thus that public service at the district level would acquire significance and be the real stepping stone for political leadership at higher levels.

6.6.2 The absence of clear cut relationship between the people and the state functionaries is responsible for much which has gone wrong. All this happened because, inadvertently or otherwise, we allowed the colonial legacy of administration to continue to hold sway in the post-independence era as well. For instance, the change of nomenclature from ICS to IAS did not even

constitute a cosmetic change. The so-called 'steel frame' of the British Empire became the role model for the fledgling IAS fraternity. The '*guru mantra*' of the old guard, viz, the I.C.S., was the maintenance of the *status quo* and the new guard, viz. the IAS, was only too willing to oblige and follow suit. It is a naïve hope to expect status quoist to initiate or welcome changes for a variety of reasons. First, they have a vested interest in perpetuating their dominant advantageous position along with the privileges flowing from it. Second, being bureaucrats rather than intellectual leaders, they lack the vision and imagination to devise new and innovative policies, preferring to tread the beaten track, follow precedents and to continue familiar programmes.

6.6.3 The end of the imperial continuum in the administrative set up may require a different conception of the generalist services. The brightest university graduates who wish to enter the Indian Administrative Service could then be trained in a variety of subjects having to do with the economic and financial administration of the States and the Union and policy making in higher branches of administration such as security, science and technology, international trade, international monetary system, alternative approaches to energy and environmental issues, social and economic issues connected with affirmative action, etc. to constitute a truly elite corps of administrators. They would be mobile within defined fields but would not perform the present generalist jig of moving from animal husbandry to defence or to women welfare which makes a total mockery of any concept of administrative policy making in the present age of knowledge explosion.

Modernizing the Civil Services – Creation of new services & curtailment of undue safeguards

6.7.1 Arbitrary and questionable methods of appointments, promotions and transfers of officers by political superiors also led to corrosion of the moral basis of its independence. It has strengthened the temptation in services to collusive practices with politicians to avoid the inconvenience of transfers and to gain advantages by ingratiating themselves to political masters. They would do the politicians' biddings rather than adhere to rules. Lest the

situation becomes more vicious, it is necessary that a better arrangement be conceived under the Constitution. The question of appointments, transfers and placements is not to be left to the discretion of the politicians or administrative bosses but be entrusted to independent and autonomous boards. **The Commission, therefore, recommends that the questions of personnel policy including placements, promotions, transfers and fast-track advancements on the basis of forward-looking career management policies and techniques should be managed by autonomous Personnel Boards for assisting the high level political authorities in making key decisions. Such civil service boards should be constituted under statutory provisions.** They should be expected to function like the UPSC. Reputed management experts from institutes of management, well known for their excellence, should be inducted into these boards to provide a broad based pool of expertise. The principle is not to take politics out of personnel policy but to make knowledge and information institutionally available to the political decision-makers on the basis of appropriate parliamentary legislation under article 309. **The sanctity of parliamentary legislation under article 309 is needed to counteract the publicly known trends of the play of unhealthy and destabilizing influences in the management of public services in general and higher civil services in particular.**

6.7.2 **Above a certain level--say the Joint Secretary level-all posts should be open for recruitment from a wide variety of sources including the open market. We should specialize some of the generalists and generalize some of the specialists through proper career management which has to be freed from day to day political manipulation and influence peddling.**

6.7.3 Social audit of official working would be another way of developing accountability and answerability. **Officials, before starting their career, in addition to the taking of an oath of loyalty to the Constitution, should swear to abide by the basic principles of good governance. This would give renewed sense of commitment by the executives to the basic**

tenets of the Constitution. It is important to recognize that change in existing policies and procedures will not come from the initiatives of those who stand to benefit from the existing arrangements. It needs the combined efforts of political avant-garde, activists in diverse fields, academic, and civil society institutions to generate pressures for change. Otherwise institutional decay will proceed apace with distressing consequences.

6.7.4 Systematic debasement as a consequence of high handed conduct by certain sections of the executive has seriously dented the moral authority of the government. The functioning of the civil and police services have been far from satisfactory. Hence a negative perception of the Police that it ill serves the people has become deeply rooted in the psyche. The letter of the law may have been observed, but the spirit has been emasculated. Corruption and illegality have vitiated the course of justice. All this has contributed to a massive decline in the prestige of the public office. Evidence of moral and professional failure of administrative apparatus is too overwhelming to ignore. Yet the services have remained largely immune from imposition of penalties due to the complicated procedures that have grown out of the constitutional guarantee against arbitrary and vindictive action (article 311). The constitutional safeguards have in practice acted to shield the guilty against swift and certain punishment for abuse of public office for private gain. A major corollary has been erosion of accountability. **It has accordingly become necessary to re-visit the issue of constitutional safeguards under article 311 to ensure that the honest and efficient officials are given the requisite protection but the dishonest are not allowed to prosper in office. A comprehensive examination of the entire corpus of administrative jurisprudence has to be undertaken to rationalize and simplify the procedure of administrative and legal action and to bring the theory and practice of security of tenure in line with the experience of the last more than 50 years.** The need is not to discourage the good people; the need is to discourage the bad people which objective can be served only by sufficient and speedy procedures to bring the guilty to the book.

6.7.5 The present methods of evaluation of performance need drastic reform. At present neither the quantity nor the quality of output of individuals and collective units is properly measured. The result is that the good, the bad and the indifferent are all lumped together. Mostly chronology determines who goes ahead and who does not. **The civil service regulations need to be changed radically in the light of contemporary administrative theory to introduce modern evaluation methodology.**

6.7.6 The administrative structure and systems have to be consciously redesigned to give appropriate recognition to the professional and technical services so that they may play their due role in modernizing our economy and society. **The specialist should not be required to play second fiddle to the generalist at the top. Conceptually we need to develop a collegiate style of administrative management where the leader is an energizer and a facilitator, and not an oracle delivering verdicts from a high pedestal.**

6.7.7 **It is essential to bring forward a parliamentary Bill under article 312(1) and to have it extensively debated in professional circles as well as by the general public.**

6.7.8 The professional bodies like the Institution of Engineers, the Chartered Accountants, Medical Council, Bar Council of India, etc. which could have played a vital role in buttressing the role of civil society in governance have been content to act as lobbyists fighting for benefits to their constituency but not much else beyond narrow self-interest. Thus we have arrived at a situation in the judicial administration where courts are deemed to exist for judges and lawyers and not for the public seeking justice.

Central Administrative Tribunal

6.8 The Central Administrative Tribunal and various State Administrative Tribunals were established under the Administrative Tribunals Act, 1985 which was enacted in pursuance of article 323A of the Constitution. Since their decisions are subject to the supervisory jurisdiction of the High Courts, a

suggestion was made that the institutions of these tribunals had not served the purpose for which they were established. The Commission examined the matter with reference to the actual results and felt that there is a case for their continuance.

Union Public Service Commission

6.9 The Commission has carefully examined the suggestions made by a delegation of UPSC Members led by their Chairperson in regard to the proviso to article 320, the jurisdiction of the UPSC and its reports, the rank of the UPSC Members, the composition of UPSC and its powers regarding recruitment of its own personnel. It feels that some suggestions like laying of the UPSC reports on the table of each House of Parliament can be implemented through executive orders. Others depend on development of healthy conventions regulating the relations between the UPSC and the executive branch. The Commission does not see any need for change in the existing provisions concerning the UPSC (or other Public Service Commissions).

The Right to Information

6.10 Major assumption behind a new style of governance is the citizen's access to information. Much of the common man's distress and helplessness could be traced to his lack of access to information and lack of knowledge of decision-making processes. He remains ignorant and unaware of the processes which vitally affect his interest. Government procedures and regulations shrouded in a veil of secrecy do not allow the clients to know how their cases are being handled. They shy away from questioning officers handling their cases because of the latter's snobbish attitude and bow-wow style. **Right to information should be guaranteed and needs to be given real substance. In this regard, government must assume a major responsibility and mobilize skills to ensure flow of information to citizens. The traditional insistence on secrecy should be discarded. In fact, we should have an oath of transparency in place of an oath of secrecy. Administration should become transparent and participatory.**

Right to information can usher in many benefits, such as speedy disposal of cases, minimizing manipulative and dilatory tactics of the babudom, and, last but most importantly, putting a considerable check on graft and corruption.

Freedom of Information Bill, 2000

6.11 The object of the Freedom of Information Bill, 2000 now pending before Parliament is to promote transparency in government activity. The public has a right to know what decisions are being taken and why. Dissemination of information about policies and actions in the public realm leads to a more accountable government. This deserves full support. **The Commission recommends that the Union Government should take steps to move the Parliament for early enactment of the Freedom of Information Legislation. It will be a major step forward in strengthening the values of a free and democratic society.**

The Challenge of Globalisation

6.12 The advent of globalisation presents a new series of challenges to the administration. Activated by technological improvements, a new international relationship of our interests across issues and boundaries has come into being. Trade and financial developments have tightened to mesh the economic linkages across boundaries and regardless of preferences. The new state of affairs just cannot be wished away but must be engaged with. We should build up expertise to ensure that the interests of our country and the people are not overwhelmed by the forces of globalisation. We must evolve our foreign and domestic policies to control our future. We cannot mortgage our interests nor can our security be left to the mercy of others. Government cannot abdicate its responsibility to affect international events and conditions to our advantage. Without the capacity to handle this new situation, we would be striking empty postures and would fail to seize the opportunity to develop in the context of globalisation. The executive of the State should learn to anticipate global developments and endow our policy

with more knowledge-packed inputs to handle them to our advantage. At the same time, the aim has to be to tap the wellsprings of patriotism and give our people a sense of patriotic duty to harness the energy for economic and social development to spearhead programmes and develop national pride and self-confidence. Mass political education and raising of political consciousness become inescapable. This is the task to be performed by political parties. **To remain actively involved in new development programmes the people would also need the support of well organized, well prepared, knowledge-oriented personnel and well thought out policies. Think-tanks and organized intellectual groups would have to be promoted through state funding, etc. without abridging their autonomy.**

6.12.1 The survival and competitiveness in the emerging global economic order requires resources that are knowledge based and outcomes which are knowledge driven. **It is, therefore, recommended that the Union Government having regard to the importance of the higher scientific and technological research should have an apex body called the National Science and Technology Commission as an umbrella organization for policy making, planning, promoting and funding of higher scientific and technological research. This is necessary that such a body should have the Prime Minister as its Head.** However, National Commission on Science and Technology will retain the distinct identity from the Departments/Organization of Atomic Energy, Space, Defence Research and Development, Scientific and Industrial Research, Bio-Technology, Ocean Development, etc. Their present internal structures, some of whom have the management structure of Commissions with delegated powers, will not be disturbed but the Commission will deal with overall common issues bringing about greater co-ordination and integration in planning, promoting, policy making, funding and securing unified vision of the future and the future technologies. **The Commission should also take into account the funding priorities in the private sector and provide over all policy guidance. The principal functions will include evaluation of science and technology policy for the country, evaluation of the models of appropriate**

managerial structures in scientific/research organizations and responsibility for rationalizing allocation of funds. The Commission, therefore, recommends that a funding pattern for investment of about 2% of the GNP exclusively for scientific and technological research and development needs to be examined.

Common Market

6.13 A major achievement since the attainment of freedom has been the creation of a common Indian market that approaches in size to some of the biggest markets in the world. This is the foundation of our political unity. Anything that weakens or threatens to weaken or destroy India's political unity has to be prevented. Therefore, no unit of the Union can be empowered to weaken the foundation of the common market. However the Commission has recommended certain measures in para 8.8.2 to remove the barriers to smooth flow of goods and services which would reflect a seamless flow of inter-state trade and commerce.

Duality In Foreign and Domestic Policies

6.14 The structural problems of foreign policy would be to constantly aim at making the best possible use of the international order and use it to our advantage. **In the country's governance, the duality of foreign and domestic policy should end.** The two should not be antithetical. A serious effort is required to combine the two to recast relations and launch a creative initiative to achieve strategic partnerships the world over on the principles of inter-dependence without domestic interests being relegated to the background. **This calls for a thorough change in the form, working and structuring of Foreign Affairs mechanisms including the External Affairs Ministry. Foreign policy implementation is now more than mere diplomacy. It calls for cutting through the mind-set of a generation.**

The Institution of the Prime Minister

6.15 The question of prerogative of the Prime Minister in the Parliamentary System to advise the dissolution of the House was raised. It was urged that

one of the methods of restoring stability and cohesion of functioning in Parliamentary system of Government was to strengthen the Institution of the Prime Minister and one of the ways of doing so is to empower the Prime Minister to advise dissolution of the House whenever he thinks that House has exhausted its mandate and a fresh appeal to the electorate is called for. The proposition as raised contemplates such a power in the Prime Minister even after he has lost confidence of the House. This proposition has the familiar ring of the Parliamentary convention in Britain. One learned Member was strongly of the view that recognition of such a power in the Prime Minister would impart much needed stability to the political system in the country and would enable the Leader of the House to address determinedly towards issues of development, national security etc.

On a consideration of the matter, the Commission is of the view that the present constitutional position needs no modification.

Probity In Governance

6.16.1 Integrity in the widest sense of the term, in the holders of public offices is what distinguishes a good public administration from a bad one. There may be other indicators but in the absence of integrity other competencies are not capable of yielding the desired results. Integrity is much more than financial honesty in official dealings. Unless public office is regarded as a trust that a public servant holds for public good, even the most enlightened policies for promoting the welfare of the society will not work. How to restore this ethical and moral dimension to public life in India is one of the most crucial issues of governance at present.

6.16.2 We cannot hope to succeed in this endeavour if we rely solely on legislation. For instance, the spirit of cooperative, team work, helping the deprived and the weak to obtain the protection and the benefit of the law require a vigorous social and political movement to really become part of our work culture and social behaviour. However, we should at the same time block some of the escape routes that the dishonest find to their advantage in the existing laws.

6.16.3 One of the measures adopted in several western countries to fight corruption and mal-administration is enactment of Public Interest Disclosure Acts which are popularly called the Whistle-blower Acts. **Similar law may be enacted in India also. The Act must ensure that the informants are protected against retribution and any form of discrimination for reporting what they perceived to be wrong-doing, i.e., for *bona fide* disclosures which may ultimately turn out to be not entirely or substantially true.**

Misfeasance in Public Office

6.17 The current situation is that public servants cannot be held personally responsible for their arbitrary, malicious, and outrageously unfair actions that cause injury to the public and loss to the State. A person can be detained illegally and subjected to unauthorised violence in custody, resulting in death, without any individual being called to account and having to pay damages for this patently illegal and arbitrary action. Other such examples can be cited. There is no law at present that defines the principles on the basis of which misfeasance can be rendered punishable. Time has come to consider framing a law that would place responsibility on public servants for damages/compensation for patently *mala fide* actions. The basis for action under the law may be an audit report or a report by a commission, committee or body competent to examine the relevant facts. **The Commission recommends that the Government examine the proposal for enacting a comprehensive law to provide that where public servants cause loss to the State by their *mala fide* actions or omissions, they would be made liable to make good the loss caused and, in addition, would be liable for damages.**

Liability in Tort

6.18 The Commission had issued a consultation paper on 'Liability of State in Tort' for eliciting public opinion. After considering the responses and fully

discussing the matter, the Commission decided that no recommendation in regard to the suggestions made in the consultation paper was necessary.

Benami Transactions (Prohibition) Act, 1988

6.19 This law was enacted to penalise public servants and others who acquire property in a clandestine manner out of ill gotten money. The property thus acquired stands in the name of others but the real beneficiary is the person who has used illegitimate funds to acquire it. The law provides that *benami* properties can be acquired by the government without any compensation. But this provision which is under Section 5 can be implemented only if rules are made under Section 8 for prescribing the authority, the manner and procedure for acquiring *benami* properties by the State. Such rules have not been made so far. **The Commission recommends that the Union Government frame rules, without further loss of time, under Section 8 of the Benami Transactions (Prohibition) Act, 1988 for acquiring *benami* property and that a law be enacted to provide for forfeiture of benami property of corrupt public servants as well as non-public servants.**

Confiscation of illegally acquired assets

6.20.1 The Supreme Court has urged in *Delhi Development Authority v. Skipper Construction Co. (P) Ltd*[2]., a well known case of abuse of authority and corruption, that "...a law providing for forfeiture of properties acquired by holders of public offices (including the offices/posts in the public sector corporations) by indulging in corrupt and illegal acts and deals, is a crying necessity in the present stage of our society." **The Commission recommends that Government examine enacting a law for confiscation of illegally acquired assets on the lines suggested by the Supreme Court.**

6.20.2 **There is perhaps no need to set up an additional independent Authority to determine this issue of confiscation. There is already,**

[2] AIR 1996 SC 2005

under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, (SAFEMA) 1976, a Tribunal to deal with similar situation arising out of other statutes. The same Tribunal may be conferred additional jurisdiction to determine cases of confiscation arising out of the Benami Transactions (Prohibition) Act, 1988 and the Prevention of Corruption Act, 1988, (as may be amended) and other legislations which empower confiscation of illegally acquired assets. The Tribunal will exercise distinct and separate jurisdictions under separate statutes.

6.20.3 **The Commission also recommends that the Prevention of Corruption Act, 1988 be amended to provide for confiscation of the property of a public servant who is found to be in possession of property disproportionate to his/her known sources of income and is convicted for the said offence. In this case, the law should shift the burden of proof to the public servant who was convicted. In other words, the presumption should be that the disproportionate assets found in possession of the convicted public servant were acquired by him by corrupt or illegal means. A proof of preponderance of probability shall be sufficient for confiscation of the property. The Commission recommends that the law should lay down that the standard of proof in determining whether a person has been benefited from an offence and for determining the amount in which a confiscation order is to be made, is that which is applicable to civil cases, i.e. a mere preponderance of probability only. A useful analogy may be seen in Section 2(8) of the Drug Trafficking Act 1994 in United Kingdom.**

Lok Pal Bill

6.21.1 The Lok Pal Bill has a long and chequered history. An agency like the Lok Pal would help forces working for a cleaner government. The most recent Bill introduced in Parliament is the Lok Pal Bill 2001, introduced in the Lok Sabha on 14 August, 2001. It follows the pattern of the 1998 Bill especially insofar as it includes the Prime Minister within its purview. The Commission has carefully examined the point relating to the inclusion of the Prime Minister

within the jurisdiction of Lok Pal. In the parliamentary system, the Prime Minister occupies a unique position. He is the kingpin of the entire governmental structure. It is his personality, his image and his leadership that drives the government and, indeed, other major institutions of the State. Major threats of destabilisation and subversion of democratic governments cannot be ignored. In this context, the Prime Minister as the symbol of the stability and continuity of the regime, should not be exposed to the risks of well orchestrated and well planned attempts to malign his image and reputation on which the entire functioning of government depends. The entire structure can be undermined by malicious character assassination. **The Commission recommends that the Constitution should provide for appointment of Lok Pal. It also recommends that the Prime Minister should be kept out of the purview of the Lok Pal.**

6.21.2 With the above amendment, the Lok Pal Bill needs to be expeditiously considered and passed by Parliament. If possible, it may be further strengthened by providing that its findings should be final and form the basis for action by government. The Commission thinks that a start should immediately be made on the basis of the Bill. Let experience be gained of working a high level body to enforce standards of rectitude and propriety in the conduct of public affairs.

Central Vigilance Commission

6.22 **The Commission recommends that the Central Vigilance Commission Bill, already introduced in Parliament, be passed as speedily as possible.**

Status of Lokayuktas

6.23.1 The Conference of the Lokayuktas and Upa-Lokayuktas at their Sixth All India Conference had passed a resolution requesting this Commission to take up for consideration the issue of conferment of a constitutional status on the institution of Lokayuktas and Upa-Lokayuktas.

6.23.2 After considering the matter, **the Commission recommends that the Constitution should contain a provision obliging the States to establish the institution of Lokayuktas in their respective jurisdictions in accordance with the legislation of the appropriate legislatures.**

Commissions of Inquiry

6.24.1 The Commissions of Inquiry Act, 1952 enables both the State and Central Governments to appoint Commissions of Inquiry to inquire into and report on definite mattes of public importance within a specified time. The Commission has noted that even though these Commissions have to submit their report in a specified time, yet they take unduly long time in submission of their report. Such delays cause disillusionment and loss of faith of the people in such Commissions of Inquiry.

6.24.2 **It is, therefore, recommended that when once a Commission of inquiry is constituted under the Commissions of Inquiry Act, 1952 or otherwise, the Government should consult the Chairperson of the Commission in respect of time required for completion / finalisation of the report Once such a time is specified, the Commission should adhere to it. It is also recommended that Action Taken Report should be announced by the Government within a period of three months from the date of submission of the report.**

CHAPTER 7

THE JUDICIARY

CONTENTS

7.1 ➢ Background

7.2 ➢ Structure

7.3 ➢ Appointment, Transfer and Removal of Judges

➢ Removal of Judges and remedies for deviant behaviour.

➢ Age of retirement

7.4 ➢ Contempt of Court

7.5 ➢ Judicial Review of Legislation

7.6 ➢ Financial Planning and Judicial Autonomy

7.7 ➢ Judicial Councils

7.8 ➢ Budgets for Subordinate Judiciary

7.9 ➢ Functioning of the Judiciary

7.10 ➢ Judicial Delays

7.11 ➢ Costs of Litigation

7.12 ➢ Priority in Hearings

7.13 ➢ ADR Systems for Urban Litigation

➢ Strategic Action Plans for time-bound clearance of Arrears

7.14 ➢ Criminal Justice Administration

7.15 ➢ Victim Orientation and Victomology

7.16 ➢ All India Judicial Service

7.17 ➢ Digital Legal Information System

7.18 ➢ Subordinate Judiciary

7.19 ➢ *Habeas Corpus* and the Human Rights Courts

CHAPTER 7

THE JUDICIARY[1]

Background

7.1.1 Among the noble aims and objectives of the Constitution, the founding fathers accorded the highest place to 'Justice'. The Preamble speaks of "We, the people of India" resolving to secure *inter alia* "Justice – social, economic and political" to "all its citizens". The juxtaposition of words and concepts in the Preamble is important. Most significantly, 'Justice' is placed higher than the other principles of 'Liberty', 'Equality' and 'Fraternity'. Again, the Preamble clearly enjoins precedence to social and economic justice over political justice. People turn to the judiciary in the quest of justice. There is need to review the working of the judiciary during the last half-a-century and more, to assess how far our justice delivery system has been able to ensure equal social, economic and political justice to all the people as ordained by the Constitution and its Preamble.

7.1.2 The Constitution lays down the structure and defines, delimits and demarcates the role and functions of every organ of the State including the judiciary and establishes norms for their inter-relationships, checks and balances. Independence of judiciary is essential to the rule of law and constitutional norms.

The Structure

7.2 Provisions in regard to the judiciary in India are contained in Part V ('The Union') under Chapter IV titled 'The Union Judiciary' and Part VI ('The States') under Chapter VI titled 'Subordinate Courts' respectively. It is, however important to emphasize that unlike other federal systems, for example, that of the United States, we do not have separate hierarchies of federal and State Courts. In India,

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[1] *See* also the Consultation Papers on "Superior Judiciary", "All India Judicial Service" and "Financial Autonomy of the Indian Judiciary" issued by the Commission in Volume II (Book 1).

though the polity is dual, the judiciary is integrated. For the entire republic of India, there is one unified judicial system – one hierarchy of courts – with the Supreme Court as the highest court and also as the arbiter in matters of relations between the Union and the States and the States *inter se.*

7.2.1 The Supreme Court and the High Courts as the custodians and watchdog of the fundamental rights and freedoms of the people and their constitutional rights have an awesome responsibility. The Superior Judiciary has successfully preserved and protected the fundamental rights of the citizens and vulnerable groups against the innovations of "an excited democracy" and for that purpose, it has drawn substantially upon the Directive Principles.

7.2.2 Speaking of the Supreme court of the United States, a writer said, "the Court has not been infallible. It has made mistakes. It sometimes has run counter to the deliberate and better judgement of the community. But the final judgement of the American people will unquestionably be that their constitutional rights are safe in the hands of the federal judiciary. Throughout the whole history of the United States, it furnishes the highest example of adequate results of any branch of our government. It has averted many a storm which was threatening our peace and has lent its powerful aid in uniting the whole country in the bonds of justice. To paraphrase the language of William Wirt, 'if the judiciary were struck from our system', there would be little of value that would remain."[2].

7.2.3 This tribute can fittingly be addressed to the Supreme Court of India too. The Supreme Court of India has admirably discharged its onerous obligations sentinel of the *qui vive*.

7.2.4 But then, there are voices of detraction. Judicial activism has not gone too well with groups of democratic theorists who object to the kind of judicial activism which has tended to turn social and political processes to legal processes and obliterating the then line of demarcation between interpretation and adjudication

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2 Constitution Law of the United States by Hugh Evander Willis.

and exhibiting an ever eager tendency to intervene in the governing process. Constitutional adjudications do have an inevitable legislative element. Judges need great wisdom and restraint in wielding this great judicial powers lest they erect their own predilections into principles. "The irreplaceable value of the power of judicial review", said a judge, "lies in the protection which it has accorded to constitutional rights that has maintained public esteem for the judiciary and has permitted peaceful existence of counter majoritarian implications of judicial review and the democratic principles on which our federal government rests".

Appointment, Transfer and Removal of Judges of the Superior Courts

Appointment

7.3.1 Article 124 vests the power of appointment of the Chief Justice of India (C.J.I.) and the Judges of the Supreme Court in the President. The President shall by warrant, make the appointment after consultation with such of the judges of the Supreme Court and the High Courts of the States, as he may deem necessary. Also, the provision speaks of 'after' consultation and not 'in' consultation. In the case of appointment of a judge other than the Chief Justice of India, the C.J.I. shall always be consulted. On a plain reading of the provision, the power of appointment vests in the President. The President, of course, means the Executive *i.e.* The President acting on the advice of Council of Ministers. The C.J.I. and other such judges of the Supreme Court and the High Courts shall be consulted by the President, as he may deem necessary.

7.3.2 The appointment of judges of the High Courts is also made by the President (Executive). The President has to consult the C.J.I., the Governor of the State and the Chief Justice of the High Court.

7.3.3 In *S.P. Gupta's Case*[3] (popularly referred to as the *First Judges' Case*) one of the points decided was whether, as among the three consultees, the C.J.I. has primacy. The Court by a majority ruled that article 217(1) of the Constitution

[3] AIR 1982 SC 149

1206 LJ&CA/2002—15A

placed all the three constitutional functionaries on the same pedestal and that there is no primacy given to the C.J.I. In *S.P. Gupta's Case* no question arose with respect to the appointment of the Judges of the Supreme Court.

7.3.4 In the *Second Judges' Case*[4], *inter alia*, the Supreme Court examined as to who, under the Constitution, has the power of appointment of the judges of the Supreme Court and of the High Courts. By a majority, it ruled that the C.J.I. while focusing his opinion as part of the consultative process must take into account the views of the two senior most judges of the Supreme Court, to ensure that the opinion is not merely his own individual opinion but is in fact the collective opinion of a body of men at the apex level in the judiciary. Also, the opinion of C.J.I. so formed should be determinative and almost binding on the President. The judgement also laid down the procedure.

7.3.5 With regard to the appointment of judges of the High Court, the majority of the judges ruled in that case that the C.J.I. might ascertain the views of one or more senior judges of the respective High Courts, whose opinions were likely to be significant in the formation of the opinion of the C.J.I. The opinion of the Chief Justice of the High Court would be entitled to maximum weight and the opinion of the other functionaries involved must also be given due weight. The opinion of the Chief Justice of the High Court must be formed after ascertaining the views of at least two of the senior most judges of that High Court.

7.3.6 Articles 124 and 217, respectively, provide for the manner of appointment of the judges of the Supreme Court and the various High Courts. It is provided that every judge of the Supreme Court or a High Court shall be appointed by the President by warrant under his hand and seal. The persons to be consulted before such an appointment is made by the President has been provided in the said articles. The Supreme Court in the Supreme Court Advocates-on-Records Association v. Union of India[5], (the second judges case) and in re Presidential

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[4] Supreme Court Advocates-on-Record Association vs. Union of India (AIR 1994 SC 268).
[5] AIR 1994 SC 268

reference[6], has in effect emphasized upon "integrated 'participatory consultative process' for selecting the best and most suitable persons available for appointment" in which "all the constitutional functionaries must perform this duty collectively with a view primarily to reach an agreed decision, sub-serving the constitutional purpose, so that the occasion of primacy does not arise" in the matter of appointment of judges. However, in case of disagreement between the President and the Chief Justice of India, the opinion of the latter must prevail. The opinion of the Chief Justice of India means the opinion of a collegium consisting of himself and two senior most judges of the Supreme Court in matter of Second Judges case and himself and four senior-most judges in the matter of Presidential reference case.

7.3.7 The matter relating to manner of appointment of judges had been debated over a decade. The Constitution (Sixty-seventh Amendment) Bill, 1990 was introduced on 18th May, 1990 (9th Lok Sabha) providing for the institutional frame work of National Judicial Commission for recommending the appointment of judges to the Supreme Court and the various High Courts. Further, it appears that latterly there is a movement throughout the world to move this function away from the exclusive fiat of the executive and involving some institutional frame work whereunder consultation with the judiciary at some level is provided for before making such appointments. The system of consultation in some form is already available in Japan, Israel and the UK. The Constitution (Sixty-seventh Amendment) Bill, 1990 provided for a collegium of the Chief Justice of India and two other judges of the Supreme Court for making appointment to the Supreme Court. However, **it would be worthwhile to have a participatory mode with the participation of both the executive and the judiciary in making such recommendations. The Commission proposes the composition of the Collegium which gives due importance to and provides for the effective participation of both the executive and the judicial wings of the State as an integrated scheme for the machinery for appointment of judges. This**

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6 AIR 1999 SC 1

Commission, accordingly, recommends the establishment of a National Judicial Commission under the Constitution.

The National Judicial Commission for appointment of judges of the Supreme Court shall comprise of:

(1) The Chief Justice of India:
Chairman

(2) Two senior most judges of the Supreme Court:
Member

(3) The Union Minister for Law and Justice:
Member

(4) One eminent person nominated by the President after consulting the Chief Justice of India:
Member

The recommendation for the establishment of a National Judicial Commission and its composition are to be treated as integral in view of the need to preserve the independence of the judiciary.

Removal of Judges and remedies for deviant behaviour

7.3.8 **A committee comprising the Chief Justice of India and two senior-most Judges of the Supreme Court shall be exclusively empowered to examine complaints of deviant behaviour of all kinds and complaints of misbehaviour and incapacity against judges of The Supreme Court and the High Courts.** Their scrutiny at this stage would be confined to ascertain whether –

(a) there is substance at all in the complaint; or

(b) there is a *prima facie* case calling for a fuller investigation and enquiry; or

(c) whether it would be sufficient to administer an appropriate advice/warning to the erring Judge or give other directions to the concerned Chief Justice regarding allotment of work to such Judge or to transfer him to some other court.

If, however, the committee finds that the matter is serious enough to call for a fuller investigation or inquiry, it shall refer the matter for a full inquiry to the committee [constituted under the Judges' (Inquiry) Act, 1968]. The committee under the Judges Inquiry Act shall be a permanent committee with a fixed tenure with composition indicated in the said Act and not one constituted ad-hoc for a particular case or from case to case, as is the present position under Section 3(2) of the Act. The tenure of the inquiry committee shall be for a period of four years and to be re-constituted every four years. The inquiry committee shall be constituted by the President in consultation with the Chief Justice of India. The membership of the inquiry committee shall not be full time salaried employment. But the terms and other conditions of service of the Members of the committee shall be such as may be specified in the notification constituting the inquiry committee. **The inquiry committee shall inquire into and report on the allegation against the Judge** in accordance with the procedure prescribed by the said Act, i.e. in accordance with the sub-sections (3) to (8) of Section 3 and sub-section (1) of Section 4 of the said Act and submit their report to the Chief Justice of India, who shall place before a committee of seven senior-most judges of the Supreme Court. The Committee of seven Judges shall take a decision as to whether (a) findings of the inquiry committee are proper and (b) any charge or charges are established against the judge and if so, whether the charges held proved are so serious as to call for his removal (i.e. proved misbehaviour) or whether it should be sufficient to administer a warning to him and/or make other directions with respect to allotment of work to him by the concerned Chief Justice or to transfer him to some other court (i.e. deviant behaviour not amounting to misbehaviour). **If the decision of the said committee of judges recommends the removal of the Judge, it shall be a convention that the judge promptly demits office himself. If he fails to do so, the matter will be processed for being placed before Parliament in accordance with articles 124(4) and 217(1) Proviso (b). This procedure shall equally apply in case of Judges of the Supreme Court and the High Courts**

except that in the case of a Supreme Court Judge the judge against whom complaint is received or inquiry is ordered, shall not participate in any proceeding affecting him.

It shall also be proper, in appropriate cases, for the Chief Justice of the High Court or the Chief Justice of India, to withhold judicial work from the judge concerned after the inquiry committee records a finding against the judge.

7.3.9 Article 124(3) contemplates appointment of Judges of Supreme Court from three sources. However, in the last fifty years not a single distinguished jurist has been appointed. From the Bar also, less than half a dozen Judges have been appointed. It is time that suitably meritorious persons from these sources are appointed.

Age of Retirement of Judges of the Supreme Court and the High Courts

7.3.10 The Commission recommends that the retirement age of the Judges of the High Court be increased to 65 years and that of the Judges of the Supreme Court be increased to 68 years.

7.3.11 The Commission recommends that in the matter of transfer of Judges, it should be as a matter of policy and the power under article 222 and its exercise in appropriate cases should remain untouched. The President would transfer a Judge from one High Court to any other High Court after consultation with a committee comprising the Chief Justice of India and the two senior-most Judges of the Supreme Court.

Contempt of Court

7.4.1 Article 129 recognizes the power of the Supreme Court to punish for contempt of itself and similarly article 215 of the Constitution recognizes the power of the High Court to punish for contempt of itself. Judicial decisions have been

interpreted to mean that the law as it now stands, even truth cannot be pleaded as a defence to a charge of contempt of court. This is not a satisfactory state of law. Article 19(1)(a) of the Constitution guarantees to all citizens the right to freedom of speech and expression. Article 19(2) saves reasonable restrictions on the exercise of such right by the operation of any existing law and enables the legislature to make such law imposing, in public interest, reasonable restrictions on the exercise of the freedom. Therefore, article 19(2) of the Constitution will not save a law in relation to contempt of court if it impinges upon the right to freedom of speech and expression unless the restrictions are reasonable and are in public interest. If the restrictions that operate upon such rights are unreasonable, they will stand annulled by the operation of article 19(1)(a) of the Constitution. A total embargo on truth as justification may be termed as unreasonable restriction. It would, indeed, be ironical if, in spite of the emblems hanging prominently in the court halls, manifesting the motto of "*Satyameva Jayate*", in the High Courts and "*Yatho dharma statho jaya*", in the Supreme Court, the courts could rule out the defence of justification by truth. The Commission is of the view that the law in this area requires an appropriate change.

7.4.2 A mere legislation by the Parliament amending the Contempt of Courts Act, 1971 alone may not suffice because the power of the Supreme Court and the High Courts to punish for contempt is recognized in the Constitution. Therefore, **an appropriate amendment by way of addition of a proviso to article 19(2) of the Constitution, to the effect that, "in matters of contempt, it shall be open to the Court on satisfaction of the *bona fides* of the plea and of the requirements of public interest to permit a defence of justification by truth". The recommendation in this regard has been made in para 3.8.2 earlier.**

Other Courts and Tribunals: Power to Punish for Contempt:

7.4.3 The power of court to punish for contempt of itself is part of sovereign power and can inhere only in a sovereign. Articles 129 and 215 recognize the existence of such power in the Supreme Court and the High Courts as they exercise *inter alia* the sovereign judicial power. Parliament and State Legislatures

exercise sovereign legislative power. It is for that reason that the power to punish for contempt of itself inheres in Parliament and State Legislatures as part of their privilege. No other court, tribunal or authority can have a power to punish for contempt of itself, either inherently or conferred by a law of legislature. It is only the power to punish for contempt of itself mentioned in articles 129 and 215 and the privilege of Parliament and State Legislatures that is implicit in the words "in relation to the contempt of court" occurring in article 19(2) of the Constitution.

7.4.4 The jurisdiction to order arrest of a person or attachment of properties of a person to implement or execute an order of court or tribunal is a sanction of law to enable the enforcement of the orders against those who are bound thereby (example Order XXXIX, Rule 3 of the Code of Civil Procedure). They are remedial in nature.

7.4.5 Courts other than the Supreme Court and the High Courts do not have inherent jurisdiction to exercise a power of 'contempt of itself'. Section 10 of the Contempt of Courts Act, 1971 confers power on the High Court to exercise the same jurisdiction, powers and authority in respect of contempt of the Courts subordinate to it. Under the proviso thereto, no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it, where such contempt is an offence punishable under the Indian Penal Code, 1860. Section 228 of the IPC provides for such a situation and rightly does not describe it as the contempt of court. (See also illustratively sections 178, 179, 180 of the Indian Penal Code, 1860 and section 10A of the Commissions of Inquiry Act, 1952.

7.4.6 Section 15(2) of the Contempt of Courts Act, 1971 enacts that in the case of criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate General, "Criminal Contempt" deals with scandalizing or lowering or tending to lower the authority of any Court (not any Tribunal or other quasi-judicial authority) prejudicing or interfering or tending to interfere or obstructing or tending

to obstruct administration of justice in any other manner. These are the limited areas which could be the subject of legislation in the legislative field of Entry 14 of List III and if necessary, read with Entries 1 and 2 of List III of the Seventh Schedule to the Constitution of India.

7.4.7 **The Commission, therefore, recommends that a proviso be inserted in article 129 that the power of court to punish for contempt of itself inherent only in the Supreme Court and the High Courts and is available as part of the privilege of Parliament and State Legislatures, and no other court, tribunal or authority should have, or be conferred with, a power to punish for contempt of itself.**

Judicial Review of Legislation: Article 13 and the power of the Supreme Court and the High Courts to declare a law unconstitutional or ultra vires or as beyond legislative competence

7.5 Parliament/State Legislatures enact laws in exercise of sovereign power of the State. Their validity either on the ground of unconstitutionality or on the ground of lack of legislative competence can be adjudicated only by another limb of the sovereign power, viz. the Supreme Court and the High Courts. No other authority can exercise such powers and cannot be conferred such powers even by legislation. To so confer and vest a sovereign power in any authority except on another limb of sovereign, viz. the Supreme Court and the High Court, would amount to an impermissible abdication of sovereign power exclusively inhering under the Constitution, only in the Supreme Court and the High Court as judicial limb of sovereign power. The decisions of courts to the effect that an authority constituted under a statute cannot question only those legislative provisions under which they are constituted but can adjudicate on the unconstitutionality and lack of legislative competence of other legislative enactments may be inconsistent with basic postulates of the constitution. Article 228 of the Constitution and Order XXVII-A Rule 1 of the Code of Civil Procedure, 1908 and sections 395 and 396 of the Criminal Procedure Code, 1973 are instances of recognition of this position.

It is, therefore, recommended that a suitable provision may be inserted in the Constitution to the effect that except the Supreme Court and the High Courts no other court, tribunal or authority shall exercise any jurisdiction to adjudicate on the validity or declare an Act of Parliament or State Legislature as being unconstitutional or beyond legislative competence and so *ultra vires*. Such a provision may be made as clause (5) of article 226.

Financial Planning and Judicial Autonomy

7.6.1 Judicial administration in the country suffers from deficiencies due to lack of proper planning and adequate financial support for establishing more courts and providing them with adequate infrastructure. For several decades the courts have not been provided with any funds under the five-year plans nor has the Finance Commission been making any separate provisions to serve the financial needs of the courts.

7.6.2 The Commission had issued a detailed Consultation Paper[7] for eliciting public opinion on financial autonomy for the Judiciary. It considered all the responses and reached certain conclusions.

Judicial Councils

7.7 **The Commission recommends the setting up of a 'Judicial Council' at the Apex level and Judicial Councils at each State at the level of the High Court. There should be an Administrative Office to assist the National Judicial Council and separate Administrative Offices attached to Judicial Councils in States. These bodies must be created under statute made by Parliament. The Judicial Councils will be in charge of the preparation of plans, both short term and long term, and for preparing the proposals for annual budget.**

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[7] See Volume II (Book 2) of the Report.

Budgets for subordinate judiciary

7.8.1 **The Commission is of the view that the budget proposals in each State must emanate from the State Judicial Council, in regard to the needs of the subordinate judiciary in that State, and will have to be submitted to the State Executive.** Once the budget is so finalized between the State Judicial Council and the State Executive, it should be presented in the State Legislature.

7.8.2 Government of India should not throw the entire burden of establishing the subordinate courts and maintaining the subordinate judiciary on the State Governments. **There is a concurrent obligation on the Union Government to meet the expenditure for subordinate courts. Therefore, the Planning Commission and the Finance Commission must allocate sufficient funds from national resources to meet the demands of the State judiciary in each of the States.**

Functioning of the Judiciary

7.9 In terms of performance, there has been a certain amount of uneasy dissatisfaction in the functioning of the judiciary. In particular, the problem areas are:-

i) Undue delays in the disposal of cases and lack of sensitivity (accountability) to the mounting arrears of cases.

ii) Injecting avoidable uncertainties in the law and thereby making the task of the Executive more difficult and sometimes unmanageable.

iii) Lack of transparency in judicial appointments and transfers.

iv) Poor management of resources and ineffective standards of judicial administration including legal aid.

v) Absence of strategic Action Plans for clearance of arrears in courts.

7.10.1 One of the reasons for the delay is often said to be the inadequate judge strength and the inadequacy of the number of courts and the infrastructure facilities in them. According to an eminent member of the Bar, the best solution to tackle the arrears is "to appoint less number of judges and more competent judges". This was the view of the Report of the Arrears Committee (1989-1990) constituted by the Government of India on the recommendation of the Chief Justices' Conference. The Committee said: "the failure on the part of the Executive to produce adequate number of competent judges from time to time has substantially contributed to the mounting arrears." The arrears can be substantially brought down with better management, computerization of court system, increased settlements by Lok Adalats, the effective and greater use of provisions of the Civil Procedure Code with all its congenial amendments with the cooperation of the lawyers and the court staff. The competence of the judges in terms of quality and quantity of disposals should be assessed by the superior court judges and reputed senior advocates.

7.10.2 **The presiding officers in courts should be adequately trained. To ensure competence, there should be a proper selection, freedom of action, training, motivation and experience. To maintain their competence it is necessary to have continuing education for the judges. Some national judicial institutions have to be properly structured to give such training. There should be a proper monitoring of moving the judges where work demands such movement from places where there are no arrears of work. There has to be systematic assessment of training needs of judicial personnel at different levels.**

7.10.3 It is possible for the governments to have a 'litigation policy' directed towards reduction of government litigation and protection of public interest by preventive strategies. For instance, in civil cases when a notice under Section 80 CPC is received, the matter should be thoroughly and carefully examined instead

of the present tendency of giving a routine recording as file without application of mind, that "the threatened suit may be awaited." The filing of appeals irrespective of the merit of the case should be avoided. Appeals are filed mechanically irrespective of the merits, merely to avoid allegations, quite often unjustified, of improper motives when a decision which affects the interests of the Government is allowed to assume finality.

7.10.4 **The Government should ensure basic infra-structure needed to all courts and arrange to ensure that courts are not handicapped for want of infra-structural facilities, Governments, both at the Centre and in the States, should constitute committee of secretaries to review government litigation with a view to avoid adjudication wherever possible, give priority in filling of written statements, wherever required, and instruct government advocates to seek early decision on government litigation.**

7.10.5 In the Supreme Court and the High Courts, **judgements should ordinarily be delivered not later than ninety days from the conclusion of the case. If a judgement is not rendered within such time – it is possible that the complexities of the case and the effect the decision may have on another similar situation might compel greater and larger judicial consideration and contemplation – the case must be listed before the court immediately on the expiry of ninety days for the court to fix a specific date for the pronouncement of the judgement.**

Costs of Litigation

7.11 Trade and industry, which resort to the courts most, must share a greater burden of maintenance of the system. A reasonable share of the judicial budget must come from the resourceful class of public of which the business class forms a segment. There was a time when in all civil proceedings costs were invariably awarded and at least a oneline reason given for not awarding costs. Today costs are rarely awarded. An award of costs is a vindication of the rightful cause and

reparation to him for having had to resort to court or defend a case when his/her cause was a good one and the adversary had an unsustainable case. It was also in the nature of retribution to the party who has approached the court on an untenable case or unsustainable defence. **An award of exemplary costs should be given in appropriate cases of abuse of process of law.**

Priority in hearings

7.12 A civil appeal, however high the stakes may be, unless it involves projects of national and public importance should not have priority over criminal cases where accused are in custody. When constitutional questions arise, it should be expeditiously heard and law settled, as it would be contrary to public interest to keep such questions in suspense. To keep tax cases pending for years causes serious public detriment. When there is no stay operating in the case of indirect taxes, the assessee does not know whether he can pass on the tax or not. If the tax had been passed on; if the levy is struck down, the consumer has already suffered the inflated price. The benefit does not go to the consumer who paid the tax, even if the doctrine of unjust enrichment is applied and the tax is not refunded to the persons who passed it on. It is no consolation for the consumer to whom the tax burden may be passed on to be told that the money has gone to some consumer benefit fund. In the case of direct taxes equally, it would deprive the tax payer, the right to utilize funds in his business or on gainful investments. The grant of stay in taxation matters has serious impact on public exchequer. A budget is made for each year. Taxation matters should therefore receive an appropriate priority in disposal of cases. Though the Representation of the People Act, 1951 enacts a provision for disposal of election disputes within a time schedule, the same is invariably breached. A mechanical queue for all cases would not meet the ends of justice.

7.13.1 The Gram Nyayalayas as contemplated by the Law Commission will process 60 to 70 per cent of rural litigation leaving the regular courts in districts and sub-divisions to devote their time to complex civil and criminal matters. With a participatory, flexible machinery available at the village level where non-adversarial, settlement-oriented procedures are employed, the rural people will have a fair, quick and inexpensive system of dispute settlement. Only revision jurisdiction on civil matters and that also on questions of law may be left to the district courts.

7.13.2 Today, the pendency in various courts in urban areas is staggering. Rent and eviction suits constitute a considerable chunk of litigation in urban courts, and that they take on an average three or more years to get adjudicated in the court at first instance, the Law Commission felt that an alternative method for these disputes is imperative. The Law Commission examined several alternatives and preferred to recommend the model of Conciliation Court along with a participatory model where a professional judge interacts with two lay judges and evolves a reasonable solution. There will not be any appeal against the decision and only a revision petition will be permissible on questions of law to the district Court.

7.13.3 **The Law Commission recommendations in regard to the Nagar Nyayalayas, Conciliation Courts, ADR systems of urban litigation, evidence recording by Commissioners etc. as incorporated in the Code of Civil Procedure (Amendment) Act, 2000 should be brought into force with such modifications as would take care of a few serious objections.**

7.13.4 The Commission noted that in all developed systems normally not more than 15% of the cases go for final adjudication. The rest of the cases are resolved by alternate dispute resolution mechanisms like conciliation, mediation and arbitration. Pre-trial conciliation accounts for the disposal of a large number of cases.

The Commission recommends that the provisions relating to conciliation in the Arbitration and Conciliation Act, 1996 should suitably be amended to provide for obligatory recourse to conciliation or mediation in relation to cases pending in courts. The Commission further recommends that scope and functions of the Legal Services Authorities constituted under the Legal Services Authorities Act, 1987 be enlarged and extended to enable the Authority to set up conciliation and mediation fora and to conduct, in collaboration of other institutions wherever necessary, training courses for conciliators and mediators.

Strategic Action Plans for time-bound clearance of Arrears

7.13.5 **The Commission recommends that each High Court should, in consultation with the judicial councils referred to in para 7.7, prepare a strategic plan for time-bound clearance of arrears in courts under its jurisdiction. The plan may prescribe annual targets and district-wise performance targets. High Courts should establish monitoring mechanisms for progress evaluation. The purpose is to achieve the position that no court within the High Court's jurisdiction has any case pending for more than one year. This should be achieved within a period of five years or earlier.**

Criminal Justice Administration

7.14.1 Criminal Justice System in India requires a strong second look.

7.14.2 **The criminal investigation system needs higher standards of professionalism and it should be provided adequate logistic and technological support. Serious offences should be classified for purpose of specialized investigation by specially selected, trained and experienced investigators. They should not be burdened with other duties like security, maintenance of law and order etc., and should be entrusted exclusively with investigation of serious offences.**

7.14.3 The number of Forensic Science Institutions with modern technologies such as DNA fingerprinting technology should be enhanced.

7.14.4 The system of plea-bargaining (as recommended by the Law Commission of India in its Report) should be introduced as part of the process of decriminalisation.

7.14.5 The greatest asset of the police in investigation of crimes and maintenance of law and order is the confidence of the people. Today, such public confidence is at the lowest ebb. The police are increasingly losing the benefit of this asset of public confidence. Hard intelligence in investigations comes from public cooperation. If police are seen as violators of law themselves or if they abuse their powers for intimidation and extortion, public develop an attitude of revulsion and the onerous duties and responsibilities that the police shoulder become more onerous and difficult.

In order that citizen's confidence in the police administration is enhanced, the police administration in the districts should periodically review the statistics of all the arrests made by the police in the district and see as to in how many of the cases in which arrests were made culminated in the filing of charge-sheets in the court and how many of the arrests were ultimately turned out to be unnecessary. This review will check the tendency of unnecessary arrests. Some statistics indicate that in some districts in the country, nearly 80% of the arrests were made in respect of bailable offences.

7.14.6 The legal services authorities in the States should set up committees with the participation of civil society for bringing the accused and the victims together to work out compounding of offences.

206 LJ&CA/2002—16A

7.14.7 **Statements of witnesses during investigation of serious cases be recorded before a magistrate under section 164 of the Code of Criminal Procedure, 1973.**

Victim Orientation and Victomology

7.15.1 The assumption that by punishing the offender the victim receives "Justice" is of doubtful value today because of the decreasing number of successful investigations and convictions. Given the inconvenience, delays, corruption and harassment, many victims tend to keep away from reporting crimes and sometimes there is a tendency to take law into one's own hands.

7.15.2 Among the many reforms canvassed for improving criminal justice is one that advocates a victim-orientation to criminal justice administration. 'Victim orientation' includes greater respect and consideration towards victims and their rights in the investigative and prosecution processes, provision for greater choices to victims in trial and disposition of the accused, and a scheme of reparation/ compensation particularly for victims of violent crimes.

7.15.3 The case for a viable, social justice-oriented and effective scheme for compensation victims is now widely felt. **The Government at the Union level and in the states are well advised under the directive principles as well as under International Human Rights obligations to legislate on the subject of an effective scheme of compensation for victims of crime without further delay.**

7.15.4 **The tremendous support which the criminal justice might derive from the people once the compensation scheme is introduced even in a modest scale, and the possibilities of advancing the crying need for social justice in a very real sense, are attractive enough for the State to find money to float the scheme immediately.**

1206 LJ&CA/2002—16B

All India Judicial Service

7.16 The Commission had circulated a Consultation Paper[8] on 'All India Judicial Service' for eliciting public opinion. After examining the responses received and after detailed deliberations, the Commission decided that the formation of All India Judicial Service would not be a better alternative to the present system. The Commission did not therefore, favour deletion of clause (3) of article 312.

Digital legal information system

7.17.1 The Commission notes that the law libraries available in the country are limited. Further, the cost of maintaining modern law libraries in various parts of the country would be enormous. With a view to providing a satisfactory justice delivery system, access to law books, law journals and other legal literature by all concerned needs no special emphasis.

7.17.2 **The Commission, therefore, recommends that the National Informatics Centre in collaboration with or with the assistance of the Indian Law Institute and the Government Law Departments should set up a Digital Legal Information System in the country so that all courts, legal departments, law schools would be able to access and retrieve information from the data bank of the important law libraries in the country."**

Subordinate Judiciary

7.18 The jurisdiction and nomenclature of subordinate courts in the various States of the country are different. At present, there are three or more tiers of civil and criminal courts below the High Court. Cases at the trial stages are decided by and assume finality at the level of the subordinate courts. The trial system is the cutting edge of the judicial machine. It would, therefore, be necessary that the

[8] *See* Volume II (Book 2) of the Report.

presiding officers of these courts are impartial and competent. It will also enhance the quality and quantity of their output. The administration of justice at this grass root level needs standardization.

The Commission **recommends that progressively the hierarchy of the subordinate courts should be brought down to a two tier of subordinate judiciary under the High Court. Further, strict selection criteria and adequate training facilities for the presiding officers of such courts should be provided.** The Commission also recommends that **to cope up with the workload of cases at the lower level and also to curtail arrears and delay, the States should appoint honorary judicial magistrates selected from experienced lawyers on the criminal side to try and dispose less serious and petty cases on part-time basis on the pattern of Recorders and Assistant Recorders in UK. They could set for, say, 100 days in a year and hold court later in the evenings after regular court hours. This would relieve the load on the regular magistracy.**

Habeas Corpus and the Human Rights Courts

7.19.1 Section 491 of the Code of Criminal Procedure, 1898 (since repealed and re-enacted as the Code of Criminal Procedure, 1973) vested the power to issue directions of the nature of *habeas corpus* in all the High Courts. The power was available since the Code was enacted in 1898 when the constitutional provisions of judicial review of the nature provided in article 226 in relation to the High Courts and article 32 for the enforcement of fundamental rights in relation to the Supreme Court of India were not available. The power under section 491 of the Code continued to be available simultaneously with the power of the High Courts and the Supreme Court to issue writs of the nature of a habeas corpus vested in them under article 226 and article 32 of the Constitution respectively even after coming into force of the provisions of the Constitution. However, when the new Code was enacted in 1973, it was thought that, in face of the constitutional provisions under article 226 and article 32, the power of the nature of section 491 of the Code of

Criminal Procedure, 1898 is redundant and was thus not provided for in the new legislation.

7.19.2 Since the enactment of the Code of Criminal Procedure, 1973, issues relating to the human rights have found a prominent place throughout the world. In India, the Protection of Human Rights Act, 1993 was enacted with a view to providing for establishment of the National Human Rights Commission and the various State Human Rights Commissions. Section 30 of the said Act provides that the State Governments may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a court of session to be a Human Rights Court to try the offences relating to human rights.

7.19.3 Since the issues relating to human rights, more particularly relating to unlawful detention, have now occupied a center-stage, both nationally and internationally, **it shall be desirable that the Protection of Human Rights Act, 1993 may be suitably amended to provide that, in addition to the powers generally vested in that Court, such courts shall have the power to issue directions of the nature of a *habeas corpus* as was available to the High Courts under section 491 of the Code of Criminal Procedure, 1898. Vesting of such power will go a long way in providing help to the indigent and vulnerable sections of the society in view of the proximity and easy accessibility of the Court of Session."**

CHAPTER 8

UNION – STATE RELATIONS

CONTENTS

8.1 Background

A. Legislation

8.2. ➢ Legislative Relations
8.2.14 ➢ Suggestion for a new entry in the Concurrent List – Management of Disasters and Emergencies, Natural or Man-made

B. Finance

8.3 ➢ Financial Relations
8.3.5 ➢ Enlargement of the Scope of the Finance Commission
8.4 ➢ Share of States in taxes, cesses and surcharges.
8.5 ➢ Tax on Services
8.6 ➢ Status of Central Bank

C. Trade, Commerce and Intercourse

8.7 ➢ Barriers to Inter-State Trade and Commerce
8.8 ➢ Trade and Commerce Commission

D. Resolution of Disputes

8.9 ➢ Inter-State Disputes
8.10 ➢ Inter-State Water Disputes
8.11 ➢ Inter-State Water Disputes Act
8.12 ➢ Inter-State Council
8.13 ➢ Treaty Making

E. Executive

8.14 ➢ Office of Governor
8.14.4 ➢ Assent of the President and Governors
8.15 ➢ Failure of Constitutional Machinery
8.16 ➢ Use-misuse of article 356
8.17 ➢ Sarkaria Commission
8.18. ➢ Should Article 356 be Deleted?
8.19 ➢ Need for Conventions
8.20 ➢ Situation of Political breakdown
8.21 ➢ Constitutional Amendments
8.22 ➢ Dissolution of Assembly
8.23 ➢ Miscellaneous Matters

CHAPTER 8

UNION-STATE RELATIONS[1]

Background

8.1.1 The Constitution in its very first article describes India as a Union of States. When the British power was established in India it was highly centralized and unitary. To hold India under its imperial authority, the British had to control it from the Centre and ensure that power remained centralized in their hands. A strong central authority was for the British both an imperial and an administrative necessity. The country continued to be ruled under the 1919 Act by a central authority until 1947. And, since under the 1919 Act, there was a central government, a central legislature, a system of central laws etc., the use of these terms continued under the colonial hangover.

8.1.2 In the Constituent Assembly, the Drafting Committee decided in favour of describing India as a Union, although its Constitution might be federal in structure. Moving the Draft Constitution for the consideration of the Constituent Assembly on 4 November 1948, Ambedkar explained the significance of the use of the expression "Union" instead of the expression "Federation". He said "...what is important is that the use of the word 'Union' is deliberate... Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source." Finally, when the Constitution was adopted on 26 November 1949, it provided for India being a Union of States and its States and territories being as specified in the First Schedule. The Schedule specified four types of units - Parts 'A', 'B' and 'C' States and Part 'D' territories.

[1] See also the Consultation Papers released by the Commission on "Constitutional Mechanisms for Settlement of Inter-state Disputes", "Treaty Making Power under our Constitution", "Institution of Governor under the Constitution" and "Article 356 of the Constitution" in Volume II (Book 2) of the report and the Background Papers on "Concurrent Powers of Legislation under List III of the Seventh Schedule", "Barriers to Inter-State Trade and Commerce" and "Article 262 and Inter-State Disputes Relating to Water" in Volume II (Book 3)

8.1.3 During the last half-a-century, many structural changes have been made and the map of the Union of States reshaped. Categorisation of States has disappeared, names of several territorial units called States have vanished, many new States have been formed on linguistic and other criteria, boundaries, areas, names etc. of some States have been altered and many relationships have been transformed. As at present, the Union consists of 28 States and seven Union Territories. Some unique solutions of regional councils, development boards, etc., have been attempted with varying degrees of success. The three newest States are Uttaranchal, Jharkhand and Chhatisgarh.

8.1.4 It is a tribute to the farsightedness of the makers of the Constitution that all these changes could be brought about largely peacefully and entirely within the four-walls of the Constitution. The predominant concern of the founding fathers as also of the various Commissions and Committees appointed since Independence to consider reorganisation of States or Union-State Relations - the JVP Committee, the Dar Commission, the States Reorganisation Commission (SRC), the Rajamannar Committee, the Sarkaria Commission, etc. - has been that of the unity and integrity of India. We are still engaged in the stupendous task of national integration which is also an admission of the hard reality of our nation and Union being still in the making. The SRC report concluded:

> It is the Union of India which is the basis of our nationality...States are but limbs of the Union, and while we recognize that the limbs must be healthy and strong...it is the strength and stability of the Union and its capacity to develop and evolve that should be governing consideration of all changes in the country.

8.1.5 The Commission feels that there is no dichotomy between a strong Union and strong States. Both are needed. The relationship between the Union and the States is a relationship between the whole body and its parts. For the body being healthy it is necessary that its parts are strong. It is felt that the real source

of many of our problems is the tendency of centralisation of powers and misuse of authority.

A - Legislation

Legislative Relations

8.2.1 The Constitution, based on the principle of federalism with a strong and indestructible Union, has a scheme of distribution of legislative powers designed to blend the imperatives of diversity with the drive of a common national endeavour. In this respect our constitutional theory as well as practice have kept pace with contemporary developments. The current trends emphasise cooperation and coordination, rather than demarcation of powers, between different levels of government. The basic theme is inter-dependence in orchestrating the balance between autonomy of the States and the inner logic of the Union.

8.2.2 The Constitution adopts a three-fold distribution of legislative powers by placing them in any one of the three lists, namely I (Union List), II (State List) and III (Concurrent List). Articles 245 and 246 demarcate the legislative domain, subject to the controlling principle of the supremacy of the Union which is the basis of the entire system.

8.2.3 The Concurrent List gives power to two legislatures, Union as well as State, to legislate on the same subject. In case of conflict or inconsistency, the rule of repugnancy, as contained in article 254, comes into play to uphold the principle of Union power.

8.2.4 The Concurrent List expresses and illustrates vividly the underlying process of nation building in the setting of our heterogeneity and diversity. The framers of the Constitution recognised that there was a category of subjects of common interest which could not be allocated exclusively either to the States or the Union. Nonetheless, a broad uniformity of approach in legislative policy was essential to combine specific requirements of different States with the articulation

of a common national policy objective. Conceived thus, harmonious operation of the Concurrent List could well be considered to be creative federalism at its best.

8.2.5 The problems that have attracted attention in the field of Union-State relations have less to do with the structure or the rationale of the Concurrent List than with the manner in which the Union has exercised its powers. In a fundamental political sense, the passing of one party dominance that characterised the first four decades of the Republic has also ended the drive towards overcentralisation. Even the powers that unquestionably belong to the Union, for example the power to temporarily assume the functions of a State Government under article 356, are heavily circumscribed by the political reality of a multi-party system where the States have acquired significant bargaining power vis-à-vis the Government of India.

8.2.6 The evolving political system has thus imparted considerable vitality to the federal impulses of the Constitution. However, what has been gained in the actual practice of legislative relations between the Union and the States, in terms of restoring the balance inherent in the constitutional scheme, has not entered the realm of institutional validation. To this extent, the unilateralism of the Union in regard to the exercise of legislative powers under the Concurrent List remains a potential problem area. The principal critique of concurrency is not that it is not required, but that it is used without consultation, that it is not exercised to deepen inter-dependence and co-operation but to stress dominance of the Union point of view.

8.2.7 It has to be conceded that institutional arrangements for facilitating exchange of views between the States and the Union on matters falling within the field of concurrent legislation leave something to be desired. This has happened in spite of the existence of the Inter-State Council under article 263. The Council has yet to develop into a mechanism to be relied on for an ongoing process of dialogue on vital socio-economic and political issues between the Union and the States and among the States. It is not as if such consultation is absent. There are

Chief Ministers' Conferences on specific issues. There are State Ministers' Conferences on a variety of subjects on which common policy positions have to be formulated, such as Value Added Tax.

8.2.8 There is, however, no formal institutional structure that requires mandatory consultation between the Union and the States in the area of legislation under the Concurrent List which covers several items of crucial importance to national economy and security. Even the National Development Council, whose ambit may occasionally be widened beyond the Five Year and the Annual Plans, is seldom convened to test ideas and evaluate experience in policy formulation and implementation in areas where both the Union and the States are interested for the sake of social and economic development.

8.2.9 The Concurrent List provides a fine balance between the need for uniformity in the national laws and creating a simultaneous jurisdiction for the States to accommodate the diversities and peculiarities of different regions. This also provides a distinguishing feature in the federal scheme envisaged by the framers of the Constitution. This is further reinforced by placing a mode of altering the provisions in lists I,II and III in the 7th schedule among other matters of provisions substantive in nature and basic to the structure of the Constitution that fall within the purview of the proviso to clause (2) of Article 368. A bill for amending the list in the 7th schedule has to be passed by Parliament by a majority of the total membership of that House and by a majority of not less than 2/3rd of the members of the House present and voting – and followed by ratification of legislatures of not less than ½ of the States. This mechanism provides a statutory tilt in favour of consultation and cooperation with the States in matters pertaining to the Legislative sphere and inherent balance between flexibility and rigidity.

8.2.10 Globalization as a phenomenon has created a great deal of mobility of goods, services, capital, technology; integrating the world trade far more than ever before. There are also related concerns arising out of a need for a better

and sustained use of resources of the earth as a planet that call for a much greater coordination in identification and formulation of responses among the nations. This process of cohesive and concurrent action needs to generate, first-of-all within the national context. The geographical climate, environmental, technological diversities amongst States have to be harmonized in order that these may link with global processes for viable sustained, development and growth. A major field of undertaking new initiatives in these spheres would lie in the legislative domain where a certain concurrences and coherence between the States and their different needs have to be harmonized to evolve national policies. This is also reflected in issues that pertain to technology, trade, financial services etc. in the global context.

8.2.11 The Commission examined the constitutional provisions regarding concurrent powers of legislation, analysing the constitutional amendments that had been enacted from time to time and the judicial pronouncements on major issues arising from concurrency. The view that emerged was that there was no ground for change in the existing constitutional provisions.

8.2.12 The Commission believes that on the whole the framework of legislative relations between the Union and the States, contained in articles 245 to 254, has stood the test of time. In particular, the Concurrent List, List III in the Seventh Schedule under article 246 (2), has to be regarded as a valuable instrument for consolidating and furthering the principle of cooperative and creative federalism that has made a major contribution to nation building. The Commission is convinced that it is essential to institutionalise the process of consultation between the Union and the States on legislation under the Concurrent List.

8.2.13 **The Commission recommends that individual and collective consultation with the States should be undertaken through the Inter-State Council established under article 263 of the Constitution. Further, the Inter-State Council Order, 1990, issued by the President may clearly specify in**

4(b) of the order the subjects that should form part of consultation in the Inter-State Council.

Suggestion for a new entry in the Concurrent List – Management of Disasters and Emergencies, Natural or Man-made

8.2.14 **The Commission has examined a suggestion made by the Union Ministry of Agriculture that "Management of Disasters and Emergencies, Natural or Man-Made" be included in List III of the Seventh Schedule, and agrees to the suggested inclusion.**

B - Finance

Financial Relations

8.3.1 Division of financial powers and functions among different levels of the federal polity are asymmetrical, with a pronounced bias for revenue taxing powers at the Union level while the States carry the responsibility for subjects that affect the day to day life of the people entailing larger expenditure than can be met from their own resources. On an average, the revenue of States from their own resources suffices only for about 50 to 60 percent of States' current expenditure. Since the insufficiency of the States' fiscal resources had been foreseen at the time of framing the Constitution, a mechanism in the shape of Finance Commission was provided under article 280 for financial transfers from the Union. Its function is to ensure orderly and judicious devolution that is deemed necessary from the point of view of avoiding vertical or horizontal imbalances.

8.3.2 The Finance Commission is only one stream of transfer of resources from the Union to the States. The Planning Commission advises the Union Government regarding the desirable transfer of resources to the States over and above those recommended by the Finance Commission. Bulk of the transfer of revenue and capital resources from the Union to the States is determined largely on the advice of these two Commissions. By and large, such transfers are

formula-based. Then there are some discretionary transfers as well to meet the exigencies of specific situations in individual States.

8.3.3 These institutional arrangements served the country well in the first three decades after independence. Testifying to the strength of these institutions neither the Union nor the States suffered from any large imbalance in their budgets, although the size of the public sector in terms of proportion of government expenditure to Gross Domestic Product had nearly doubled during this period.

8.3.4 Imbalances have become endemic during the last two decades and have assumed alarming proportions recently. For this state of affairs, the constitutional provisions can hardly be blamed. Broadly, the causes have to be sought in the working of the political institutions. There are shortcomings in the transfer system. For example, the 'gap-filling' approach adopted by the Finance Commission and the soft budget constraints have provided perverse incentives. The point, however, is that these deficiencies are capable of being corrected without any change in the Constitution.

Enlargement of the Scope of the Finance Commission

8.3.5 The institution of the Finance Commission has been one of the major success stories of the Constitution. The broad terms of reference as laid down in article 280(3) are unexceptionable. However, other matters in the interest of sound finance can also be referred to the Finance Commission. These would constitute additional terms of reference. It has been suggested that it would be desirable to associate the States more actively in deciding the additional terms of reference, preferably by having the National Development Council (comprising the Prime Minister and the Chief Ministers of States) to endorse the additional terms of reference. The Commission is not in favour of an amendment of article 280(3)(d) to enable such enlargement of the scope of the Finance Commission. However, it is recommended that terms of reference of the Finance Commission

should be broader and comprise of matters which would take care, in a comprehensive way, aspects of the financial relations between the Union and the States. The broadening of such terms of reference could also be discussed earlier by the National Development Council.

8.3.6 Under article 281, the recommendations of the Finance Commission are laid before the Houses of Parliament along with an explanatory memorandum as to the action taken on them. The recommendations are not theoretically binding, although there has been no case so far when the Government of India has deviated from recommendations of successive Finance Commissions. It has been suggested that the Constitution itself should describe the recommendations as an award binding on both the Union and the States. This has been urged in the context of the mechanism of the State Finance Commissions which are set up under articles 243-I and 243-Y which too make only recommendations and not awards. The State Finance Commissions are a comparatively new constitutional mechanism. They would take some time to strike roots in the constitutional soil. Politicians at the Sate level have also to find their bearings in the new landscape where the old landmarks of patronage at the State level have yielded place to a non-discriminatory passage of resources from the State exchequer to the local government institutions. Keeping in view the factors pointed out above the Commission does not consider it necessary to recommend the amendment of the Constitution to provide for the recommendations of either the Finance Commission constituted under article 280 or of the State Finance Commissions constituted under articles 243-I and 243-Y being treated as awards.

Share of States in taxes, cesses and surcharges

8.4. The Constitution was amended to provide a prescribed percentage of the revenue receipts to be transferred to States (article 270(2)). However, surcharges and cesses do not form part of the divisible pool. Cesses are intended for specific purposes and the States can have no complaint if the

1206 LJ&CA/2002—17A

money is spent on predetermined purposes. Surcharges can be regarded as a not so thinly veiled device to deny the States their share in receipts from such surcharges. Keeping in view the complexity of the present national and international situation which has placed additional burden on the Union; the Commission would not recommend any constitutional amendment to make surcharges shareable but would expect public policy to move decisively in the direction of doing away with the surcharges as part of the Union's fiscal armoury.

Tax on services

8.5 In recent years, services have emerged as the dominant component in the gross domestic product (GDP). Yet there is no mention in the Constitution in any of the three lists (Union List, State List, Concurrent List) enabling any level of government to tax services. The Union has used the residuary power in the last entry of the Union List (entry 97) to levy taxes on selected services. The efforts have not succeeded in tapping the full potential of the service sector of a vast range of services which are primarily local in nature. It is necessary to enhance the revenue potential of the States in view of their major responsibilities for social and physical infrastructure. It might be worthwhile to provide explicitly for taxing power for the States in respect of certain specified services. For the Union also an explicit entry would be helpful, rather than leaving it to the residuary power of entry 97. However, it may be better to first let a consensus list of services to be taxed by the States come into force to be treated as the exclusive domain of the States, even if the formal taxing power is exercised by the Union. In other words, the golden rule here would be to hasten slowly. A *de facto* enumeration of services that can be taxed exclusively by the States should get priority from policy makers with a view to augmenting the resource pool of the States. **The Commission recommends specific enumeration of services that may become amenable to taxation by the States. This is necessary with a view to augmenting the resource pool of the States. The Commission recommends an appropriate amendment to the Constitution in this behalf to include certain taxes, now levied and collected by the Union, to be**

enabled to be levied and collected by the States. Illustratively a list of such subjects in respect of which service tax is levied under the relevant section of the Finance Act, 1994 (Act 32 of 1994) as amended from time to time is given below:

(1) Section 65(48)(e): "To a client, by an advertising agency in relation to advertisements in any manner". Corresponding Entry in List-II of the Constitution – Entry 55 – "Taxes on advertisements published in the newspapers [and advertisements broadcast by radio or television]"

(2) Section 65(48)(f) – "to a customer, by a courier agency in relation to door-to-door transportation of time-sensitive documents, goods or articles". Corresponding Entry in List-II of the Constitution – Entry 56 – "Taxes on goods and passengers carried by road or on inland waterways".

(3) Section 65(48)(m) – "to a client, by a mandap keeper in relation to the use of a mandap in any manner including the facilities provided to the client in relation to such use and also services, if any, rendered as a caterer". Corresponding Entry in List-II of the Constitution – Entry 49 – "Taxes on lands and buildings"

(4) Section 65(48)(o) – "to any person, by a rent-a-cab scheme operator in relation to the renting of a cab" Corresponding Entry in List-II of the Constitution – Entry 57 – "Taxes on vehicles, whether mechanically propelled or not; suitable for use of roads, including tram-cars subject to the provisions of Entry 35 of List III.

(5) Section 65(48)(za) – "to any person, by a mechanized slaughter house in relation to the slaughtering of bovine animals."

Status of Central Bank

8.6 A question has been raised whether any constitutional or legislative safeguards are needed to uphold the autonomy of the Reserve Bank of India (Entry 38, List I) in conducting monetary policy. An advisory group set up by the Reserve Bank of India (RBI) has recommended that legislative changes should be made to facilitate the emergence of an independent and effective monetary policy. However, the Commission sees no need for a change in the Constitution to specifically provide for independent conduct of monetary policy. The existing legislation has broadly succeeded in maintaining a suitable environment of security and continuity for the key personnel and of the autonomy of decision making by the top management. The Commission agrees that appropriate legislative changes would suffice for the proper and timely development of money, securities and exchange markets.

C - Trade, Commerce and Intercourse

Barriers to Inter-State Trade and Commerce

8.7.1 Free flow of trade without geographical barriers is *sine-qua-non* for economic prosperity nationally as well as internationally. Therefore, progressive removal of such barriers has been a general phenomenon in social evolution in the modern world. Today we are vigorously pursuing the goal of free flow of trade among the nations of the world under the banner of globalisation through, for example, the WTO among the nations of the world. Regionally, member states of the European Community, for example, have already achieved that goal almost fully.

8.7.2 As economy is the most important source of power and identity in the world of today, the nations or regions that constitute the federation do not want to lose their hold on economic power. Nor do the economically strong States want the economically weak States to become parasites on them. Therefore, an arrangement must be devised which will ensure free flow of trade, encourage fair

competition and simultaneously remain capable of discouraging and regulating unfair trade practices.

8.7.3 One common arrangement found in all federations in this regard, is the division between the interstate and intrastate trade and commerce. While the regulation of the former is assigned to the federal authority, the States retain the regulation of the latter. Some federations have gone further and made interstate trade free from regulation both by the federal authority as well as the authority of the States. Australia is the foremost example of that. India goes one step further than Australia in so far as it makes flow of interstate as well as intrastate trade free from regulation by the Union as well as the States. However, unlike Australia, after making such a general declaration, the Constitution of India gives adequate powers to the Union and the States, particularly to the former, to regulate trade and commerce.

Trade and Commerce Commission

8.8.1 In order that the country's competitiveness in trade, commerce and industry is enabled to respond to the increasing pressures of globalisation, it is necessary that barriers to Interstate trade and commerce, particularly, the free movement of goods on the inter-state routes should be progressively reduced with a view to their final elimination. A statutory authority contemplated under article 307 of the Constitution requires to be set-up. As the effects of such an authority could as well go beyond the purposes of article-307, the legislation could be comprehensive drawing on Entry 42 of List -I and, if necessary, Entry 97 of List-I of the Seventh Schedule. The composition of the authority may provide for representation of the FICCI, CII, Railway Board, FSIME (Federation of Small Industries and Micro Enterprises), Indian Society of Automobile Manufacturers, National Highway Authority of India, NCAER, National Institute of Public Finance and Policy, Inter-State Council, School of International Studies (Jawaharlal Nehru University), Planning Commission and Ministry of Surface Transport.

8.8.2 **For carrying out the objectives of articles 301, 302, 303 and 304, and other purposes relating to the needs and requirements of inter-state trade and commerce and for purposes of eliminating barriers to inter-state trade and commerce Parliament should by law establish an authority called the "Interstate Trade and Commerce Commission" under the Ministry of Industry and Commerce under article 307 read with Entry 42 of List-I.**

D - Resolution of Disputes

Inter-State Disputes

8.9.1 In a constitutional set-up where powers are distributed between the Union and the States, it is natural to expect disputes as to on which side of the boundary a particular matter falls. Where such differences do arise, it is desirable that there should be a well thought out systemic mechanism for the resolution of such inter- State disputes.

8.9.2 Article 131 relates to the original jurisdiction of the Supreme Court and provides the judicial mechanism for dealing with inter-Governmental disputes involving any questions of law or fact on which existence or extent of a legal right depends between the Government of India and one or more States or between the Government of India and any State or States on the one side and one or more other States on the other or between two or more States. However, a few matters are excluded either by express provisions or by necessary implication.

8.9.3 The Commission considered as to whether the Supreme Court should be given exclusive jurisdiction in controversies concerning the distribution of legislative powers. Incidentally, it may be mentioned here that article 131A was inserted in the Constitution *vide* the Constitution (Forty-second Amendment) Act, 1976 so as to provide exclusive jurisdiction to the Supreme Court in regard to the questions as to constitutional validity of Union laws. However, the said provision was repealed by the Constitution (Forty-third Amendment) Act, 1977. After carefully considering the issues, the Commission is of the view that no exclusive

jurisdiction need be conferred on the Supreme Court in matters of controversies concerning distribution of legislative power between the Union and the States. It would deprive non-governmental parties of the facilities and the advantages of seeking remedy in the High Courts. However, there may be situations, which may require that such questions should not undergo a long drawn-process of litigation and the Supreme Court should be enabled to dispose off such questions finally and quickly without its being made a court of exclusive jurisdiction. The Commission is of the view that the Supreme Court should be empowered to transfer such cases to itself and decide the same. For this purpose it is not necessary to amend article 131. It can be provided for by amending article 139A. This will also ensure that the Supreme Court would be able to apply its mind and *prima facie* see as to whether (a) the case really involves some substantial question of law and is not raising untenable or frivolous contentions; and (b) whether the case is such that it should be transferred to it and disposed of expeditiously.

8.9.4 **The Commission recommends that article 139A, which confers power on the Supreme Court to withdraw cases involving the same or substantially the same question of law, which are pending in Supreme Court and one or more High Courts, should be amended so as to provide that it can withdraw to itself cases even if they are pending in one court where such questions as to the legislative competence of the Parliament or State Legislature are involved.**

Inter-State Water Disputes

8.10.1 Water is a prime resource for sustaining life on earth. The domestic, agricultural and industrial uses of water are multiplying day by day and this phenomenal increase in demand for water in diverse fields has resulted in its scarcity. Moreover, availability of water is highly uneven in both space and time as it is dependent upon varying seasons of rainfall and capacity of storage. India is served by two great river systems, i.e. the Great Himalayan Drainage system and the peninsular river network. It has 14 major rivers that are inter-State rivers

and 44 medium rivers of which 9 are inter-State rivers. Eighty five per cent of the Indian land mass lies within its major and medium inter-State rivers. The Commission considered the importance of inter-State water sharing as an area of great concern in maintaining the federal spirit and better Union-State and inter-State relations. The Commission accordingly studied the mechanisms available for efficient, productive and sustainable resource management of the country's river systems and allocation of inter-State water resources.

8.10.2 The Constitution does not itself lay down any specific machinery for adjudication of water disputes. Article 262(1) lays down that Parliament may by law provide for the adjudication of any disputes or complaints with respect to use, distribution or control of the waters of, or in, any inter-State river or river valley. The subject "Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power, subject to the provisions of Entry 56 of List I" is a matter enumerated in entry 17 of the State List (List II) of the Seventh Schedule.

8.10.3 The expression "regulation and development of inter-State rivers and river valleys" in Entry 56 of the Union List in the Seventh Schedule of the Constitution would include the use, distribution and allocation of the waters of the inter-State rivers and river valleys between different riparian States. Otherwise the provision for the Union to take over the regulation and development under its control makes no sense and serves no purpose. The River Boards Act, 1956 which is admittedly enacted under Entry 56 of the Union List for the regulation and development of inter-State rivers and river valleys does cover the field of the use, distribution and allocation of the waters of the inter-State rivers and river valleys. The very basis of a federal Constitution like ours mandates such interpretation and would not bear an interpretation to the contrary which will destroy the constitutional scheme. Although, therefore, it is possible technically to separate the "regulation and development" of the inter-State rivers and river valleys from the "use, distribution and allocation" of water, yet it is neither warranted nor necessary to do so.

Inter-State Water Disputes Act

8.11.1 Pursuant to the powers conferred by article262 of the Constitution, Parliament enacted the Inter-State Water Disputes Act, 1956 (Act 33 of 1956) to provide for adjudication of disputes relating to waters of inter-State river and river valleys. The Union Government has constituted several Tribunals under the aforesaid Act. Section 4(1) of the Inter-States Water Disputes Act, 1956 empowers the Central Government to constitute a Water Disputes Tribunal for adjudication of a water dispute when a request from any State Government in respect of such water dispute is received by it and it is of opinion that the water dispute cannot be negotiated. The process under the Act from the stage of constitution of the Tribunal to the giving of the award by it normally takes 7 to 10 years. The inordinate delay caused in constituting the Tribunals, delay in passing awards, framing of schemes or plans for giving effect to the decisions, and judicial review by the Supreme Court at times have been contributing factors in developing bitterness and friction between the States involved in the disputes. All these delays were also causing underutilization of water resources and hindering the timely development of the nation.

8.11.2 Having regard to the various infirmities and difficulties in speedy and timely resolution of disputes, the Commission on Centre-State Relations (commonly known as Sarkaria Commission) in Chapter XVII of its report (Volume I) gave several recommendations for implementation. Keeping in view the recommendations of the Sarkaria Commission, the Union Government introduced the Inter-State Water Disputes (Amendment) Bill, 2001 in Lok Sabha to ensure the setting up of inter–State Tribunals and submission of reports by the Tribunals in a time bound manner. (*See* the Background paper on the subject for details). It was passed by Lok Sabha on 03.08.2001 and is still pending in the Rajya Sabha Though the Bill has dealt with some important aspects, particularly the speedier settlement of Inter-State Water Disputes, the momentum of change in technologies requires quicker and larger mobilization of water resources to sufficiently meet the different needs including that of food security.

8.11.3 The Commission observed that in case of every water dispute there have been several occasions when one or the other party approached the Supreme Court by way of seeking judicial review both against the interim orders of the tribunal as also against the final decision. Further in the implementation of the decision of the tribunal the oustees or persons on behalf of the oustees resort to enforcing their fundamental rights under article 21 by a remedy under article 32, consequent on the submergence of their lands due to construction of reservoirs. This leads to adjudication by two forums one as to the use and distribution of water and the other relating to the enforcement of fundamental rights in the process of implementation of the decision of the Tribunal.

8.11.4 The Commission is of the view that it is not necessary to exclude Inter-State Water Disputes from the original jurisdiction of the Supreme Court under article 131 of the Constitution and that such disputes should also be made to fall within the exclusive jurisdiction of the Supreme Court. It has been noticed that Inter-State Water Disputes Act, 1956 has vested the Tribunal with a very unique jurisdiction under section 3. When a water dispute has arisen or is likely to arise by reason of the fact that the interest of the State or of the inhabitants thereof, in the waters of an inter-State river or river valley have been or are likely to be affected prejudicially by any executive action or legislation taken or passed or proposed to be taken or passed by another State, the aggrieved State Government may request the Union Government to refer the water dispute to a Tribunal for adjudication. Consequently, even a proposed legislation can be the subject matter of a dispute and interdicted by the Tribunal by a *quia timet* action. Courts do not exercise such powers of interdiction of legislative measures. Appropriate provision should be made for conferring such a unique power on the Supreme Court. It is recommended that the Inter-State Water Disputes Act, 1956 be repealed and in its place a more comprehensive parliamentary legislation should be enacted. However, it is necessary to make express provisions that the suit shall be instituted in the Supreme Court, which shall have exclusive jurisdiction.

8.11.5 It is not necessary to repeal article 262 of the Constitution for shifting the jurisdiction from the Tribunal to the Supreme Court. Article 262 is a very important provision and the said provision being a part of the Constitution as originally enacted and having come up before the courts several times, it is unlikely to successfully challenge the same. Once it is omitted or repealed, difficulties would arise if after experimenting on the changed form of adjudication, it is later felt or desired to have a Tribunal with a modified or changed jurisdiction or even if it is felt that the system of adjudication by a Tribunal as in the Act of 1956 would be better.

8.11.6 Article 131 is subject to the provisions of the Constitution. It may be noticed that article 262(2) is only an enabling provision and Parliament is not bound to enact a legislation constituting a Tribunal. A parliamentary legislation is sufficient to substitute the forum of the Supreme Court to the Tribunal. No amendment to the provisions of the Constitution may be required. This will enable Parliament to change the law, from time to time, as it may deem fit and proper by resorting to its power under article 262.

8.11.7 **The Commission feels that as river water disputes being important disputes between two or more States and/or the Union, they should be heard and disposed by a bench of not less than three Judges and if necessary, a bench of five Judges of the Supreme Court for the final disposal of the suit.**

8.11.8 **Appropriate provisions may be made as envisaged by article 145(1) in consultation with the Supreme Court or if the Supreme Court so opts to provide for the same by the Supreme Court Rules to appoint Commissioners or Masters and to have the evidence recorded not by the Supreme Court itself but by the Commissioners or Masters so that the precious time of the Supreme Court is saved.**

8.11.9 While a more radical suggestion has been made to place all the inter-State rivers under the jurisdiction of an authority appointed to administer them in national interest by law enacted by Union Parliament, it is a fact that in relation to regulation and development of inter-State waters, the River Boards Act, 1956 has remained a dead letter. Further, as and when occasions arose, different River Boards have been constituted under different Acts of Parliament to meet the needs in a particular river system according to the exigencies, facts and the circumstances. **The Commission, therefore, recommends that appropriate Parliamentary legislation should be made for repealing the River Boards Act, 1956 and replacing it by another comprehensive enactment under Entry 56 of List I. The new enactment should clearly define the constitution of the River Boards and their jurisdiction so as to regulate, develop and control all inter-State rivers keeping intact the adjudicated and the recognized rights of the States through which the inter-State river passes and their inhabitants.** While enacting the legislation, national interest should be the paramount consideration as inter-State rivers are 'material resources' of the community and are national assets. Such enactment should be passed by Parliament after having effective and meaningful consultation with all the State Governments.

Inter-State Council

8.12.1 Article 263 provides a mechanism for resolving problems by collective thinking, persuasion and discussion through a high level coordinating forum, namely the inter-State Council. In view of frequent friction between the Union and the States and between the States, the article has become more relevant. Article 263 empowers the President to establish an Inter-State Council at any time if it appears to him that the establishment of such a Council would serve the public interest. The Council could be charged with the duty of - (a) inquiring into and advising upon disputes which may have arisen between States;(b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or (c) making recommendations

upon any such subject and, in particular, recommendations for the better coordination of policy and action with respect to that subject.

8.12.2 An Inter-State Council was established in 1990 but it met for the first time in 1996. Under the States Reorganization Act, 1956 five zonal Councils were set up. Besides this, North-Eastern Council has been setup under the North-Eastern Council Act, 1971.

8.12.3 The Commission observes that article 263 has vast potential and the same has not yet been fully utilized for resolving various problems concerning more than one State. Of late, it has been observed that where a treaty is entered into by the Union Government concerning a matter in the State List vitally affecting the interests of the States no prior consultation is made with them. The forum of inter-State Council could be very well utilized for discussion of policy matters involving more than one State and arriving at a decision expeditiously. The Commission issued a consultation paper on "constitutional mechanism for the settlement of inter-State disputes" and elicited opinion of the general public. The responses were most helpful.

8.12.4 **The Commission, while endorsing the recommendations of the Commission on Centre-State Relations (Sarkaria Commission), recommends that in resolving problems and coordinating policy and action, the Union as well as the States should more effectively utilize the forum of inter-State Council. This will be in tune with the spirit of cooperative federalism requiring proper understanding and mutual confidence and resolution of problems of common interest expeditiously.**

Treaty Making

8.13.1 Entering into treaties and agreements with foreign powers is one of the attributes of State sovereignty. No State can insulate itself from the rest of the world whether it be in the matter of foreign relations, trade, commerce, economy, communications, environment or ecology. The advent of globalization and the

enormous advances made in communication and information technology have rendered independent States more inter-dependent.

8.13.2 Article 246 (1) read with Entry 14 of List I- Union List of the Seventh Schedule empowers Parliament to make laws with respect to "entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries". As per the provisions contained in article 253, Parliament has, notwithstanding anything contained in article 245 to 252, power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. This article (article 253), therefore, overrides the distribution of legislative powers provided for by article 246 read with Lists in the Seventh Schedule to the Constitution.

8.13.3 **The Commission recommends that for reducing tension or friction between States and the Union and for expeditious decision-making on important issues involving States, the desirability of prior consultation by the Union Government with the inter-State Council may be considered before signing any treaty vitally affecting the interests of the States regarding matters in the State List.**

E - Executive

Office of Governor

8.14.1 The Commission had issued a consultation paper with a questionnaire on the office of the Governor for eliciting public opinion. The issues raised and the suggestions made in the consultation paper related to amending articles 155, 156, 200 and 201 with a view to entrusting the selection of Governors to a Committee, making the five-year term a fixed tenure, providing for removal only by impeachment and limiting his powers in the matter of giving assent to Bills and reserving them for the consideration of the President.

8.14.2 After carefully considering the public responses and after full deliberations, the Commission does not agree to dilute the powers of the President in the matter of selection and appointment of Governors. **However, the Commission feels that the Governor of a State should be appointed by the President, after consultation with the Chief Minister of that State. Normally the five year term should be adhered to and removal or transfer of the Governor should be by following a similar procedure as for appointment i.e. after consultation with the Chief Minister of the concerned State.**

8.14.3 **The Commission recommends that in the matter of selection of a Governor, the following matters mentioned in para 4.16.01 of Volume I of the Sarkaria Commission Report should be kept in mind:**

- **He should be eminent in some walk of life.**
- **He should be a person from outside the State.**
- **He should be a detached figure and not too intimately connected with the local politics of the State.**
- **He should be a person who has not taken too great a part in politics generally, and particularly in the recent past.**

In selecting a Governor in accordance with the above criteria, the persons belonging to the minority groups should continue to be given a chance as hitherto.

Assent of the President and Governors

8.14.4 **There should be a time-limit - say a period of six months – within which the Governor should take a decision whether to grant assent or to reserve a Bill for consideration of the President. If the Bill is reserved for consideration of the President, there should be a time-limit, say of three months, within which the President should take a decision whether to accord his assent or to direct the Governor to return it to the State**

Legislature or to seek the opinion of the Supreme Court regarding the constitutionality of the Act under article 143.

8.14.5 In *Jamalpur Gram Panchayat* - Vs. *Malwinder Singh* - AIR 1985 SC 1394, the Supreme Court held that if the assent of the President were sought to the law for a specific purpose, the efficacy of the assent would be limited to that purpose and cannot be extended beyond it. The court held that if the assent is sought and given, in general terms so as to be effective for all purposes, different considerations might arise. In the case before the Supreme Court case the assent was given by the President for giving protection to the legislation under article 31 (as it then stood) and article 31A and the court held that such assent would not operate for the purposes of article 254(2) of the Constitution. However, the court upheld the law passed by the State Legislature on the ground that it fell under entry 18 of the State List and not entry 41 of the Concurrent List.

8.14.6 **It is felt desirable that a suitable amendment should be made in the Constitution so that the assent given by the President should avail for all purposes of relevant articles of the Constitution.** It would be inappropriate to drag the assent of President into such arguments. From the time the Bill is introduced till the assent of President is given, the whole procedure and proceedings are legislative in character. It is a collective action of the President, the House of the People, and the Council of States. It is not permissible to enquire as to how the mind of each member of the House and the President worked during the entire proceedings beginning with the introduction of the Bill and concluding with the according of assent by the President. The procedures are "certainly internal matters which are beyond the jurisdiction of the court to inquire into." The court is entitled to go into the questions as to whether the enactment is either ultra virus or unconstitutional. The assent of the President is not justiciable. See AIR 1983 SC 1019 at 1048 para 88 - M/s Hoechst Pharmaceuticals Ltd. Vs. State of Bihar and others. Even if noting sent to the President by the concerned Ministry does not reflect all the articles in the Constitution, which referred to the effect of the assent of the President i.e.

articles 31A, 31C, 254 annot be presumed that the President was not aware of or did not bear in , the relevant articles dealing with the effect of the assent of the President. **However, it is desirable that when a Bill is sent for the President's assent, it would be appropriate to draw the attention of the President to all the articles of the Constitution, which refer to the need for the assent of the President to avoid any doubts in court proceedings.**

8.14.7 **A suitable article should be inserted in the Constitution to the effect that an assent given by the President to an Act shall not be permitted to be argued as to whether it was given for one purpose or another. When the President gives his assent to the Bill, it shall be deemed to have been given for all purposes of the Constitution.**

8.14.8 **It is recommended that the following proviso may be added as second proviso to article 111 of the Constitution:**

> **"Provided further that when the President declares that he assents to the Bill, the assent shall be deemed to be a general assent for all purposes of the Constitution."**

Suitable amendment may also be made in article 200.

Failure of Constitutional Machinery

8.15.1 The Constitution of a country – or, for that matter, any enactment containing important and far-reaching provisions – is expected to provide for situations where circumstances arise, in which those provisions cannot be worked in strict conformity with the constitutional or statutory text, as applicable in normal circumstances. In India, the specific topic of failure of constitutional machinery in the States is dealt with, in three articles of the Constitution – articles 355 to 357 and 365 – of which, article 356 is the one most talked about and subject of controversy allegedly on grounds of having been frequently misused and abused.

1206 LJ&CA/2002—16A

8.15.2 It is important that article 356 is read with the other relevant articles *viz.* articles 256, 257, 355 and 365. Insofar as article 355 also *inter alia* speaks of the duty of the Union to protect the State against external aggression and internal disturbance and to ensure that the government of the State is carried on in accordance with the Constitution, it is obvious that article 356 is not the only one to take care of a situation of failure of constitutional machinery. The Union can also act under article 355 *i.e.* without imposing President's rule. Article 355 can stand on its own. Also, Union Government can issue certain directions under articles 256 and 257. While article 356 authorises the President to issue a proclamation imposing President's rule over a State if he is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, article 365 says that where a State fails to comply with Union directions (under articles 256, 257 and others) "it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution". The scheme of the Constitution seems to clearly suggest that before rushing to issue a proclamation under article 356, all other possible avenues should be explored and as Dr. Ambedkar said, article 356 should be used only as a matter of last resort. It should first be ensured that the Union had done all that it could in discharge of its duty under article 355, that it had issued the necessary directions under articles 256-257 and that the State had failed to comply with or give effect to the directions.

Use-misuse of Article 356

8.16 Since the coming into force of the Constitution on 26 January 1950, article 356 and analogous provisions have been invoked 111 times. According to a Lok Sabha Secretariat study, on 13 occasions the analogous provision namely section 51 of the Government of Union Territories Act, 1963 was applied to Union Territories of which only Pondicherry had a legislative assembly until the occasion when it was last applied. In the remaining 98 instances the article was applied 10 times technically due to the mechanics of the Constitution in

circumstances like reorganisation of the States, delay in completion of the process of elections, for revision of proclamation and there being no party with clear majority at the end of an election. In the remaining 88 instances a close scrutiny of records would show that in as many as 54 cases there were apparent circumstances to warrant invocation of article 356. These were instances of large scale defections leading to reduction of the ruling party into minority, withdrawal of support of coalition partners, voluntary resignation by the government in view of widespread agitations, large scale militancy, judicial disqualification of some members of the ruling party causing loss of majority in the House and there being no alternate party capable of forming a Government. About 13 cases of possible misuse are such in which defections and dissensions could have been alleged to be result of political manoeuvre or cases in which floor tests could have finally proved loss of support but were not resorted to. In 18 cases common perception is that of clear misuse. These involved the dismissal of 9 State Governments in April 1977 and an equal number in February 1980. This analysis shows that number of cases of imposition of President's Rule out of 111, which could be considered as a misuse for dealing with political problems or considerations irrelevant for the purposes in that article such as mal-administration in the State are a little over 20. Clearly in many cases including those arising out of States Reorganisation it would appear that the President's Rule was inevitable. However, in view of the fact that article 356 represents a giant instrument of constitutional control of one tier of the constitutional structure over the other raises strong misapprehensions.

Sarkaria Commission

8.17 Chapter 6 of the Sarkaria Commission Report deals with emergency provisions, namely, articles 352 – 360. The Sarkaria Commission has made 12 recommendations; 11 of which are related to article 356 while 1 is related to article 355 of the Constitution. Sarkaria Commission also made specific recommendations for amendment of the Constitution with a view to protecting the States from what could be perceived as a politically-driven interference in self-

governance of States. The underlined theme of the recommendations is to promote a constitutional structure and culture that promotes co-operative and sustained growth of federal institutions set down by the Constitution.

Should Article 356 be Deleted?

8.18 The Commission had issued a consultation paper along with a questionnaire with a view to elicit the views and responses of the public. Large majority of the responses were against deletion of article 356 but favoured its being suitably amended to prevent misuse. There are three patent reasons which require the retention of the article:

(i) Article 356 and related provisions were regarded as a bulwark of the Constitution, an ultimate assurance of maintaining or restoring representative government in States responsible to the people.

(ii) In a fairly large number of cases the invocation of article 356 has been found to have been not only warranted but inevitable.

(iii) If this article is deleted, article 365 would lose relevance and use of article 355 in the absence of 356 might bring a drastic change in Union-State relations which may be worse from the point of view of both the States and the Union.

The Commission is, therefore, not in favour of deletion of article 356.

Need for Conventions

8.19.1 In considering the issues raised regarding article 356 the Commission found that a great part of the remedy to prevent its misuse lies in the domain of creating safeguards and constitutional conventions governing its use. The ultimate protection against the misuse of article 356 lies in the character of the

political process itself. The Commission is, therefore, for generating a constitutional culture that relies on conventions and treats them with same respect as a constitutional provision.

8.19.2 Article 356 has been lodged in the Constitution as a bulwark, a giant protection and a remedy of the last resort. The invocation of article 356 is a constitutional device, the operation of which is vested in the executive domain. In invocation, it is therefore essential to preserve its stature in the constitutional scheme. If the exercise of this power is perceived to yield to political expediency, it will greatly damage the majesty of the executive power and the federal balance. **The Commission, therefore, recommends, in the spirit of the framers of the Constitution, that article 356 must be used sparingly and only as a remedy of the last resort and after exhausting action under other articles like 256, 257 and 355.**

8.19.3 It has been widely represented that the process of invocation of article 356 must follow the principles of natural justice and fair consideration. This aspect also weighed heavily during discussions in the Constituent Assembly and the Chairman of the Drafting Committee had hoped that warning would be given to the errant States and they would be given an opportunity to explain their position. One other issue regarding the issue of such a warning is whether it should be made public or given wide publicity. The Commission have considered this aspect very carefully and have come to the conclusion that taking this matter to the public domain at this stage may apparently allow for transparency but is likely to generate a great deal of heat in the political domain providing the anti-social forces a free play for social disharmony and violence. It may also encourage from the very outset a process of litigation that may apply continuous brakes in exercise of the executive responsibility.

8.19.4 The Commission feels that in a large number of cases where article 356 has been used, the situation could be handled under article 355 i.e. without

imposing President's rule under article 356. It is most unfortunate that article 355 has hardly been used.

8.19.5 In case of political breakdown, the Commission recommends that before issuing a proclamation under article 356 the concerned State should be given an opportunity to explain its position and redress the situation, unless the situation is such, that following the above course would not be in the interest of security of State, or defence of the country, or for other reasons necessitating urgent action.

Situation of Political breakdown

8.20.1 One of the principal criticisms against the imposition of the President's rule has been the unseemly hurry of Governors to recommend it - particularly in a politically conflicting context – without exploring all possibilities of having an alternative Government enjoying confidence of the House. Even while making such an exploration the Governors placed excessive reliance on their subjective satisfaction to ascertain majority support for one or the other political party by resorting to headcounts of supporters presented before them by the political parties.

8.20.2 The issue of determining the majority support of a political party in the House has been dealt with in the Rajamannar Committee Report, Sarkaria Commission and the Bommai judgement. The Commission notes that the political events in a divisive context in several States have repeatedly shown tremendous speed and mobility of shifting political loyalties. In such a situation the task that a Governor may impose upon himself to determine the majority support of one or the other party is indeed an onerous one. The assessment of the Governor, no matter how carefully and objectively determined, can loose validity in no time in the climate of quick shifting sands of political loyalty. It is, therefore, not a matter of subjective determination of the Governor or the President. The constitutional requirement is that a Government should enjoy the

confidence of the House and its open and objective determination is possible only on the floor of the House. There may conceivably be exceptional circumstances and situations which are not conducive to hold the floor test. The Commission is not, therefore, in favour of a static binding rule but would rely on a political and constitutional process in a constitutional forum for a valid determination of majority support for a particular party in the House. The procedure suggested forms a part of the Bommai judgement and thus holds ground judicially.

8.20.3 The Commission recommends that the question whether the Ministry in a State has lost the confidence of the Legislative Assembly or not, should be decided only on the floor of the Assembly and nowhere else. If necessary, the Union Government should take the required steps, to enable the Legislative Assembly to meet and freely transact its business. The Governor should not be allowed to dismiss the Ministry, so long as it enjoys the confidence of the House. It is only where a Chief Minister refuses to resign, after his Ministry is defeated on a motion of no-confidence, that the Governor can dismiss the State Government. In a situation of political breakdown, the Governor should explore all possibilities of having a Government enjoying majority support in the Assembly. If it is not possible for such a Government to be installed and if fresh elections can be held without avoidable delay, he should ask the outgoing Ministry, (if there is one), to continue as a caretaker government, provided the Ministry was defeated solely on a issue, unconnected with any allegations of maladministration or corruption and is agreeable to continue. The Governor should then dissolve the Legislative Assembly, leaving the resolution of the constitutional crisis to the electorate.

8.20.4 The problem would stand largely resolved if the recommendations made in para 4.20.7 in Chapter 4 in regard to the election of the leader of the House (Chief Minister) and the removal of the Government only by a constructive vote of no-confidence are accepted and implemented.

8.20.5 Clause (1) of article 356 contains the expression 'or otherwise'. Clearly, the satisfaction of the President, as regards the existence of the situation contemplated under article 356, flows from two streams. It is immaterial that in most cases where article 356 had been invoked in the past it was on the basis of the report of the Governor. Given the circumstances of global nexus in activities of terrorism, insurgency, lawlessness, the material flowing from the source "otherwise" than the report of the Governor is equally germane to the scheme of invoking this provision. If, to meet with the desirable objective of transparency, as suggested by the Sarkaria Commission, the Governor's Report is projected in the public domain by making it a speaking document and given wide publicity, it would raise serious problems in the discharge of the executive responsibility. For purposes of publicity it would be difficult to differentiate between the Report of the Governor and the materials received "otherwise". **The Commission recommends that normally President's Rule in a State should be proclaimed on the basis of Governor's Report under article 356(1). The Governor's report should be a "speaking document", containing a precise and clear statement of all material facts and grounds, on the basis of which the President may satisfy himself, as to the existence or otherwise of the situation contemplated in article 356.**

Constitutional Amendments

8.21.1 Article 356 has been amended 10 times principally by way of amendment of clause 356(4) and by substitution/omission of proviso to Article 356(5). These were basically procedural changes. Article 356, as amended by Constitution (44th Amendment) provides that a resolution with respect to the continuance in force of a proclamation for any period beyond one year from the date of issue of such proclamation shall not be passed by either House of Parliament unless two conditions are satisfied, *viz:-*

(i) that a proclamation of Emergency is in operation in the whole of India or as the case may be, in the whole or any part of the State; and

(ii) that the Election Commission certifies that the continuance in force of the proclamation during the extended period is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned.

8.21.2 The fulfillment of these two conditions together are a requirement precedent to the continuation of the proclamation. It could give rise to occasions for amendment of the Constitution from time to time merely for the purpose of this clause as happened in case of Punjab. Circumstances may arise where even without the proclamation of Emergency under article 352, it may be difficult to hold general elections to the State Assembly. In such a situation continuation of President's rule may become necessary. It may, therefore, be more practicable to delink the two conditions allowing for operation of each condition in its own specific circumstances for continuation of the President's rule. This would allow for flexibility and save the Constitution from the need to amend it from time to time.

8.21.3 **The Commission recommends that in clause (5) of article 356 of the Constitution, in sub-clause (a) the word "and" occurring at the end should be substituted by "or" so that even without the State being under a proclamation of Emergency, President's rule may be continued if elections cannot be held.**

8.21.4 Whenever a proclamation under article 356 has been issued and approved by the Parliament it may become necessary to review the continuance in force of the proclamation and to restore the democratic processes earlier than the expiry of the stipulated period. The Commission are of the view that this could be secured by incorporating safeguards corresponding, in principal, to

clauses (7) and (8) of article 352. **The Commission, therefore, recommends that clauses (6) & (7) under article 356 may be added on the following lines:**

> **"(6) Notwithstanding anything contained in the foregoing clauses, the President shall revoke a proclamation issued under clause (1) or a proclamation varying such proclamation if the House of the People passes a resolution disapproving, or, as the case may be, disapproving the continuance in force of, such proclamation.**
>
> **(7) Where a notice in writing signed by not less than one-tenth of the total number of members of the House of the People has been given, of their intention to move a resolution for disapproving, or, as the case may be, for disapproving the continuance in force of, a proclamation issued under clause (1) or a proclamation varying such proclamation:**
>
> **(a) to the Speaker, if the House is in session; or**
>
> **(b) to the President, if the House is not in session,**
>
> **a special sitting of the House shall be held within fourteen days from the date on which such notice is received by the Speaker, or, as the case may be, by the President, for the purpose of considering such resolution."**

Dissolution of Assembly

8.22.1 When it is decided to issue a proclamation under article 356(1), a matter for consideration that arises is whether the Legislative Assembly should also be dissolved or not. Article 356 does not explicitly provide for dissolution of the Assembly. One opinion is that if till expiry of two months from the Presidential

proclamation and on the approval received from both Houses of Parliament the Legislative Assembly is not dissolved, it would give rise to operational disharmony. Since the executive power of the Union or State is co-extensive with their legislative powers respectively, bicameral operations of the legislative and executive powers, both of the State Legislature and Parliament in List II of VII Schedule, is an anathema to the democratic principle and the constitutional scheme. However, the majority opinion in the Bommai judgement holds that the rationale of clause (3) that every proclamation issued under article 356 shall be laid before both Houses of Parliament and shall cease to operate at the expiry of two months unless before the expiration of that period it has been approved by resolutions passed by both Houses of Parliament, is to provide a salutary check on the executive power entrenching parliamentary supremacy over the executive.

8.22.2 The Commission having considered these two opinions in the background of repeated criticism of arbitrary use of article 356 by the executive, is of the view that the check provided under clause 3 of article 356 would be ineffective by an irreversible decision before Parliament has had an opportunity to consider it. The power of dissolution has been inferred by reading sub clause (a) of clause 1 of article 356 along with article 174 which empowers the Governor to dissolve Legislative Assembly. Having regard to the overall constitutional scheme it would be necessary to secure the exercise of consideration of the proclamation by the Parliament before the Assembly is dissolved.

8.22.3 **The Commission, therefore, recommends that article 356 should be amended to ensure that the State Legislative Assembly should not be dissolved either by the Governor or the President before the proclamation issued under article 356(1) has been laid before Parliament and it has had an opportunity to consider it.**

Coorg Organisations

8.23.1 The Commission considered memoranda submitted by Coorgi organizations. While one wanted a separate State or Union Territory status for Coorg, the other opposed it. The Commission appreciates the contribution made by the Coorgis to the national cause and **recommends that the Government may consider having a Sainik School and setting up a Development Board for them and also the demand for a University in Coorg.** The Commission did not favour the demand for a separate State or granting of Union Territory status for the area.

Sindhi Organisations

8.23.2 The Commission considered the representations made by various Sindhi organizations. It was agreed that some of the grievances of the community were genuine and required action and it was not possible for the Commission to consider granting any separate constitutional status to the Sindhi community as such or to consider any request for carving out a separate territory as a Sindhi state or a Sindhi region. **However, the Commission recommends that steps may be taken for better protection of Sindhi language and culture by setting up a Centre of Sindhi Language and Culture with the State providing necessary facilities for the same. The Commission recommends further that the difficulties faced by the Sindhi migrants may be examined and corrective measures taken to facilitate grant of citizenship as per the existing law.**

CHAPTER 9

DECENTRALISATION AND DEVOLUTION

CONTENTS

A. Panchayats

9.1 ➢ Background

9.2 ➢ Vision of the Founding Fathers

9.3 ➢ Record of Implementation

9.4 ➢ Constitutional Provisions

9.5 ➢ The Problems

9.6 ➢ Elections

9.7 ➢ Functional Domain

9.8 ➢ Financial Domain

9.9 ➢ Personnel System

9.10 ➢ Dissolution of Panchayats

9.11 ➢ Coordination Machinery

9.12 ➢ Audit of Accounts

B. Municipalities

9.13 ➢ Dissolution of Municipalities

9.14 ➢ Qualifications and Disqualifications for Membership

9.15 ➢ Election Expenses and Code of Conduct

9.16 ➢ Ensuring Regular Elections

9.17 ➢ Electoral Rolls and Delimitation

9.18 ➢ Reservations

9.19 ➢ State Election Commissions

9.20 ➢ Functional Domain

9.21 ➢ Financial Domain

C. Cantonments

9.22 ➢ Administration of Cantonments

D. Institutions In North East India

9.22 ➢ Background and Objective

9.23 ➢ General Recommendations

9.24 ➢ Specific State-wise Recommendations

9.25 ➢ Nagaland

9.26 ➢ Assam

9.29 ➢ Meghalaya

9.30 ➢ Tripura

9.31 ➢ Mizoram

9.32 ➢ Manipur

9.33 ➢ Arunachal Pradesh

CHAPTER 9

DECENTRALISATION AND DEVOLUTION[1]

A. Panchayats

Background

9.1 The search for ways to rebuild India free from the yokes of deprivation, disparities, discrimination proceeded along with the struggle against foreign rule. It was recognized that political, economic, social and cultural spheres of life were interdependent. Gandhiji had advocated the concept of village republics and village self-government. His vision was that of each village being a republic, self sufficient for its own vital needs, and yet inter-dependent. In this model, the village was the centre of a super-structure of concentric circles of governance with a bottom up approach.

Vision of the Founding Fathers

9.2 The Draft Constitution came under sharp criticism in the Constituent Assembly as the popularly elected Panchayats of Gandhiji's dreams did not find a place therein. The only concession made to the Gandhian sentiment, however, was addition of article 40 (as added to draft Constitution by way of amendment) among the Directive Principles of State Policy. The article provides that the State shall take steps to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. Entry 5 of List II (State List) of the Seventh Schedule empowers the State Legislatures to make laws with respect to local self-government or village administration. K. Santhanam put on record the intent of the Constituent Assembly in unambiguous terms:

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[1] *See* also the Consultation Papers on "Review of the Working of the Constitutional Provision for Decentralisation (Panchayats)", Decentralisation and Municipalities" "Empowering and Strengthening of Local Self-Government in Cantonments" and "Empowerment and Strengthening of Panchayati Raj Institutions/ Autonomous District Councils/Traditional Tribal Governing Institutions in the North East India" issued by the Commission, in Volume II (Book 2).

"What is attempted to do here is to give a definite and unequivocal direction that the State shall take steps to organize Panchayats and shall endow them with necessary powers and authority to enable them to function as units of self-government. That the entire structure of self-government, of independence in this country should be based on organized village community life is the common factor of all the amendments tabled and that factor has been made the principal basis of this amendment. I hope it will meet with unanimous acceptance."[2]

Record of Implementation

9.3 The sad fact is that only some sporadic initiatives were taken during 1950-1980. The most serious attempt was in the late 1950s following the review of the working of the community development programme by the Balwant Rai Mehta Committee. The Committee held that in the absence of democratic decentralization, no meaningful and sustained development could be expected. Following the Mehta Committee Report, States like Andhra Pradesh, Rajasthan, Maharashtra and Gujarat took some legislative and administrative initiatives to set up Panchayat Raj Institutions. But it was only in the late 1980s that the first ever effective initiative was taken.

Constitutional Provisions

9.4.1 The Constitution (73rd Amendment) Act, 1992 relating to Panchayats containing articles 243 to 243-O and the Constitution (74th Amendment) Act, 1992 relating to Municipalities (articles 243P to 243ZG) imparted some basic features of certainty, continuity and strength to Panchayat Raj institutions all over the country.

9.4.2 The main features of the 73rd Amendment are - (i) a three-tier system of Panchayat Raj for all States having a population of over twenty lakhs; (ii) Panchayat elections to be held regularly every five years; (iii) reservation of seats for the Scheduled Castes and Scheduled Tribes and for women (not

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[2] See Debates dated 22nd November, 1948 in 'Constituent Assembly Debates' Volume 7 (Book No. 2), Lok Sabha Secretariat Reprint (1999 Edition) p. 520.

less than one-third of seats), (iv) constitution of State Finance Commissions; (v) constitution of District Planning Committees to prepare development plans for the district as a whole; (vi) establishment of State Election Commissions; and (vii) establishment of Gram Sabhas.

The Problems

9.5.1 With a view to generating a debate and eliciting public opinion before examining the problems and suggesting remedial measures, the Commission released Consultation Papers on (i) Panchayats, (ii) Municipalities, (iii) Cantonments and (iv) Panchayat institutions/Autonomous District Councils/ traditional tribal institutions in the North-eastern India. The Commission heard the views of a delegation of representatives of Panchayat Raj Institutions [PRIs] and representatives of traditional tribal institutions in the North-East region. It also considered the responses to the Questionnaires and the general memoranda received by it.

9.5.2 In the process of implementation of the 73rd and 74th Amendments, considerable gaps have been noticed. The Union Government and the State Governments continue to exercise powers in planning and the Panchayats and Municipalities do not enjoy autonomy – financial or administrative – as institutions of local self-government. While today Panchayats elect some three million members of whom one-third are women, the objectives envisaged in the Amendments have not been fully achieved even after more than eight years.

Elections

9.6.1 The State Governments often delay Panchayat elections on purely political considerations. They can do so, because they retain some powers relating to the conduct of elections under the State Acts/Rules. The State Election Commission (SEC) has to depend upon the State Government for

1206 LJ&CA/2002—19A

logistic support that includes staff and finances. Besides, certain important powers like issuance of election notification, delimitation of constituencies, earmarking of reserved seats, etc. are retained by the State Governments in many States. Considering all these, the Commission feels that there is strong case for further strengthening the hands of the SEC by making specific provisions in the Constitution itself.

9.6.2 Sometimes, the SECs have to fight long battles against the State Governments in order to fulfil their constitutional duty to hold elections as per the provisions of law. In order to ensure the accountability of the States in timely conduct of Panchayat and Municipal elections, it is felt that the SECs should function independent from the State Governments and draw expertise and guidance from the Election Commission of India.

The Commission, therefore, recommends that article 243K and 243ZA should be amended on the following lines:

1. Amendment of article 243K.-

In article 243K of the Constitution,-

(a) for clause (1), the following clauses shall be substituted, namely:-

"(1) Subject to the provisions of clause (1A), the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(1A) The Election Commission shall have the power to issue any directions or instructions to the State Election Commission for the discharge of its functions under clause (1).".

1206 LJ&CA/2002—19B

(b) after clause (4), the following clause shall be inserted, namely:-

"(5) The State Election Commission shall submit its annual report to the Election Commission and to the Governor, every year and it may, at any time, submit special reports on any matter which in its opinion is of such urgency or importance that it should not be deferred till the submission of its annual report.".

2. Amendment of article 243ZA.-

In article 243ZA of the Constitution, for clause (1), the following clauses shall be substituted, namely:-

"(1) Subject to the provisions of clause (1A), the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K.

(1A) The Election Commission shall have the power to issue any directions or instructions to the State Election Commission for the discharge of its functions under clause (1).".

Functional Domain

9.7.1 Article 243G along with the Eleventh Schedule indicates the kind of functions to be discharged by the Panchayats. It does not guarantee assignment of a set of exclusive functions to the Panchayats. Hence the kind of role they would be expected to play in governance depends on the regime that controls the government of a State.

The Commission recommends that Panchayats should be

categorically declared to be 'institutions of self-government' and exclusive functions be assigned to them.

Even in the States which have shown political will to decentralise, devolution has not gone beyond entrusting to them responsibility for implementation of the schemes/projects conceived by the State or Union government. As a result, Panchayats have not blossomed into institutions of self-government. Instead they have been reduced to an implementing arm of the State Government.

9.7.2 Article 243G alongwith the Eleventh Schedule indicates the kind of functions to be discharged by the Panchayats. It does not guarantee assignments of a set of exclusive functions to the Panchayats. Hence the kind of role they would be expected to play in governance depends on the regime that controls the government of a State.

The Commission, therefore, recommends that Panchayats should be categorically declared to be "institutions of self-government" and exclusive functions should be assigned to them. For this purpose, article 243G should be amended to read as follows:

Substitution of article 243G.- For article 243G, the following article shall be substituted, namely:-

"Powers, authority and responsibility of Panchayats

243G. Subject to the provisions of this Constitution, the Legislature of a State shall, by law, vest the Panchayats with such powers and authority as are necessary to enable them to function as institutions of self-government and such law shall contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as shall be specified therein, with respect to-

(a) preparation of plans for economic development and social

justice;

(b) the implementation of schemes for economic development and social justice as shall be entrusted to them including those in relation to the matters listed in the Eleventh Schedule."

Similar amendments should be made in article 243W relating to the powers, authority and responsibilities of Municipalities, etc.

Financial Domain

9.8.1 As an institution of self-government, the Panchayats should have adequate fiscal capability. To be an institution of self-government, a Gram Panchayat should, as far as possible, be a viable unit. It should be capable of generating internal resources by using its own fiscal powers that include taxing power commensurate with the functions assigned to it. The PRIs at present are principally grant-fed and their dependence upon the State Government even for carrying out their routine functions is heavy. Among the three-tiers of Panchayats, the Gram Panchayats (GPs) are comparatively in a better position. This is so because the GPs have some taxing power of their own, while the other two tiers are dependent only on tolls, fees and non-tax revenue for generating internal resources. The Commission feels that major fiscal restructuring and financial resources are necessary to enable the Panchayats to function as viable local self-government institutions. Some of the measures necessary for such reforms may be taken even within the framework of existing constitutional provisions.

9.8.2 Articles 243H and 243X are enabling provisions that give authority to the State Legislature to authorise the Panchayats and Municipalities in respect of levy, collection and appropriation of taxes, duties, fees and tolls aw well as for the creation of a fund within the Panchayat and Municipal institutions to regularise and control inflow and outflow of financial resources. The said

articles do not serve their purpose since some State Governments appeal to be reluctant to share their fiscal powers with the local self-government institutions. The Commission, therefore, feels that the only way out is to introduce the concept of a separate tax domain for the local bodies. The Commission considered the suggestion to provide a Local List in the Seventh Schedule for giving fiscal autonomy to the local-self government institutions. However, the Commission feels that it would be too early to consider such a proposal.

The Commission, therefore, recommends that the Eleventh and the Twelfth Schedules should be restructured in a manner that creates a separate fiscal domain for Panchayats and Municipalities. Accordingly articles 243H and 243X should be amended making it mandatory for the Legislature of the States to make laws devolving powers to the Panchayats and Municipalities.

9.8.3 Sub-clauses (bb) and (c) of clause (3) of article 280 require the Finance Commission to make its recommendations in respect of the Panchayats and Municipalities "on the basis of the recommendations made by the Finance Commission of the State". The Eleventh Finance Commission found it difficult to work within this framework because of various problems. It found that in some States, the State Finance Commissions (SFCs) were either not constituted or did not submit their reports. Again, in view of the 'heterogeneity of approach' of different SFCs and differences in contents and periods covered by them, the Eleventh Finance Commission found it difficult to form its opinion only on the basis of their recommendations. For avoiding such a situation in future and **in order to enable the Finance Commission to take a macro-level view, it is recommended that the provisions of article 280(3)(bb) and (c) should be suitably amended. The words "on the basis of the recommendation" in these clauses may be replaced by the words "after taking into consideration the recommendations."**

9.8.4 In order to enable the Finance Commission to give due weight to the reports of SFCs for assessing the situation in each State, it is necessary to synchronize the periods covered by the reports of both of them. **In the part of clause (1) of article 243-I which calls for constitution of SFC at the expiration of every fifth year, in line with article 280(1), the words "or at such earlier time as the Governor considers necessary" may be added after the words 'fifth year'. While it is for the State Legislature to ensure that the Government implements fully its assurances, there should be constitutional obligations for placing the Action Taken Report (ATR) before the legislature within 'six months' after the submission of the report. Clause (4) of article 243-I may need to be amended accordingly.**

9.8.5 Taxes on professions, trades, callings and employment under article 276 have been a traditional source of revenue for the local bodies. (Of late, there is, however, a tendency for the State Governments to take over such powers from the local bodies). One of the impediments in generating substantial revenue from the levy and collection of this tax is that the upper ceiling (presently, Rs. 2500 per annum) has been constitutionally fixed [*see* article 276(2)]. While there is a need for fixing the upper ceiling of the tax centrally in order to avoid the charge of double taxation on 'income', constitutional provision introduces unnecessary rigidity. **It would be better to vest in Parliament the necessary legislative power of fixing upper limit of taxes on professions, trades, callings and employment under article 276.**

9.8.6 Now-a-days, the local governments are being encouraged to take recourse to borrowing for financing asset-building and/or remunerative projects. Some Municipal Corporations have been given power even to go to the capital market. The Panchayats of West Bengal are permitted to borrow from the financial institutions, subject to Government approval. With the role

we are envisaging for PRIs in the governance structure, there is no reason as to why the borrowing power should not be constitutionally given to the Panchayats, especially, the Zilla Parishads. **All local authorities may be allowed to borrow from the State Government and financial institutions.**

Personnel System

9.9.1 An institution of self-government must have the power to recruit and control the officers and other employees required for managing its functions. The Constitution is totally silent about this vital aspect of institutional autonomy. The Commission feels that failure to address the human resource issue has definitely affected the growth of Panchayats as self-governing institutions. **It is necessary that an enabling provision is made in Part IX of the Constitution permitting the State Legislature to make, by law, provisions that would empower the State Government to confer on the Panchayats full power of administrative and functional control over such staff as are transferred following devolution of functions, notwithstanding any right they may have acquired from State Act/Rules. They should also have the power to recruit certain categories of staff required for service in their jurisdiction.**

Dissolution of Panchayats

9.10 Clause (1) of article 243E provides that every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer. However, the corresponding provision, namely, clause (1) of article 243U relating to Municipalities, makes a specific proviso to the effect that a municipality shall be given a reasonable opportunity of being heard before its dissolution. It has been noticed that there is no corresponding proviso in article 243E relating to Panchayats.

The Commission recommends that a proviso to clause (1) of article 243E may be inserted to the effect that a reasonable opportunity of being heard shall be given to a Panchayat before it is dissolved.

Coordination Machinery

9.11 There is need for coordination among the Panchayats. They also need continued support from the State Government. Gujarat, Orissa and Karnataka Acts provide for a coordination body.

The Commission recommends that a provision for constitution of a State Panchayat Council under the chairmanship of the Chief Minister [on the pattern of Gujarat State Council for Panchayats as provided in the Gujarat Panchayats Act, 1993] may be made in the Constitution on the analogy of the provision in article 263 of the Constitution relating to the Inter-State Council. The leader of the opposition may be made *ex-officio* vice-chairman of the Council to provide a consensual approach to the development of Panchayats as fully democratic, efficient and responsible institutions.

Audit of Accounts

9.12 The Commission noted with concern that there is considerable lack of accountability of Panchayats because of inadequate provisions in law relating to audit of accounts of public bodies. There is no time frame to conduct the audit of accounts of a given year, submit the audit report or comply with the objections raised in the report. Delay in audit provides opportunity for misuse of funds, tardy implementation of projects and over-all weakening of the system.

The Commission recommends that necessary provisions may be made for audit of Panchayat accounts to ensure that all works related to

audit (conduct of audit, submission of audit report and compliance with audit objections if any) are completed within a year of the close of a financial year. To ensure uniformity in the practice relating to audits of accounts, the Comptroller and Auditor-General of India be empowered to conduct the audit or lay down accounting standards for Panchayats.

B. Municipalities

Dissolution of Municipalities

9.13 **The Commission recommends that whenever a Municipality is superseded, a report stating the grounds for such dissolution should be placed before the State Legislature.** This will be a deterrent to treating supersession casually and resorting to it because of political expediency.

Qualifications and Disqualifications for Membership

9.14 Articles 243F and 243V contain identical provisions so far as disqualifications for membership in a Panchayat or a Municipality are concerned. The main principle followed is that the grounds of disqualification should be the same as applied for elections to the State Legislatures. But since the State laws may make additional provisions, these are spread over several State laws. Some disqualifications, as in Himachal Pradesh or Haryana barring all licensed architects, town planners, surveyors, etc., from contesting local elections merely because they are licensed by the Municipality may be carrying the notion of conflict of interest too far. It may be expected that the State laws will be modified in the context of experience. **The Commission recommends that all provisions regarding qualifications and disqualifications for elections to local authorities should be consolidated in a single law and until that is done, each State should prepare a manual of existing provisions for public information.**

Election expenses and code of conduct

9.15 Having regard to the population, topography, etc., election expenses may vary from State to State.

The Commission recommends that the State Election Commission (SEC) should have the authority to prescribe ceiling of expenses and code of conduct in elections. Further, the State laws should clearly specify the powers of the SEC to disqualify candidates in the event of violation of these laws.

Ensuring regular elections

9.16.1 Articles 243E and 243U of the Constitution contain identical provisions. Clause (1) of article 243E states that every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer". Similarly, clause (1) of article 243U states that every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting. The provisions are clear and unambiguous and hence, there is no scope for any other interpretation. Clause (3) of article 243E and that of 243U further state that elections to constitute a Panchayat and a Municipality respectively shall be "completed before the expiry of its duration specified in Clause (1)". Both the articles 243E and 243U, in sub-clause (1) thereof contains a provision for dissolution of panchayat or municipality respectively. Here again sub-clause (b) of clause (3) in both the articles stipulate that elections have to be completed "before the expiration of a period of six months from the date of its dissolution."

9.16.2 **The Commission recommends that it should be the duty of a State and the Union (in case of Panchayats and Municipalities located in Union territories) to ensure the completion of elections within the**

stipulated limits. It should also be duty of the State Election Commissioner to ensure this and in the event of possible delay make a report to the Governor of the State drawing his attention to the problems and suggesting remedial action to fulfill the requirements of the Constitution. Article 243K(I) and article 243 ZA(I) state that the "superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the Panchayats/Municipalities shall be vested in a State Election Commission." This is a composite set of responsibilities. The preparation of electoral rolls and the conduct of elections involve several processes and actions which are closely inter-related. The words, "superintendence, direction and control" are comprehensive and unambiguous and do not permit any artificial division. Clause (4) of 243K and Clause (2) of 243 ZA do provide for a State Legislature to make provisions with respect to all matters relating to or in connection with these elections. However, this has to be subject to the provisions of the Constitution and can relate only to processes to be followed and guidelines for this purpose so that such processes serve public interest and ensure free and fair elections. They do not permit splitting up of the composite responsibilities as stated in article 243K and 243ZA. However, experience indicates that certain important parts of these responsibilities such as delimitation of territorial constituencies or reservation of seats or rotation of such reservation among constituencies have been assumed by some State Governments. The effect of this has been to enable these State Governments to intervene in the composite and integrated process of conducting elections and thereby hold up the same if they so chose to do.

The Commission, therefore, recommends that article 243K and 243ZA should be suitably amended to specify that the responsibility for the conduct of elections shall include all preparatory steps for the same including preparation of electoral rolls. The Commission further

recommends that the functions and responsibilities of delimitation, reservation and rotation of seats and matter connected therewith should be vested in a delimitation commission constituted by law made by the appropriate Legislature and not in the SEC.

Electoral Rolls and Delimitation

9.17.1 (a) Under articles 243K and 243ZA, the preparation of electoral rolls is the responsibility of the State Election Commission (SEC). The general practice has been for the SECs to adopt the electoral rolls available for the Assembly and Lok Sabha elections. In some cases however the electoral rolls for the local elections are prepared afresh and the two rolls may differ. As recommended by the Commission earlier, the Constitution should specifically stipulate a common electoral roll both for local elections to Panchayats and Municipalities and to the Parliament and State Legislative Assemblies. In other words, the electoral roll for the Panchayat/Municipal elections should be the same electoral roll prepared by the Election Commission of India under article 327 of the Constitution read with the Representation of the People Act, 1950 and as updated by the SECs. The processes for preparing the roll as also its periodical revision should be uniform throughout the country.

9.17.2 The Election Commission has been evolving over a period of time a system whereby each polling station in an Assembly constituency has a unique identity which is linked to the roll of electors using that polling station. It is possible that panchayat and municipal elections may require more polling stations. If so, these additional polling stations should be extensions or sub-units of the main polling station. This will ensure a 'building block' approach for elections in the country whereby the smallest unit will be a polling station on a sub unit theory. A certain number of these will form a 'panchayat ward' or a 'municipal ward' which in turn will be grouped into Panchayats and Municipalities or Assembly segments and Lok Sabha constituencies. The

voter is the same. **The R.P. Act and State laws should specify that common polling stations should be used for elections to local bodies, State Legislatures and Parliament.**

9.17.3 While delimitation of the constituencies for Panchayat and Municipal elections should be under the control and direction of the SEC, the Constitution should stipulate that such delimitation should be adjusted after every census and not for every election. **The State laws should provide guidelines for the delimitation work such as parity, as far as possible, in the ratio between the population of a territorial constituency and the number of seats within the same class of Panchayats or Municipalities.** The extent of permissible variations should also be mentioned. Parity as a requirement is stipulated in the proviso to article 243C so far as panchayats are concerned but is missing in article 243R relating to municipalities.

9.17.4 **State laws should specify that changes in the administrative boundaries of districts, sub-divisions, taluks, police stations, etc., should not be made within six months prior to a panchayat or a municipal election.**

Reservations

9.18.1 Reservation and rotation of reserved constituencies and division of responsibilities in this regard is another cause for delay in holding elections in time. If rotation takes place during every election, a person elected on the reserved seat does not get an opportunity of occupying the same seat for a second term. This proves to be a disincentive for members to work hard for their constituency. It is particularly disadvantageous to women and fresh entrants to build up their capacity and experience as elected representatives.

9.18.2 Articles 243D and 243T contain identical provisions so far as

reservation of seats in Panchayats and Municipalities for SCs/STs and women are concerned. However there are some ambiguities about the rotation of such reserved seats. The words used in both the articles are "may be allotted by rotation". However in the third proviso to clause (4) of article 243D regarding reservation of the offices of chairpersons the words used are "shall be allotted by rotation". The constitutional provisions also do not specify the frequency of rotation. Moreover, in clause (4) of article 243T there is no stipulation for rotation. **To remove ambiguities, articles 243D and 243T should be suitably amended to provide for rotation and changes only at the time of delimitation and not in between. State laws should provide the guidelines for the process of reservation which should ensure transparency and adequate opportunities for eliciting voter response.**

9.18.3 Clause (6) of article 243D and clause (6) of article 243T enable a State Legislature to provide for reservation of seats as also offices of chairpersons in Panchayats and Municipalities in favour of backward class of citizens. Neither of the articles stipulate any ceiling for the total number of reserved seats and reserved offices. Since not less than one-third of total seats has been specified as the minimum for women; the reservation additionally made for backward classes can take a large proportion. **To clarify the precise position, the overall total of reserved seats and reserved offices in Panchayats and Municipalities should be specified.**

State Election Commissions

9.19.1 It is essential that the machinery for organizing the local elections is adequately strengthened. For this purpose, **the Commission recommends that the State Election Commissioner should have a fixed term of 5 years. He/she should be equal to a Judge of the High Court. The broad qualifications for a State Election Commissioner may be specified under the State law.** Since the conduct of elections is a major logistical exercise,

administrative experience should be stressed.

9.19.2 Notification for all elections to Panchayats and Municipalities should be issued by the SEC.

Functional Domain

9.20 In the period after independence, there has been a steady diversion and diminution of responsibilities in the sphere of municipal functions. There has been a growth of development activities of Municipalities and they have become afflicted with maladies such as corruption, unresponsiveness, financial mismanagement, lack of accountability, political interference, etc. It was expected that the Constitution 74th Amendment would reverse this trend and once again entrust the responsibilities for the upkeep and development of towns and cities to Municipalities and corporations. Article 243G and 243W of the Constitution provide for the State laws to endow the Panchayats and Municipalities respectively with such powers and authority as may be necessary to enable them to function as institutions of self-government. The Eleventh and Twelfth Schedules to the Constitution Lists 29 and 18 items respectively for Panchayats and Municipalities. It is important to note that neither these Schedules are exhaustive nor they signify a variety of functions. In essence, these Schedules are illustrative only. The Commission reiterates its recommendations made in para 9.8.2 above.

Financial Domain

9.21 The functions, functionaries and finances have to go together for any process of devolution to be meaningful. It has been observed that the mismatch between functions and finances and near bankruptcy in many situations have been recurring features of municipal body finances in the country. The Constitution, even after the 74th Amendment does not provide

for an autonomous domain of tax or revenue raising powers to Municipalities. These continue to be determined and regulated by the State Governments. The State Governments specify the taxes that the Municipalities can levy and collect which are taken from the State List in the 7th Schedule. Historically these taxes have included taxes on lands and buildings, taxes on entry of goods into a local area for consumption, taxes on animals and boats, taxes on entertainment, taxes on professions, trades, etc. There are significant variations between the States. Since there is no distinct tax domain of the Municipalities as such, the control of the State Governments in determining the tax, tax rates or even tax exemptions is significant.

The Commission recommends that the concept of a distinct and separate tax domain for municipalities should be recognised. This concept should be reflected in a list of taxes in the relevant schedule. Carving out items from the existing State lists such as item 49 (taxes on land and buildings) and item 52 (taxes on entry of goods into a local area for consumption) should not be difficult. The Commission also reiterates its recommendations in para 9.8 above.

C. Cantonments

Administration of Cantonments

9.22 After considering the suggestions in regard to cantonments, the Commission decided that it was not necessary to make any recommendations in that regard.

D. Institutions in North East India

Background and Objective

9.22.1 The North Eastern region of India is one of its richest regions in terms

1206 LJ&CA/2002—20A

of natural resources. It is also one of the most beautiful parts of India. However, a sense of alienation, misgovernance, corruption and under development are pervasive features of the region. To tackle the problems of this unique area and to preserve the democratic traditions and cultural diversity of its people, the framers of the Constitution conceived of the instrument of tribal self-rule. This stands embodied in the Sixth Schedule to the Constitution. The drafting of this Schedule was done by a Sub-Committee on North East Frontier (Assam Tribal and excluded areas) of the Constituent Assembly headed by Shri Gopinath Bardoloi, the then Premier of Assam. The effort was to accommodate the collective aspirations of tribal communities within the broader framework of a democratic political system.

9.22.2 The provisions of the Sixth Schedule are applicable to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram. Arunachal Pradesh (earlier known as North Eastern Frontier Agency) was also part of the Sixth Schedule and was administered by the Governor of Assam. Assam (barring two districts covered by the Sixth Schedule), Arunachal Pradesh, Manipur and Sikkim have passed legislation bringing the local bodies under the provisions of the 73rd and 74th Amendments to the Constitution.

9.22.3 **The North Eastern part of India with its large number of tribal communities and emerging educated elites has self-governing village councils and organized tribal chiefdoms. Efforts are to be made to give all the States in this region the opportunities provided under the 73rd and 74th Constitution Amendments. However, this should be done with due regard to the unique traditions of the region and the genius of the people without tampering with their essential rights and giving to each State the chance to use its own nomenclature for systems of governance which will have local acceptance.**

1206 LJ&CA/2002—20B

9.22.4 The Commission feels that our efforts must be to develop those instruments of political government to bring self-governance to the region and to calm the passions of divisive trends. The future of the North Eastern States hinges on choosing self-governance. During the last few decades, the system of local-governance promoted under the provisions of the Sixth Schedule has been seeking to guarantee political dominance for backward groups, better local governance at the community level, better economic development and ethnic security for those who feel threatened by large scale influx of illegal migrants and even settlers from other parts of India.

9.22.5 The other regions of the country where there are large population of tribals are covered by the provisions of the Fifth Schedule. This is totally different from the Sixth Schedule States where the emphasis is on self-rule because many of the communities inhabiting these areas had ruled themselves until the British subjugated them in the 19th century. The issues of emotional, physical and political distance and alienation still remain.

General Recommendations

9.23 After carefully studying the existing position of local self- governance in the various North-eastern States, the Commission makes the following general recommendations:-

(i) Careful steps should be taken to devolve political powers through the intermediate and local-level traditional political organisations, provided their traditional practices carried out in a modern world do not deny legitimate democratic rights to any section in their contemporary society. The details of state-wise steps to devolve such powers will have to be carefully considered in a proper representative

meeting of traditional leaders of each community, opinion builders of the respective communities and leaders of state and national stature from these very groups. A hasty decision could have serious repercussions, unforeseen and unfortunate, which could further complicate and worsen the situation. To begin with, the subjects given under the Sixth Schedule and those mentioned in the Eleventh Schedule could be entrusted to the Autonomous District Councils (ADCs). The system of in-built safeguards in the Sixth Schedule, should be maintained and strengthened for the minority and micro-minority groups while empowering them with greater responsibilities and opportunities, for example, through the process of Central funding for Plan expenditure instead of routing all funds through the State Governments. The North Eastern Council can play a central role here by developing a process of public education on the proposed changes, which would assure communities about protection of their traditions and also bring in gender representation and give voice to other ethnic groups.

(ii) Traditional forms of governance must be associated with self-governance because of the present dissatisfaction. However, positive democratic elements like gender justice and adult franchise should be built into these institutions to make them broader based and capable of dealing with a changing world.

(iii) The implementation of centrally funded projects from various departments of the Union Government should be entrusted to the ADCs and to revived village councils with strict audit by the Comptroller and Auditor-General of India.

(iv) The process of protection of identity and the process of

development and change are extremely sensitive. These twin processes need to be understood in the framework of a changing world and the role of all communities, small and large, in that world. Therefore, the North Eastern Council should be mandated to conduct an intensive programme of public awareness, sensitization and education through non-government organizations, State Governments, and its own structure to help bring about such an understanding of the proposals given below.

(v) The provisions of the Anti-Defection Law in the proposed revised form as now recommended by the Commission, vide paragraph 4.18.2 shall be made applicable to all the Sixth Schedule areas.

(vi) Given the demographic imbalance which is taking place in the North-East as a result of illegal migration from across the borders, urgent legal steps are necessary for preventing such groups from entering electoral rolls and citizenship rolls of the country. The recommendations of this Commission for issuance of multi-purpose identity cards to all Indian citizens be made mandatory for all Indian residents in the North East on a *high-priority basis* and the Citizenship Act should be reviewed to plug the loopholes which enable illegal settlers to become 'virtual' citizens in a short span of time, using a network of touts, politicians and officials.

(vii) A National Immigration Council be set up under law to examine and report on a range of issues including Work Permits for legal migrants, Identity Cards for all residents and the enactment of a National Migration Law and a National Refugee Law, review of the Citizenship Act, the

Illegal Migrants Determination by Tribunal Act and the Foreigners Act.

(viii) Local communities be involved in the monitoring of our borders, in association with the local police and the Border Security Force.

Specific State-wise Recommendations

9.24 In addition to the above, some specific reforms are recommended by the Commission in regard to individual States in the North Eastern region of India.

9.25 ***Nagaland***: The case of Nagaland is quite different from the position of other North Eastern States in view of the provisions of article 371A of the Constitution inserted by the Constitution (Thirteenth Amendment) Act, 1962 and the Nagaland Tribe, Area, Range and Village Council Act, 1966. Article 371A specifically provides that no Act of Parliament in respect of (i) religious or social practices of the Nagas, (ii) Naga customary law and procedure, (iii) administration of civil and criminal justice involving decisions according to Naga customary law; and (iv) ownership and transfer of land and its resources shall apply to the State unless the Legislative Assembly by a resolution so decides. In addition, the Governor of Nagaland has special powers to act with regard to internal disturbances; powers which are virtually unchallengeable. The Nagaland Tribe, Area, Range and Village Council Act, 1966 provides for the creation of a tribal council for each tribe, an Area Council for Kohima and Dimapur, a Range Council where there is a recognized range in the Mokukchung and Kohima Districts and Village Councils for one or more villages in Kohima and Mokukchung, wherever they may be deemed necessary by the Deputy Commissioner. The Village Development Board scheme was started in 1970s to enable village councils to function effectively and with autonomy. The Village Development Boards are now receiving central funds and about 1000 village development boards are functioning with assets totalling about twenty crores of rupees. The Commission elicited views

of the State Government and the general public as to how a long term settlement of the political issues of the Naga leadership could be arrived at and as to how much autonomy could be given to the local communities to promote self-governance and a sense of ownership. The Commission notices the efforts being made by the Government to arrive at a political solution. It is to be hoped that this process would contribute to peace and stability.

The Commission recommends that in Nagaland -

(1) **Naga Councils be replaced by elected representatives of various Naga society groups with an intermediary tier at the district level.**

(2) **Village Development Boards be less dependent on State and receive more Centrally-sponsored funds.**

9.26 ***Assam***: The division of the composite State of Assam led to the drawing of new boundaries. The North Cachar hills sub-division of the United Mikir and Cachar Hills District was upgraded to a district in 1970. The Mikir Hills District section was renamed as Karbi Anglong in 1976. Both the districts have Autonomous Councils. For each autonomous district, the Sixth Schedule provides for a District Council consisting of not more than 30 members for a term of five years. The Governor nominates not more than four members to the Council while the others are elected on the basis of adult suffrage. The Chief Executive Member (CEM), the chairman and the deputy chairman (equivalent to Speaker and the deputy Speaker) are elected from among the Members and the CEM selects the other executive members.

9.27 There are different internal rules for different Autonomous District Councils. In some Councils like Mara in Mizoram, the electorate are eligible adults and in certain others like Karbi Anglong right to access to traditional lands and length of stay in the region are regarded as qualifying criteria for being included in the voters' list for the ADCs.

9.28 **As regards Assam, the Commission recommends that (1) the Sixth Schedule should be extended to the Bodoland Autonomous Council with protection for non-tribal, non-Bodo groups, (2) other Autonomous Councils be upgraded to Autonomous Development Councils with more Central funds for infrastructure development; within the purview of the 73rd Amendment but also using traditional governing systems at the village level.**

9.29 ***Meghalaya***: In Meghalaya, the District Councils are dominated by the tribal communities. The major tribes of the State are Khasi, Jaintia and Garo. Besides District Councils, there are traditional ruling systems, namely, the Syiems (rajas) of the Khasi Hills. The Dolois of the Jaintia and the Nokmas of the Garos. Of these three, the Khasi traditional polity was regulated under a three tier system with the Durbar Shnong *i.e.,* Village Council presided by the Rangbah Shnong (headman) at the base, the Durbar Hima *i.e.,* State Assembly presided by the Syiem or the equivalent of a king at the apex. The Dolois of the Jaintia Hills and the Nokmas or traditional headmen of the Garos are not as well organized as the Syiemships. There are at present competing systems of authority each of which is seeking to serve or represent the same constituency and the system therefore requires streamlining as per the aspirations of the people. Trends towards militancy in the State can be discouraged through measures leading to self-governance. For this to happen, the traditional systems of governance will have to be included and given specific roles and opportunities instead of being marginalized.

As regards Meghalaya, the Commission makes the following recommendations:-

(1) **A tier of village governance to be created for a village or a group of villages in the Autonomous District Councils, comprising of elected persons from the traditional systems plus from existing village councils with not more than 15**

persons at each village unit.

(2) **At present, each of the Autonomous District Councils in Meghalaya consists of 30 seats. It is recommended that this number may be increased by 10 seats, *i.e.*, to a total number of 40 seats. Of the 10 additional seats, having regard to the non-representation of women and non-tribals, the Governor may nominate up to five members from these categories to each of the ADCs. The other five may be elected as follows:-**

- **By Syiems and Myntris, from among themselves to the Khasi Autonomous Council.**
- **By Dolois from among themselves to the Jaintia Autonomous District Council; and**
- **By Nokmas from among themselves to the Garo Autonomous District Council.**

9.30 ***Tripura*:** In Tripura, the Tripura Tribal Areas Autonomous District Councils were formed in 1985 and every such Council has 28 elected members and two members nominated on the basis of the Chief Executive Member's recommendation by the Governor from among the Tribals.

As regards Tripura, the Commission makes the following recommendations:-

(1) **The recommendations made by the Commission for other Autonomous Councils should also apply in respect of the Autonomous District Council(s) in Tripura.**

(2) **The number of elected members in the Council should be increased from 28 to 32.**

(3) **The number of nominated members should be increased to six from the current two. The existing non-tribal seats (currently,**

they have three elected seats) be converted to tribal seats. Three non-tribals may be nominated by the Governor and three tribal women may be nominated by the Chief Executive Member.

9.31 ***Mizoram*:** In Mizoram, there are three Autonomous District Councils (ADCs), namely, the Lai, Mara and Chakma. The Chakma ADC has 13 elected members and 3 nominated members. The Lai ADC has 23 elected and 4 nominated members. The Mara ADC has 19 elected and 4 nominated members.

As regards Mizoram, the Commission makes the following recommendations:-

(1) **An intermediary elected 30-member tier be developed at the district level in areas not covered by the Sixth Schedule, *i.e.*, excluding the Chakma, Lai and Mara District Autonomous Councils. There would thus be two tiers below the State Legislature: the District and the Village.**

(2) **Village Councils in non-Scheduled areas be given more administrative and judicial powers; two or more villages be combined to form one village council, given the small population in the State.**

(3) **Consideration be given to groups seeking Sixth Schedule status, depending on viability of the demand, including size of population, territorial and ethnic contiguity.**

(4) **Central funding as outlined in general recommendations be provided to the ADCs.**

(5) **Nominated seats for women, non-tribals and Sixth Schedule tribes in non-scheduled area (not to exceed six over and above the size of the Councils, making a total of 36 members);**

current size of ADCs be increased to 30 with a similar provision for women and non-scheduled tribes.

9.32 ***Manipur:*** Manipur has been seeking Sixth Schedule status for its hill areas and this request needs serious consideration. The 73rd and 74th Amendments are applicable to only those areas of Manipur which are in plains and these provisions are yet to be fully implemented.

As regards Manipur, the Commission recommends that the provisions of the Sixth Schedule be extended to hill districts of the State. Also, the 73rd Amendment be implemented vigorously in the areas of the plains where, despite elections, the system is virtually non-existent.

9.33 ***Arunachal Pradesh*:** Since the Government of Arunachal Pradesh has already implemented the provisions of the Constitution 73rd Amendment *in toto*, the Commission does not propose to make any recommendation in this regard.

CHAPTER 10

PACE OF SOCIO-ECONOMIC CHANGE AND DEVELOPMENT

CONTENTS

10.1	➢ Constitutional Aspirations	10.10	➢ Strengthening of constitutional provisions in favour of SCs and STs
10.2	➢ Progress towards social justice	10.11	➢ Minorities
10.3	➢ Issues of governance	10.12	➢ Denotified Tribes/ Communities and Nomadic and Semi-nomadic Tribes/ Communities
10.4	➢ Education – Establishment of Residential Talent Schools and Protection of Educational Interest of Weaker Sections	10.13	➢ Unorganised labour
10.5	➢ Liberation and Rehabilitation of Safai Karmacharis (Scavengers)	10.14	➢ Bonded and Child Labour
10.6	➢ Socio-economic Development and Empowerment of SCs, STs and Revitalisation of Special Component Plan for SCs and Tribal sub-plan	10.15	➢ Development of Backward Classes
10.7	➢ Land Reforms	10.16	➢ Empowerment of Women
10.8	➢ Legal protection for security of life and human dignity	10.17	➢ Immoral traffic in women and girls children- rescue and rehabilitation
10.9	➢ Science and Technology		

CHAPTER 10

PACE OF SOCIO-ECONOMIC CHANGE AND DEVELOPMENT[1]

Constitutional Aspirations

10.1.1 The Constitution aimed at a social revolution that would transform the Indian society. There were many dimensions to this historic endeavour. There was, first, the task of catching up with the agricultural and industrial revolutions that had characterised the developed world. This among other reforms involved vast technological changes for increasing productivity of both capital and labour. It was not easy to introduce new techniques of production based on modern science and technology. New structures and institutions had to be created to suit these, a difficult and disruptive exercise in the best of circumstances.

10.1.2 In the Indian context there were other serious obstacles to be overcome, obstacles that had not been confronted by the presently developed nations. Hierarchy and attendant inequality presented an entirely new aspect in India in the shape of the caste system which stifled the creative energies of vast numbers condemned to labour in conditions of degrading exploitation. The exploiter and the exploited were both stripped of human dignity and worth. Patriarchy added yet another element of subjection of women and children to this enormously tragic blockage of initiative and innovation. Religious differences of a plural tradition were turned into a pernicious divide by the deliberate policy of the master minds of the Raj which continues to cast its vicious shadows on Indian polity.

10.1.3 The colonial version of modernity not only carefully preserved inherited inequalities and oppressions, but also overlaid them with more

[1] See also the Consultation Paper released by the Commission on "Pace of Socio-Economic Change Under the Constitution" in Volume-II (Book 1) and the Background Paper on "Pace of Socio-Economic Change and Development" in Volume-II (Book 3).

powerful subtexts of new inequalities of a parasitic feudalism and dominations deriving from arrested development.

10.1.4 Faced with the daunting task of modernising India against this setting, the constitution makers set to work with unflinching faith and unbounded hope - faith in the revolutionising principles of liberty, equality and fraternity and in the genius of the Indian people to build a better future for themselves, and hope that the promised transformation would be accomplished without violence and within the framework of democracy.

Progress towards social justice

10.2.1 The Preamble to the Constitution accords primacy to Justice, social, economic, and political, in the making of state policy and in state action. Accordingly, an impressive array of legislative enactments and executive orders have provided a firm legal framework for government action to abolish the most outrageous aspects of the caste system, viz., untouchability; to anchor in law the scheme of reservations for the Scheduled Castes and Scheduled Tribes in political institutions of governance, and to provide for reservation in government services and educational institutions; to reform land relations in order to enable the weaker sections, predominantly belonging to the scheduled castes and scheduled tribes, to access productive assets so that they may work with freedom and dignity; to protect the incomes of landless labour and marginal land holders through minimum wage legislation; to provide financial and organisational resources for the scheduled caste children to receive elementary, secondary and higher education; to prevent and penalise atrocities; to allocate plan resources under specially designed schemes for economic, educational and social development of the scheduled castes and scheduled tribes and to provide the plan mechanism of Special Component Plan for SCs and Tribal Sub-plan to channelise more developmental resources to them and to integrate the scheduled castes and scheduled tribes with the mainstream of social and economic life in the country. There is a misconception that the problems of Scheduled Castes, Scheduled Tribes and Backward Classes are sectional and marginal. In reality these are part of the central and core problems of the country. These

three categories of people constitute about 3/4th of the population of the country and almost the entire physical labour force of the country is drawn from them. It is the failure to tackle their problems so as to remove their disabilities and secure their full potential for national development that lies at the root of the many weaknesses faced by post-Independence India to this day. Therefore, these issues and the remedial measures should be approached as central and core concerns of India.

10.2.2 It is true that there is some progress in breaking the mould of social inequality and caste oppression and in the economic and educational spheres but there is a long way to go before social equality, educational equality, freedom from caste oppression, freedom from economic dependence are achieved. The traditional sanction for inequality has been decisively questioned and to some extent undermined. What is most important is the cultural and intellectual upsurge in the *dalit* communities across the country evidenced in their literary and intellectual productions. This is a development which fills us with hope for the future.

10.2.3 Yet, one still waits for a cultural revolution that would uproot inherited attitudes, values, institutions, practices, and postures, replacing them with values and attitudes relevant to a modern, egalitarian society. Education has still to perform the role of dissolving the encrusted debris of birth sanctioned superiority and birth-based discrimination, deprivation and exploitation. Vast numbers of landless and marginal farmers still hope for a change in institutional arrangements that would end their abject dependency on the existing power structures in the rural areas.

10.2.4 However, even when faced with the reality of the gap between aspiration and achievement, we cannot but pay our humble tribute to the foresight and wisdom of the Constitution makers in frontally tackling an issue of immense significance to nation building. It remains for us to carry forward the task of bringing about social, economic and educational equality fortified by the mandates of our Constitution. Reservation, no doubt, helped the deprived sections to secure a share, though not to an adequate extent, in governance. Reservation was intended to be part of a comprehensive

package of an entire gamut of economic, educational and social measures. This comprehensive package has not been provided in its fullness. Consequently, reservation alone by itself has not been able to bring about the total social transformation envisaged in the Constitution.

10.2.5 The outcome of the failure to provide the comprehensive package envisaged by the Constitution gives material for a sobering thought. More than half century after the Constitution, the bulk of the SC families remain agricultural wage labourers as in the past many centuries. The bulk of STs continue to remain in remote areas and are being progressively deprived of their lands converting many of them into agricultural labourers. The bulk of the backward classes pertaining to economic categories like traditional artisans, fisher-folks and the like are being deprived of their traditional occupations while being denied access to relevant technology and modern occupations, thereby pushing them into the unorganised labour force. All the three categories continue to be the victims, in varying forms and degrees, of all-round deprivations, discriminations and disabilities, in all spheres – economic, educational, social – in the case of SCs extending to the extreme of untouchability and in the case of STs to the extreme of isolation.

Issues of governance

10.3.1 In line with our earlier analysis of the Executive and Public Administration (Chapter 6), we emphasise the paramount need for a radical redefinition of governance to change the mind-set of the political executive and the permanent civil service. The movement must be from governance to self-governance. It should be recognised that constitutional rights of the citizenry, human dignity, Human Rights, human security are not rewards of development but are critical to development itself. Self-governance must necessarily include developmental autonomy for SCs and STs through empowered special institutions on their behalf and empowerment of SCs, STs, BCs and other deprived categories to shape relevant and appropriate policies and programmes for their development and empowerment and the implementation of those policies. Since civil society is an important element figuring conceptually in model of self-governance, it has to be emphasised

1206 LJ&CA/2002—21B

that civil society must include Scheduled Caste, Scheduled Tribes, Backward Classes and other deprived categories outside Government and governmental institutions and they should be enabled to have a hand in the continuing process of development and programmes.

10.3.2. **The Commission recommends that Citizens' Charters be prepared by every service providing department/agency to enumerate the entitlements of the citizens. In case a citizen fails to receive the public goods and the services in the manner and to the extent set out in such charters, he/she should have recourse to an easy and effective system of grievance redressal through chartered Ombudsman. These citizen's charters should include specifically the entitlements of citizens belonging to SCs, STs and other deprived classes. In the case of these deprived classes the charters can with advantage provide for National and State Commission for SC, ST, BC, Minorities, women, safai karamcharis to function effectively as ombudsman-bodies. Concomitantly, the Commission recommends that the charter of these National and State Commissions and the way they are constituted should be such as to facilitate the role, *inter alia*, as ombudsman-bodies for different deprived classes.**

10.3.3. Personnel policy should consciously aim at sensitizing public servants, especially officers in the Indian Administrative Service and the Indian Police Service to the special needs of women, the scheduled castes, the scheduled tribes, minorities, and other weaker sections. **The Commission recommends that the Civil Services Boards, recommended to be set up under Chapter 6 for considering promotions and placements, should be directed to specifically consider the performance of officers in promoting the welfare of scheduled castes, scheduled tribes and other deprived categories. When officers are being considered for promotion and placement economic agencies/ministries, weightage should be given to officers who have worked conscientiously and efficiently to implement constitutional values and norms under the law and rules and regulations for the welfare,**

development and empowerment of the above disadvantaged categories and those who have failed in this and those who have not worked at least for five years in the areas and sectors pertaining to these categories should be excluded from placements in economic ministries/agencies. For this purpose, the Commission recommends that provision be made for Social Justice Clearance before an officer of class I or class II is promoted along the lines detailed in para 3.2 at pages 1390-1391 of Book-3, Vol.II.

10.3.4 The Commission recommends that:

(i) reservation for SCs and STs should be brought under the purview of a statute covering all aspects of reservation, as detailed in para 8.10 at pages 1406-1408 of Book-3, Vol.II, including setting up *Arakshan Nyaya Adalats* or Tribunal to adjudicate upon all cases and disputes pertaining to reservation in posts and vacancies in Government, Public Sector, Banks and other financial institutions, Universities and all other institutions and organisations to which reservations are and become applicable. These Tribunals should have the status of High Courts, appeals lying only to the Supreme Court. These Tribunals should have their main Bench at Delhi and other Benches in the States. The Chairperson, Vice-Chairperson and other Members of the Tribunal and its benches should be selected on the basis of their record in the implementation of Reservation in their earlier positions. The statute should, *inter alia*, have a penal provision including imprisonment for those convicted of wilfully or negligently failing to implement reservation; and

(ii) the proposed statute and related provisions should be brought under the Ninth Schedule to the Constitution.

10.3.5 The Commission further recommends that the three constitution amendment enacted in the last two years to undo the harm done in 1997 to the long pre-existing rights of SCs and STs in reservations should be put into effect forthwith. The Central and State

1206 LJ&CA/2002—21A

Governments should amend the executive orders issued in 1997 regarding the roster and restore the pre-1996 roster. This should also be brought into the purview of the statute mentioned above.

10.3.6 **The Commission recommends that Reservation for backward classes should also be brought under a statute which, while containing the specificities of reservation for BCs should also contain provisions for *Arakshan Nyaya Adalats* or Tribunal for providing Justice in Reservation, penal provisions etc. as recommended in the case of the statute in respect of SCs and STs.**

10.3.7 **The Commission recommends that it should be mandatorily stipulated in the Memoranda of Understanding (M.O.Us.) of privatisation or dis-investment of public sector undertakings that the policy of reservation in favour of SCs, STs and BCs shall be continued even after privatisation or dis-investment in the same form as it exists in the Government and this should also be incorporated in the respective statutes of reservation. As a measure of social integration there should be a half per cent reservation for children of parents one of whom is SC/ST and the other parent is non-SC/non-ST and this reservation should be termed as reservation for the Casteless.**

10.3.8 In higher judiciary, the representation of judges from Scheduled Castes, Scheduled Tribes and other backward classes is inadequate. Out of 610 judges in the High Courts, there are hardly about 20 judges belonging to the Scheduled Castes and the Scheduled Tribes. In S.P. Gupta's[2] case and Supreme Court Advocates on Record[3] case, popularly known as the First Judges' Case and Second Judges' Case respectively, the Supreme Court upheld the constitutionality of the circular letter addressed by the Union Law Minister requesting the State Governments and the High Courts to recommend the names of competent candidates belonging to the Scheduled Castes, the Scheduled Tribes, women and Other Backward Classes.

[2] AIR 1982 SC 149
[3] AIR 1994 SC 268

10.3.9 **In view of the above and also taking into account the weighty opinion against the formal introduction of reservation in the higher judiciary, and the fact that over fifty years, the progress of education, however tardy, has certainly produced adequate number of persons of the SC, ST and BC in every State who possess the required qualifications, having necessary integrity, character and acumen required for Judges of Supreme Court and High Courts for appointment as Judge of the superior judiciary, a way could and should, therefore, be found to bring a reasonable number of SCs, STs and BCs on to the Benches of the Supreme Court and High Courts in the same way in which, in practice, it is found is followed in respect of advocates from different social segments/regions of the country/States or different religious communities so that on the one hand the overwhelming opinion against formal reservation in the Supreme Court and High Courts is respected and on the other hand, the feeling of alienation of the vast majority of Indians comprising SCs, STs and BCs that, in spite of having persons of requisite calibre and character among them, they are being ignored in the appointment of Judges, is resolved.**

10.3.10 **The Commission recommends that there should be reservation for SCs, STs and BCs (including BC minorities and especially More and Most Backward classes), with a due proportion of women from each of these categories in the matter of allotment of shops under the public distribution system, and other allotments like petrol stations, gas agencies, etc. for distribution of commodities by public authority. There is need for support mechanism to help entrepreneurs among these deprived sections to help them to come up in these business ventures. These measures should be taken along detailed lines as spelt out in para 4.6 at page 1393 of Book-3 Vol.II.**

10.3.11 In the context of PDS, taking note of people who do not have purchasing power even to pay for subsidised food-grains available through PDS, **the Commission recommends that massive programmes of employment be undertaken and expanded to cover all such people and**

provide them employment at statutory minimum wage fixed for agricultural labourers at least for 80 days in the year over and above the unsteady employment they normally have. The nature of the work to be undertaken, the mode of payment of wages etc. should be as detailed in para 4.5 at pages 1392 to 1393 of Book-3 of Volume-II. Inclusion of Right to Work as a fundamental right has been recommended in para 3.13.2 of this Report and this will provide the necessary constitutional base and support for this programme.

Education - Establishment of Residential Talent Schools and Protection of Educational Interest of Weaker Sections

10.4.1 Education was envisaged as one of the most powerful engines for the social and economic liberation of the SCs, STs, BCs and for bringing about social equality and empowerment of these categories. The mandate of Article 46 of the Constitution is very clear on these aspects. Yet the best education has not been brought within the reach of these sections. In the context of realities, it is imperative to set up residential schools of high quality for SC, ST and BC, each of which is not a single community but hundreds of communities, recognised and categorised together on the basis of criteria like untouchability, and social backwardness. Unless such schools are set up for them, the goal of educational equalisation and quality education will continue to elude them and the constitutional mandate envisaged by Article 46 will continue to be flouted. **This Commission, therefore, recommends the establishment of residential schools for SCs and STs in every district in the country – one each for SC boys and SC girls, and ST boys and ST girls, as one item of an important package of comprehensive measures required for the development and empowerment of SCs and STs. Similarly, the Commission recommends that residential schools should be set up for the BCs in every district, one each for BC boys and BC girls, including minorities who belong to BCs and with special attention to More Backward and Most Backward classes among BCs. The proportion of the students of the specific category of weaker sections (say 75 per cent) and of other social categories (say 25 per cent), the principles of location, methodology of covering the Minority B.C.,**

phasing and funding, mode of selection of the candidates, management etc. should be as detailed in paras 5.4 and 6.2 at pages 1395 to 1398 of Book 3 of Volume II. This system has got the support of the precedent and experience for the last two decades in Andhra Pradesh state, providing ground for hope in this important and indispensable measure. In addition, the Commission recommends that it is also necessary to see that the SCs, STs and BCs especially the More and Most Backward classes of BCs from poor and middle-class families get due benefit of good and prestigious private educational institutions in the country as well as in foreign educational institutions at all levels and in all disciplines, at state cost. Funding for this can be found by measures outlined in sub para (V) of para 5.4 at page 1396 of Book 3 of Volume II. The measures detailed in sub para (ii) and (iv) of para 5.4 at pages 1395 and 1396 of Book 3 of Volume II should be followed in the matter.

10.4.2 The Commission feels that the time has come to build up the educational coverage of SC and ST in technical, vocational, scientific and professional disciplines, with appropriate incentive and support and with special budgetary outlays so that a reservoir of highly educated professional, scientific and technological manpower is built up among the SCs and STs and also the More and Most Backward Classes of BCs, commensurate with their population proportion. **Incentives should be offered to students to prepare for such courses of study. Only a massive transfer of resources to the educational programmes for the scheduled castes and scheduled tribes will enable us to achieve the kind of quantitative expansion needed to bring these communities on par with others in terms of skills and knowledge base to engage with the modern world. It is only then that they would be in a position to compete on the basis of their own strength and rise to the leadership role in different spheres of public life. The Commission recommends that this aspect of measures for building up a reservoir of highly educated professional, scientific and technological manpowers among these categories in population equivalent proportion should be borne in mind along with its earlier recommendations regarding residential schools of high quality and**

elementary education, and provisions and outlays should be made accordingly.

10.4.3 Social policy should aim at enabling the SC, ST and BC (including BC minorities and especially the More and Most Backward Classes among BCs) and with particular attention to the girls in each of these categories to compete on equal terms with the general category. This was always necessary but this becomes more important and increasingly urgent in the context of a knowledge society that is emerging. Reservation has helped the above deprived categories to enter state educational institutions from which they had been debarred and / or otherwise excluded in the past. Reservation continues to be necessary since these adverse factors have not ceased to exist. But with the growth of high quality educational institutions built up by the wealthier sections, almost entirely drawn from non-SC, non-ST, non-BC categories, as a high quality stream distinct and separate from the state educational system, it becomes important to ensure that other measures in addition to reservations are introduced. That is why the Commission has recommended establishment of high quality residential schools for boys and girls of these categories in every district, and ensuring a share for boys and girls of these categories from poor and middle-class families, at state cost, in private institutions of excellence created for themselves by the wealthier sections and also a share for these disadvantaged categories in foreign educational institutions again at state cost. Without these measures, along with the Commissions recommendations on elementary education, the gap between the SC, ST and BC on the one hand and the rest of society will inexorably continue and even be widened.

Liberation and Rehabilitation of Safai Karamcharis (Scavengers)

10.5 Manual scavenging is a degrading practice. The Commission recommends that the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, be strictly enforced to bring to an early end to this degrading practice so offensive to human

dignity without abridgement of the employment and income of existing Safai Karamcharis. Automatic applicability of the Act to all states should be brought about by the amendment suggested in para 7.2 at page 1399 of Book 3 of Volume II. Further, the specifics and details of the abolition of the manual scavenging system and the liberation and rehabilitation of safai karamcharis and protection of safai karamcharis during the transition period should be as detailed in para 7.3 of pages 1399 to 1401 of book 3 of Volume II, including its incorporation in the System of Social Justice Clearance of officers at the time of their consideration for promotion. Limitations placed on the National Commission of Safai Karamcharis should be removed and it should be given the same powers and functional autonomy as is being enjoyed by the National Human Rights Commission; it should be adequately equipped to achieve its objective of total liberation and full rehabilitation of safai karamcharis. This should form an integral part of a National Sanitation Policy-cum-National Social Justice Policy.

Socio-economic Development and Empowerment of SCs, STs and Revitalisation of Special Component Plan for SCs and Tribal sub-Plan

10.6.1. For comprehensive development and empowerment of Scheduled Castes and Scheduled Tribes, the Government have followed, over the last 25 years, a policy of earmarking a proportion of total plan outlay, not less than the proportion of the population of SCs/STs in India as a whole (for the central plan) and in each State (for State Plans). It has also been formally decided many years back that population equivalent proportion of the total plan outlay of the Centre and of each State should be for the Special Component Plan for Scheduled Castes (SCP), and Tribal Sub-Plan (TSP). Further the concept has been that programmes and schemes in accordance with the developmental needs and priorities of the SCs and STs should be formulated under the SCP and TSP. This commendable policy has no doubt helped but has not been able to bring about the required qualitative change in the conditions of the SCs and STs. Adequate Plan outlays and corresponding budgetary allocations as required for SCP and TSP are never made for want of seriousness of purpose in line with Article 46 of the Constitution, in the

process of plan formulation and implementation. In recent years even the aggregate allocations for the development of SCs and STs have declined as a proportion of the total plan outlay. Another serious problem is that the allocated amounts are not fully utilised due to lack of coordination between various Departments and want of seriousness and sincerity. Further funds earmarked for SCP and TSP allocated for the development of SCs and STs often have been diverted in spite of specific policy decisions and guidelines from the Centre as well as States against such diversions.

10.6.2 **The Commission strongly feels that this bleak situation will continue to bedevil the SCs and STs and the nation unless appropriate new institutions are created to take charge of the full quantum of outlay of SCP and TSP (i.e. outlay not less than the population equivalent proportion of the total plan outlay of the Centre/each State) and manned by competent experts of SCs and STs and others genuinely working for them, to formulate Plans in accordance with the developmental needs and priorities of the SCs and STs and ensure that these plans are implemented effectively.** This will help to take planning and implementation of development of SCs and STs out of the hands of those who have no interest in them. **This new institutional system should consist of an integrated network of National Development Council for SCs and STs, and National SCs and STs Development Authority, State SCs and STs Development Authorities and District SCs and STs Development Authorities. Out of the total plan outlay of the Centre and of each State, before sectoral allocations are made, an outlay equivalent to the population proportion of SCs and STs should be placed at the disposal of the National and respective State Authorities, as the corpus of SCP and TsP for formulation of plans in accordance with the needs and priorities of SC & ST. For this, the system as detailed in para 9.2 at pages 1409 to 1411 of Book-3, Volume-II should be established. The schemes as illustrated in sub-para (9) of para 9.2 at page 1410 to 1411 of Book-3, Volume-II should also be taken up on a massive scale. This will at one stroke remove the various limitations and difficulties faced by the SCP and TSP and create a powerful, integrated instrument of social**

transformation based on the vision of economic liberation, educational equality and social dignity of the SCs and STs.

Land Reforms

10.7.1 One of the basic issues continues to be access to and control over land. It is significant that land reform as a political and economic issue of major importance has ceased to occupy the central place it occupied in political discourse not too long ago. The statistical data compiled for the background paper clearly shows that the vast majority of the SC population remain landless agricultural labourers and marginal peasants and the STs have been steadily losing their land and adding to the landless agricultural labour force. Without access to productive assets and firm legal protection for their title, ownership, possession and peaceful enjoyment, it is difficult to see how there can be a real and significant change in the position of the scheduled castes and scheduled tribes in the village society. In addition, we need to inject new vitality in the operation of minimum wage legislations to benefit agricultural labour. **The Commission recommends that land reforms involving distribution and allotment of lands from different sources (i.e. Government lands not required for genuine public use, Bhoodan lands, ceiling surplus lands, etc.) to the SCs and STs along with supportive mechanism in the shape of supply of subsidised capital and credit and extension be made, and development of these lands through irrigation and other means be undertaken. In this context, the measures recommended at (b) of sub-para (9) of para 9.2 at pages 1410 to 1411 of Book-3, Volume-II and in para 14(i) to (vi) at pages 1416 to 1417 of Book-3, Volume-II should be implemented. Similarly, with regard to enforcement of the Minimum Wages Act for agricultural labour, the methodology recommended at (c) of sub-para (9) of para 9.2 at page 1410 of Book-3, Volume-II should be followed. Strong legal action is needed to prevent alienation of lands belonging to the tribal communities and effective prior rehabilitation of tribals before displacement due to developmental projects. For this purpose the measures listed in para 13.2 at page 1414 to 1416 of Book-3, Volume-II**

should be undertaken. Additionally the tribal communities have to be associated with the management of forest resources, for not only their livelihoods, but also for protecting their way of life and cultural identity which are indissolubly linked to forests. For this purpose, action as recommended in sub-para (10) and (11) of para 13.2 at pages 1415 to 1416 of Book-3, Volume-II should be taken.

10.7.2 **In the matter of harmonising the preservation of the land ownership of STs, industrial and other development, the Commission recommends that action be taken as outlined in sub-para (6),(8) and (9) of para 13.2 of pages 1415 to 1416 of Book-3, Volume-II.**

10.7.3 The tribal communities are repositories of myriad cultural traditions –tribal lore, the arts and crafts, music, dance, and design, textiles, metallurgy and eco-friendly technology. There is a tremendous range of attainment in all these different aspects of their heritage. Knowledge of flora and fauna, herbal medicine and therapies, time-reckoning, animal husbandry, veterinary practices etc. represent additional areas of specialized knowledge in tribal societies in different parts of the country. It is of crucial importance that these variegated elements of tribal cultural heritage are protected from being overrun or expropriated. **The Commission recommends that special safeguards should be provided to protect the wholesome traditions of the cultural heritage and of the intellectual property rights of the tribal people. This is no less important for the tribal identity than the effort to prevent alienation of land and land-related institutional rights of tribal people.**

10.7.4 As a means of improving the administration of the areas inhabited by the Scheduled Tribes and promoting local autonomy, **the Commission recommends that all areas governed by the Fifth Schedule of the Constitution should be forthwith transferred to the Sixth Schedule extending the applicability of the Sixth Schedule to tribal areas other than the North Eastern States to which alone the Sixth Schedule now applies, and all tribal areas which are neither in the Fifth Schedule nor in the Sixth Schedule should also be brought forthwith under the Sixth**

Schedule. Special programmes of training and orientation for the elected representatives of the Sixth Schedule bodies and related officials should be undertaken and conducted regularly in order to secure the full potential of local developmental and administrative autonomy envisaged under the Sixth Schedule.

10.7.5 The Commission took into account the changing parameters of State action in the context of the tectonic shift toward globalization and liberalization. At present SC and ST employees in the private sector are numerically insignificant except at the shop floor level. This is also true of More and Most Backward Classes to a considerable extent including BC Minorities and women, particularly women from these sections. It is obvious that in the context of the severe bias against the SCs and STs and also in varying degrees against BCs, women and minorities shared by the captains of the private sector with the rest of the advanced sections of the society, they will not, left to themselves, be able to provide adequate space for the SCs and STs and also to BCs, women and Minorities and meet their just aspirations. **It is necessary for the Government to step in firmly and clearly, if the gap is to be bridged between private prejudices, camouflaged in the name "efficiency" on the one hand and the just aspirations of the SC, ST, BC including BC minorities, and women. For this purpose the Commission recommends that the Government should take the initiative along the lines suggested in para 11.3 at pages 1412 to 1413 of Book-3, Volume-II.**

10.7.6 **Further the Government should examine other economic and activity sectors at every level of each such sector and see whether the SCs and STs are adequately represented in each of them. If they are not, remedial measures either through reservation or through other means should be undertaken to see that they are adequately represented at every level in every such sector. Similar action should also be taken with regard to backward classes including BC minorities, especially More and Most Backward Classes and women of all**

categories. This is possible, if non-economic prejudices are excluded, without watering down the genuine requirements of efficiency.

10.7.7 **Agriculturists and other traditional producing classes face certain adverse effects of sudden and unprepared exposure to the regimes of WTO, IPR, etc. In order to protect them from these adverse effects while at the same time to secure the benefits of those regimes, a national convention should be convened involving Ministers in charge of Ministries connected with globalisation and Ministers in charge of Agriculture and other sectors of traditional produce and authentic representatives of the peasant organizations as well as organisations of other traditional producing classes, to identify remedial Steps arrive at a consensus about them and these should be implemented quickly. There should be a continuing mechanism involving all these to continuously monitor implementation and corrections and modifications required from time to time.**

10.7.8 **Further agriculturists and many other traditional producing classes suffer from the adverse effects of natural calamities like drought, cyclone, floods, etc. A similar national convention should identify the measures required to protect them from such adverse effects of natural calamities including crop insurance, preparedness etc., arrive at a consensus about these measures and institute a continuing machinery of continuous monitoring and corrections and modifications.**

Legal protection for security of life and human dignity

10.8.1 The Commission recognises that on the one hand there should be an effective legal structure to protect the SCs and STs against atrocities and discriminatory practices based on untouchability and along with such structure and its efficient functioning, there should also be attitudinal change of a profound nature in the general society.

10.8.2 With regard to legal structure, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 needs to be strengthened and its effective enforcement ensured. This include the establishment of special courts exclusively to try offences under this Act, inclusion of certain crimes in the list of atrocities, certain penal provisions where they do not exist, appropriate plugging of certain loopholes and comprehensive rehabilitation of victims and so on. For this purpose, the Commission recommends the measures suggested in para 8.2.1, 8.2.2, 8.2.3, 8.3 and 8.4 (a) to (p) of Book-3, Vol.II at pages 1401 to 1404.

10.8.3 Regarding untouchability which continues to be widely prevalent in old classic forms as well as in new forms in line with modern developments, multi-pronged measures covering human rights education, moral education, building up of a strong democratic movement against untouchability and effective punitive action under the Protection of Civil Right Acts, 1955 (PCR Act) are required. In view of this, the Commission recommends the adoption of the entire gamut of measures suggested in paras 8.6 to 8.8 at pages 1404 to 1405, Book-3, Vol.II.

Science and Technology

10.9 The National Science and Technology Commission referred to in Chapter 6 should also promote measures for extending the umbrella of modern science and technology and higher scientific and technological research to cover SCs, STs and BCs, women and other poor sections of the society, devise means by which they can also be introduced into this field and potential talent among them identified and nurtured so that they also are enabled to contribute to the advancement of higher scientific and technological research in the country and so that there is no feeling that they are shut out from this important area on account of non-scientific prejudices.

Strengthening of constitutional provisions in favour of SCs and STs

10.10 **The Constitution of India** was shaped by the guiding hand and genius of Dr.Babasaheb Ambedkar with the goodwill of Pt. Nehru, Sardar Patel and Dr.Rajendra Prasad and other stalwarts of the Constituent Assembly under the inspiration of Mahatma Gandhi and **contains distinct provisions for the protection and promotion of the interests of Scheduled Castes and Scheduled Tribes, Backward classes, women, minorities and other weaker sections, so that an egalitarian society could be built up. If these provisions had been implemented in the right spirit, the problems bedevilling the masses of the people and country as a whole should have disappeared by now. Taking the realities of the recent decades and the failure to implement these constitutional provisions, the Commission considers it necessary to strengthen these provisions by amendments, transfer of certain articles to Part III Fundamental Rights, and certain other similar steps. Accordingly, the Commission recommends amendments to the Constitution listed in para 15 at pages 1417 and 1418 of Book-3, Vol.II, covering articles 46, 335, 16, 15 and List III of the Seventh Schedule.**

Minorities

10.11.1 The general argument for creating a better cultural, economic and educational environment for protection of rights and of development of disadvantaged sections applies mutatis mutandis to the religious and linguistic minorities. Constitutional safeguards already exist. What is needed is a major break through in educational and economic spheres. In this context, it is also to be noted that the bulk of the religious minorities consist of castes/communities which are included in the list of socially and educationally backward classes. They are mainly counterparts of Hindu Backward Classes and to some extent of Hindu Scheduled Castes.

1206 LJ&CA/2002—22A

10.11.2 The Commission recommends that-

(a) Steps should be taken for improvement of educational standards amongst the minority communities. Special programmes should be drawn up after the widest consultation with the leaders of minority communities including leaders of BCs, SCs and STs among Minorities from academic, professional, business, and socio-political spheres and from low-occupational spheres. Such programmes should be generously funded. Only educational and cultural advancement will help the cause of national integration as well as raise the capabilities of the communities. This is the high road to national cohesion.

(b) At present the political representation of minority communities in legislatures, especially Muslims, has fallen well below their proportion of population. The proportion of BCs among them is next to nil. This can lead to a sense of alienation. It is recommended that in situations of this kind, it is incumbent for political parties to build up leadership potential in the minority communities, including BCs, SCs and STs among them, for participation in political life. The role of the state for strengthening the pluralism of Indian polity has to be emphasised.

(c) Backward classes belonging to religious minorities who have been identified and included in the list of backward classes and who, in fact, constitute the bulk of the population of religious minorities should be taken up with special care along with their Hindu counterparts in the developmental efforts for the backward classes. This should be on the pattern of the approach to the development of Backward Classes formulated by the Working Group for the Development and Empowerment of Backward Classes in the Tenth Plan referred to separately under Backward Classes. This will, on the one hand, help the development of the masses of religious minorities and on the other hand help bring about national cohesion.

(d) An effort needs to be made to carry out special recruitment of persons belonging to the underrepresented minority communities in the

1206 LJ&CA/2002—22B

police forces of States, para military forces and armed forces. This will instil confidence among minority populations as well as help them to develop responsible attitudes toward security issues confronting the nation.

10.11.3 There exist in every State minority people speaking languages other than the Stage langueage in other words linguistic minorities, who suffer from the dis-advantage of education being available only in the language of the State concerned. Keeping in view the psychology of learning, the Commission recommends that in every State the linguistic minorities should be provided the facility of having instruction for their children at elementary stage in their mother tongue. Numerous recommendations in this behalf and other matters have been made by the Commissioner for Linguistic Minorities in his successive Annual Reports regarding the various problems faced by the linguistic minorities. **The Commission recommends that the Ministry of Social Justice and Empowerment and the Ministry of HRD should collate all these recommendations and see that substantive action is taken on each of them.**

10.11.4 The Secretary, Ministry of Social Justice & Empowerment requested the Commission to examine the relevance of the Office of the Commissioner for Linguistic Minorities under article 350B. After considering the matter, the Commission felt that no change in article 350B was desirable.

Denotified Tribes/Communities and Nomadic and Semi-nomadic Tribes/ Communities

10.12.1 The denotified tribes/communities have been wrongly stigmatized as crime prone and subjected to high handed treatment as well as exploitation by the representatives of law and order as well as by the general society. Some of them are included in the list of Scheduled Tribes and others are in the list of Scheduled Castes and list of backward classes. The special approach to their development has been delineated and emphasized in the Reports of the Working Groups for the Development of Scheduled Tribes, Scheduled Castes and Backward Classes in successive Plans and also in the

Annual Reports of the Commissioners for Scheduled Castes and Scheduled Tribes, National Commission for Scheduled Castes and Scheduled Tribes and the National Commission for Backward Classes. There are also special reports available on de-notified tribes. Their recommendations have not received attention. **The Commission recommends that the Ministry of Social Justice and Empowerment and the Ministry of Tribal Welfare should collate all these materials and recommendations contained in the reports of the working groups and the reports of the National Commissions and other reports referred to and strengthen the programmes for the economic development, educational development, generation of employment opportunities, social liberation and full rehabilitation of denotified tribes. Whatever has been said about vimuktajatis also holds good for nomadic and semi-nomadic tribes/communities. The Commission recommends similar action in respect of nomadic and semi-nomadic tribes/communities as done in the case of de-notified tribes or vimuktajatis.** The continued plight of these groups of communities distributed in the list of Scheduled Castes, Scheduled Tribes and backward classes is an eloquent illustration of the failure of the machinery for planning, financial resources allocation and budgeting and administration in the country to seriously follow the mandate of the Constitution including Article 46. **The Commission also points out that the setting up of an integrated net work of National Scheduled Castes and Scheduled Tribes Development Authority, etc. recommended in para 10.5.2 to 10.5.3 above will provide a structural mechanism to deal in a practical way with the vimuktajatis as well as nomadic and semi-nomadic tribes/communities within the frame work of the SCP and TsP. Similarly the approach to the development of backward classes referred to at para 10.14 below contains the approach to deal in a practical way with the Vimuktajatis and nomadic and semi-nomadic tribes/communities who are in Backward Class list.**

10.12.2 **The Commission also considered the representations made on behalf of the De-notified and Nomadic Tribal Rights Action Group and decided to forward them to the Ministry of Social Justice &**

Empowerment with the suggestion that they may examine the same preferably through a Commission.

Unorganized labour

10.13.1 In 1991, out of a total work force of 286 million, an overwhelming proportion was in the unorganized sector. Nothing illustrates better, the dualistic structure of our economy. Whereas legal protection for the rights of workers in the organized sector has a long history and the trade union movement has made a major contribution to organized workers' welfare, unorganized labour is in an extremely vulnerable situation. Bereft of trade union support, ill supported by the enforcement agencies of State Governments in regard to the implementation of minimum wages legislations and let down by political formations of nearly all descriptions, unorganized workers have looked to the State in vain to come to their help.

10.13.2 **The Commission recommends that the Union legislation for agricultural workers, drafted as far back as 1978-80, should be introduced and passed immediately.** It is regrettable that a legal measure of great importance for the welfare of unorganized workers in the rural sector has not had the political salience it deserved. A realistic scheme of credible implementation of minimum wages Acts with particular attention to agricultural labours, relying to a suitable degree on the district Collectors/Dy. Commissioners and district superintendents of police, should be immediately put into action. **For this purpose the measures suggested in para 17.2 at page 1419 of Book 3 Vol.II should be followed.**

Bonded and Child Labour

10.14 **Despite prohibition of begar and other forms of forced labour by the Constitution, the practice of bonded labour has not ended as it is patronised by the most powerful sections in the rural areas. Child labour too is widespread. In order to deal effectively with this problem in keeping with the mandate of the Constitution, the Commission recommends that a fully empowered National Authorit**

for the Liberation and Rehabilitation of bonded labour, as recommended by the Commission for Rural Labour in 1990-91, should be set up immediately along with similar authorities at the State level. In addition, the Commission recommends simultaneous rehabilitation of released Bonded Labourers and education for released bonded child labourers and other measures referred to in para 19.2 at page 1420 of Book 3,Vol.II.

Development of Backward Classes

10.15 Socially and educationally backward classes other than SC and ST were recognised at the national level and many States as a category needing focussed developmental attention, only in 1990 and this could be put into effect only after the Supreme court's Mandal judgment in November 1992. On account of this unfortunate delay, there has been a serious lacuna in respect of planned development of Backward Classes and there is no national policy and programmes consensus as in the case of SCs and STs. The Working Group on the Empowerment of Backward Classes in the Tenth Plan has given a clear and comprehensive approach to the development of backward classes. The best that can be said is that the Government should immediately implement everyone of the recommendations of the Working Group. As mentioned in para 10.9.1 above, the backward classes include identified castes/communities of religious minorities who together constitute the bulk of the population of religious minorities of the country. **The Commission recommends that the Government should immediately implement every one of the recommendations of the Working Group on Employment of Backward Classes in the Tenth Plan which covers all aspects and fields of their development - Economic, Educational, social, employment, reservation, etc. - taking in with particular care those backward classes who belong to religious minorities along with their Hindu counterparts in a cohesive manner. For example, some of the residential talent schools earmarked for Backward Classes should be located in areas of concentration of Muslim B.Cs. Further there should be residential talent schools for backward classes as separately**

recommended for SCs and STs at the rate of one each for boys and girls in each district, 75% being taken from backward classes and 25% from other categories. The Government should without any delay introduce reservation for backward classes in seats in educational institutions since absence of promotion of their education through reservation and other means when there is reservation of employment is anomalous.

Empowerment of Women

10.16 Disabilities to which women of all categories are subject to and the deprivations are well documented in various books, reports and papers as well as the background paper on the Pace of Socio-Economic Change under our Constitution. In addition, the women of SC, ST and BC and other weaker sections have extra dimensions of disabilities along with their men folk. **In view of this, the Commission recommends to the Government action in accordance with the suggestions made in para 16.2 at page 1418 of Book 3 Vol.II, covering reservation, development, empowerment, health including malnutrition and maternal anaemia and protection against violence.**

Immoral traffic in women and girls children - rescue and rehabilitation

10.17 The problems relating to prostitution, child prostitutes and children of prostitutes have been the subject of a landmark judgment of the Supreme Court in Gaurav Jain's case of 9th July, 1997 and the Report of Committee of Secretaries on Prostitution, Child Prostitutes and children of Prostitutes set up in 1997 as explained in para 20.1 and 20.2 at pages 1414 to 1415 of Book 3 Vol.II. **In respect of this area of problem, the Commission recommends to the Government that action be taken according to the suggestion listed at para 20.3 at page 1415 of Book 3 of Vol.II, covering implementation of the judgement and the Secretaries' report, elimination the Devadasi system, provision of development and education and prevention of HIV / AIDS.**

CHAPTER 11

SUMMARY OF RECOMMENDATIONS

CONTENTS

		Recommendation Nos.
Chapter 3	Fundamental Rights, Directive Principles and Fundamental Duties	(1) to (29)
Chapter 4	Electoral Processes and Political Parties	(30) to (69)
Chapter 5	Parliament and State Legislatures	(70) to (97)
Chapter 6	Executive and Public Administration	(98) to (121)
Chapter 7	The Judiciary	(122) to (149)
Chapter 8	Union-State Relations	(150) to (175)
Chapter 9	Decentralisation and Devolution	(176) to (213)
Chapter 10	Pace of Socio-Economic Change and Development	(214) to (249)

CHAPTER 11

SUMMARY OF RECOMMENDATIONS

[Of the various recommendations, **58** recommendations involve amendments to the Constitution, **86** involve legislative measures and the rest involve executive action. Those recommendations which involve amendments to the Constitution are given in italics]

CHAPTER 3: FUNDAMENTAL RIGHTS, DIRECTIVE PRINCIPLES AND FUNDAMENTAL DUTIES

Fundamental Rights

(1) *In article 12 of the Constitution, the following Explanation should be added:-*

'Explanation – In this article, the expression "other authorities" shall include any person in relation to such of its functions which are of a public nature.'

[Para 3.5]

(2) *In articles 15 and 16, prohibition against discrimination should be extended to "ethnic or social origin; political or other opinion; property or birth".*

[Para 3.6]

(3) *Article 19(1)(a) and (2) should be amended to read as follows:*

"Art. 19(1): All citizens shall have the right -
(a) to freedom of speech and expression which shall include the freedom of the press and other media, the freedom to hold opinions and to seek, receive and impart information and ideas."

19(2): "Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, or preventing the disclosure of information received in confidence except when required in public interest.".

[Para 3.8.1]

(4) *A Proviso to article 19(2) of the Constitution should be added as under:-*

"Provided that, in matters of contempt, it shall be open to the Court to permit a defence of justification by truth on satisfaction as to the bona fides of the plea and it being in public interest.".

[Paras 3.8.2 and 7.42]

(5) *The existing article 21 may be re-numbered as clause (1) thereof, and a new clause (2) should be inserted thereafter on the following lines:-*

"(2) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.".

[Para 3.9]

(6) *After clause (2) in article 21 as proposed in para 3.9, a new clause, namely, clause (3) should be added on the following lines:-*

"(3) Every person who has been illegally deprived of his right to life or liberty shall have an enforceable right to compensation."

[Para 3.10]

(7) *After article 21, a new article, say article 21-A, should be inserted on the following lines:-*

"21-A. (1) Every person shall have the right to leave the territory of India and every citizen shall have the right to return to India.

(2) Nothing in clause (1) shall prevent the State from making any law imposing reasonable restrictions in the interests of the sovereignty and integrity of India, friendly relations of India with foreign States and interests of the general public."

[Para 3.11]

(8) *A new article, namely, article 21-B, should be inserted on the following lines:*

"21-B. (1) Every person has a right to respect for his private and family life, his home and his correspondence.

(2) Nothing in clause (1) shall prevent the State from making any law imposing reasonable restrictions on the exercise of the right conferred by clause (1), in the interests of security of the State, public safety or for the prevention of disorder or crime, or for the protection of health or morals, or for the protection of the rights and freedoms of others.". [Para 3.12]

(9) *A new article, say article 21-C, may be added to make it obligatory on the State to bring suitable legislation for ensuring the right to rural wage employment for a minimum of eighty days in a year.*

[Para 3.13.2]

(10) *As regards article 22, the following changes should be made:-*

(i) The first and second provisos and Explanation to article 22(4) as contained in section 3 of the Constitution (44th Amendment) Act, 1978 should be substituted by the following proviso and the said section 3 of the 1978 Act as amended by the proposed legislation should be brought into force within a period of not exceeding three months:-

"Provided that an Advisory Board shall consist of a Chairman and not less than two other members, and the Chairman and the other members of the Board shall be serving judges of any High Court:

Provided further that nothing in this clause shall authorize the detention of any person beyond a maximum period of six months as may be prescribed by any law made by Parliament under sub-clause (a) of clause (7).".

(ii) In clause (7) of article 22 of the Constitution, in sub-clause (b), for the words "the maximum period", the words "the maximum period not exceeding six months" shall be substituted. [Para 3.14.2]

(11) *After article 30, the following article should be added as article 30A:*

"30-A: Access to Courts and Tribunals and speedy justice

(1) Everyone has a right to have any dispute that can be resolved by the application of law decided in a fair public hearing before an independent court or, where appropriate, another independent and impartial tribunal or forum.

(2) The right to access to courts shall be deemed to include the right to reasonably speedy and effective justice in all matters before the courts, tribunals or other fora and the State shall take all reasonable steps to achieve the said object.". [Para 3.15.1]

(12) *Article 39A in Part IV should be shifted to Part III as a new article 30-B to read as under:-*

"30-B. Equal justice and free legal aid. The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.". [Para 3.15.2]

(13) *Article 300-A should be recast as follows:-*

"300-A. (1) Deprivation or acquisition of property shall be by authority of law and only for a public purpose.

(2) There shall be no arbitrary deprivation or acquisition of property:

Provided that no deprivation or acquisition of agricultural, forest and non-urban homestead land belonging to or customarily used by the Scheduled Castes and the Scheduled Tribes shall take place except by authority of law which provides for suitable rehabilitation scheme before taking possession of such land."

[Para 3.16.2]

(14) *In article 31-B, the following proviso should be added at the end, namely:-*

"Provided that the protection afforded by this article to Acts and Regulations which may be hereafter specified in the Ninth Schedule or any of the provisions thereof, shall not apply unless such Acts or Regulations relate –

(a) in pith and substance to agrarian reforms or land reforms;
(b) to reasonable quantum of reservation under articles 15 and 16;
(c) to provisions for giving effect to the policy of the State towards securing all or any of the principles specified in clause (b) or clause (c) of article 39."

[Para 3.17]

(15) *Clauses (1) and (1A) of article 359 should be amended by substituting for "(except articles 20 and 21)", the following:-*

"(except articles 17,20,21,23,24,25 and 32)"

[Para 3.18.2]

(16) *The relevant provision in the Constitution (93rd Amendment) Bill, 2001 making the right to education of children from 6 years till the completion of 14 years as a Fundamental Right should be amended and enlarged to read as under:-*

"30-C. Every child shall have the right to free education until he completes the age of fourteen years; and in the case of girls and members of the Scheduled Castes and the Schedule Tribes until they complete the age of eighteen years."

[Para 3.20.2]

(17) *After article 24, the following article should be added:-*

"Article 24A. Every child shall have the right to care and assistance in basic needs and protection from all forms of neglect, harm and exploitation.".

[Para 3.21.2]

(18) *After the proposed article 30-C, the following article may be added as article 30-D:-*

"30-D. Right to safe drinking water, prevention of pollution, conservation of ecology and sustainable development.-

Every person shall have the right-

(a) to safe drinking water;

(b) to an environment that is not harmful to one's health or well-being; and

(c) to have the environment protected, for the benefit of present and future generations so as to-

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.".

[Para 3.22.3]

(19) *Explanation II to article 25 should be omitted and sub-clause (b) of clause (2) of that article should be reworded to read as follows:-*

"(b) providing for social welfare and reform or the throwing open of Hindu, Sikh, Jaina or Buddhist religious institutions of a public character to all classes and sections of these religions.".

[Para 3.23.2]

(20) *It shall be desirable that some optimum level of population with a view to take necessary action under this constitutional provision is prescribed. In article 347 of the Constitution, for the words "a substantial proportion of the population", the words "not less than ten per cent of the population" should be substituted.*

[Para 3.24]

Directive Principles

(21) *The Commission recommends that the heading of Part IV of the Constitution should be amended to read as* "DIRECTIVE PRINCIPLES OF STATE POLICY AND ACTION".

[Para 3.26.3]

(22) A strategic Plan of Action should be initiated to create a large number of employment opportunities in five years to realize and exploit the enormous potential in creating such employment opportunities. The components of this plan may include:

(1) Improvement of productivity in agriculture that will activate a chain of activities towards increased income and employment opportunities.

(2) Integrated horticulture that will include production of fruits, vegetables and flowers, cut-flowers for export and medicinal plants as well as establishment of bio-processing industries aimed primarily at value-addition of agricultural products.

(3) Intensification of animal husbandry programs and production of quality dairy products.

(4) Integrated Program of Intensive Aquaculture including use of common property resources like village ponds and lakes.

(5) Afforestation and Wasteland Development t[illegible] an additional 12 million hectares under forest plantation, a[illegible]ribute to rural asset building activity.

(6) Soil and Water Conservation to support affo[illegible]n and Natural Resource Conservation towards eco-friendly [illegible]ure.

(7) Water Conservation and Tank Rehabilitation

(8) Production and use of organic manures thro[illegible]miculture and other improved techniques and production o[illegible]c health foods from them.

[Para 3.27.3]

(23) The Commission recommends that an [illegible]lent National Education Commission should be set up every [illegible]rs to report to Parliament on the progress of the constitutio[illegible]ective regarding compulsory education and on other aspects rel[illegible]t to the knowledge society of the new century. The model of the Finance Commission may be usefully looked into.

[Para 3.31.3]

(24) *After article 47, the following article should be added, namely:-*

47A. "Control of population.- The State shall endeavour to secure control of population by means of education and implementation of small family norms."

[Para 3.32]

(25) An inter-faith mechanism to promote such civil society initiatives should be set up. This may be done under the auspices of the National Human Rights Commission set up under section 3 of the Protection of Human Rights Act, 1993 which, inter alia, provides for the participation of "the Chairpersons of the National Commission for Minorities, the National Commission for Scheduled Castes and Scheduled Tribes and the National Commission for Women" who shall be deemed to be the Members of the Commission for the discharge of functions specified in clauses (b) to (j) of the section 12 of the said Act. This body could, in addition to its other statutory functions, also function in collaboration with the National Foundation for Communal Harmony as a mechanism for promotion of inter-religious harmony for *inter alia* overseeing the installation and working of "Mohalla Committees" and other civil society initiatives in sensitive areas. With an appropriate statutory enablement by way of enlargement of section 12 of the said Act, the purpose could be achieved without additional expenditure for setting up a separate mechanism. Section 12 of the said Act with consequential amendments to section 3(3) could be amended by the addition of clause (k), which shall read as under:

"(k) promoting through civil society initiatives, inter-faith and inter-religious harmony and social solidarity.".

The Chairpersons of the National Commission for the Backward Classes and the National Commission for Safai Karamcharis should be co-opted to this body.

[Para 3.34.2]

(26) There must be a body of high status which first reviews the state of the level of implementation of the Directive Principles and Economic, Social and Cultural Rights and in particular (i) the right to work, (ii) the right to health, (iii) the right to food, clothing and shelter, (iv) Right to Education up to and beyond the 14th year, and (v) the Right to Culture. The said body must estimate the extent of resources required in each State under each of these heads and make recommendations for allocation of adequate resources, from time to time. For ensuring that the Directive Principles of State Policy are realized more effectively, the following procedure should be followed:-

(i) The Planning Commission should ensure that there is special mention/emphasis in all the plans and schemes formulated by it, on the effectuation/realization of the Directive Principles of State Policy.

(ii) Every Ministry/Department of the Government of India should make a special annual report indicating the extent of effectuation/realization of the Directive Principles of State Policy, the shortfall in the targets, the reasons for the shortfall, if any, and the remedial measures taken to ensure their full realization, during the year under report.

(iii) The report under item (ii) should be considered and discussed by the Department Related Parliamentary Standing Committee, which shall submit its report on the working of the Department indicating the achievements/failures of the Ministry/Department along with its recommendations thereto.

(iv) Both the Reports mentioned at items (ii) and (iii) above should be discussed by the Planning Commission in an interactive seminar with the representatives of various NGOs, Civil Society Groups, etc. in which the representatives of the Ministry/Department and the Departmental Related Parliamentary Standing Committee would also participate. The report of this interaction shall be submitted to the Parliament within a time bound manner.

(v) The Parliament should discuss the report at item (iv) above within a period of three months and pass a resolution about the action required to be taken by the Ministry/Department concerned.

A similar mechanism as mentioned above may be adopted by the States.

[Paras 3.35.2 and 3.35.3]

The Report of the National Statistical Commission (2001) stresses the importance of availability of adequate, credible and timely socio-economic data generated by the statistical system, both for policy formulation and for monitoring progress of the sectors of economy and

1206 LJ&CA/2002—23A

pace of socio-economic change. The Commission endorses the recommendations of the National Statistical Commission and stresses the importance of their implementation.

[Para 3.36]

Fundamental Duties

(28) For effectuating Fundamental Duties, the following steps should be taken:-

(i) The first and foremost step required by the Union and State Governments is to sensitise the people and to create a general awareness of the provisions of fundamental duties amongst the citizens on the lines recommended by the Justice Verma Committee on the subject. Consideration should be given to the ways and means by which Fundamental Duties could be popularized and made effective;

(ii) Right to freedom of religion and other freedoms must be jealously guarded and rights of minorities and fellow citizens respected;

(iii) Reform of the whole process of education is an immediate but immense need, as is the need to free it from governmental or political control; it is only through education that will power to adhere to our Fundamental Duties as citizens can be inculcated;

(iv) *Duty to vote at elections, actively participate in the democratic process of governance and to pay taxes should be included in article 51A;* and

(v) The other recommendations of the Justice Verma Committee on operationalisation of Fundamental Duties of Citizens should be implemented at the earliest.

[Para 3.40.3]

(29) *The following should also be incorporated as fundamental duties in article 51A of the Constitution* -

(i) To foster a spirit of family values and responsible parenthood in the matter of education, physical and moral well-being of children.

(ii) Duty of industrial organizations to provide education to children of their employees.

[Para 3. 40.4]

CHAPTER 4: ELECTORAL PROCESSES AND POLITICAL PARTIES

Electoral Processes

(30) While some far-reaching reforms in the electoral processes are necessary, no major constitutional amendment is required. The necessary correctives could be achieved by ordinary legislation modifying the existing laws, or in many cases, merely by rules and

1206 LJ&CA/2002—23B

executive action. A foolproof method of preparing the electoral roll right at the Panchayat level constituency of a voter and supplementing it by a foolproof voter ID card which may in fact also serve as a multi-purpose citizenship card for all adults. A single exercise should be enough for preparing common electoral rolls and ID cards. The task could be entrusted to a qualified professional agency under the supervision of the Election Commission of India (EC) and in coordination with the SECs. The rolls should be updated constantly and periodically posted on the web site of the Election Commission and CDROMs should be available to all political parties or anyone interested. Prior to elections, these rolls should be printed and publicly displayed at the post offices in each constituency, as well as at the panchayats or relevant constituency headquarters. These should be allowed to be inspected on payment of a nominal fee by anyone. Facilities should also be provided to the members of the public at the post offices for submitting their applications for modification of the electoral rolls.

[Paras 4.7.3 and 4.8.3]

(31) Introduction of Electronic Voting Machines (EVMs) in all constituencies all over the country for all elections as rapidly as possible.

[Para 4.9]

(32) Under section 58A of the Representation of the People Act, 1951, the Election Commission should be authorised to take a decision regarding booth capturing on the report of the returning officers, observers or citizen groups. Also, the EC should be empowered to countermand the election and order a fresh election or to declare the earlier poll to be void and order a re-poll in the entire constituency. Further, the EC should consider the use of tamper-proof video and other electronic surveillance at sensitive polling stations/ constituencies.

[Para 4.10]

(33) Any election campaigning on the basis of caste or religion and any attempt to spread caste and communal hatred during elections should be punishable with mandatory imprisonment. If such acts are done at the instance of the candidate or by his election agents, these would be punishable with disqualification.

[Para 4.11]

(34) The Representation of the People Act should be amended to provide that any person charged with any offence punishable with imprisonment for a maximum term of five years or more, should be disqualified for being chosen as or for being a member of Parliament or Legislature of a State on the expiry of a period of one year from the date the charges were framed against him by the court in that offence and unless cleared during that one year period, he shall continue to remain so disqualified till the conclusion of the trial for that offence. In case a person is convicted of any offence by a court of law and sentenced to imprisonment for six months or more the bar should

apply during the period under which the convicted person is undergoing the sentence and for a further period of six years after the completion of the period of the sentence. If any candidate violates this provision, he should be disqualified. Also, if a party puts up such a candidate with knowledge of his antecedents, it should be derecognised and deregistered.

[Para 4.12.2]

(35) Any person convicted for any heinous crime like murder, rape, smuggling, dacoity, etc. should be permanently debarred from contesting for any political office.

[Para 4.12.3]

(36) Criminal cases against politicians pending before Courts either for trial or in appeal must be disposed off speedily, if necessary, by appointing Special Courts.

[Para 4.12.4]

(37) A potential candidate against whom the police have framed charges may take the matter to the Special Court. This court should be obliged to enquire into and take a decision in a strictly time bound manner. Basically, this court may decide whether there is indeed a prima facie case justifying the framing of charges.

[Para 4.12.5]

(38) The Special Courts should be constituted at the level of High Courts and their decisions should be appealable to the Supreme Court only (in similar way as the decisions of the National Environment Tribunal). The Special Courts should decide the cases within a period of six months. For deciding the cases, these Courts should take evidence through Commissioners.

[Para 4.12.6]

(39) The benefit of sub-section (4) of section 8 of the Representation of the People Act, 1951 should be available only for the continuance in office by a sitting Member of Parliament or a State Legislature. The Commission recommends that the aforesaid provision should be suitably amended providing that this benefit shall not be available for the purpose of his contesting fresh elections.

[Para 4.12.7]

(40) The proposed provision laying down that a person charged with an offence punishable with imprisonment for a maximum period of five years or more should be disqualified from contesting elections after the expiry of a period of one year from the date the charges were framed in a court of law should equally be applicable to sitting members of Parliament and State Legislatures as to any other such person.

[Para 4.12.8]

(41) In matters of disqualification on grounds of corrupt practices, the President should determine the period of disqualification under section

8A of the Representation of the People Act, 1951 on the direct opinion of the EC and avoid the delay currently experienced. This can be done by resorting to the position prevailing before the 1975 amendment to the said Act.

[Para 4.13.1]

(42) The election petitions should also be decided by special courts proposed in para 4.12.6. In the alternative, special election benches may be constituted in the High Courts and earmarked exclusively for the disposal of election petitions and election disputes.

[Para 4.13.2]

(43) The existing ceiling on election expenses for the various legislative bodies be suitably raised to a reasonable level reflecting the increasing costs. However, this ceiling should be fixed by the Election Commission from time to time and should include all the expenses by the candidate as well as by his political party or his friends and his well-wishers and any other expenses incurred in any political activity on behalf of the candidate by an individual or a corporate entity. Such a provision should be the part of a legislation regulating political funding in India. Further, Explanation 1 to section 77(1) of the Representation of the People Act, 1951 should be deleted.

[Para 4.14.2]

(44) The political parties as well as individual candidates should be made subject to a proper statutory audit of the amounts they spend. These accounts should be monitored through a system of checking and cross-checking through the income-tax returns filed by the candidates, parties and their well-wishers. At the end of the election each candidate should submit an audited statement of expenses under specific heads.

[Para 4.14.2]

(45) Every candidate at the time of election must declare his assets and liabilities along with those of his close relatives. Every holder of a political position must declare his assets and liabilities along with those of his close relations annually. Law should define the term 'close relatives'.

[Para 4.14.5]

(46) Any system of State funding of elections bears a close nexus to the regulation of working of political parties by law and to the creation of a foolproof mechanism under law, with a view to implementing the financial limits strictly. Therefore, proposals for State funding should be deferred till these regulatory mechanisms are firmly in position.

[Para 4.14.5]

(47) All candidates should be required under law to declare their assets and liabilities by an affidavit and the details so given by them should be made public. Further, as a follow up action, the particulars of the

assets and liabilities so given should be audited by a special authority created specifically under law for the purpose. Again, the legislators should be required under law for the purpose. Again, the legislators should be required under law to submit their returns about their liabilities every year and a final statement in this regard at the end of their term of office.

[Para 4.14.6]

(48) Campaign period should be reduced considerably.

[Para 4.15.4]

(49) Candidates should not be allowed to contest election simultaneously for the same office from more than one constituency.

[Para 4.15.5]

(50) The election code of conduct, which should come into operation as soon as the elections are announced, should be given the sanctity of law and its violation should attract penal action.

[Para 4.15.6]

(51) The Commission while recognizing the beneficial potential of the system of run off contest electing the representative winning on the basis of 50% plus one vote polled, as against the first-past-the-post system, for a more representative democracy, recommends that the Government and the Election Commission of India should examine this issue of prescribing a minimum of 50% plus one vote for election in all its aspects, consult various political parties, and other interests that might consider themselves affected by this change and evaluate the acceptability and benefits of this system. The Commission recommends a careful and full examination of this issue by the Government and the Election Commission of India.

[Para 4.16.6]

(52) Intra-State delimitation exercise may be undertaken by the Election Commission for Lok Sabha and Assembly constituencies and the Scheduled Castes and Non-Scheduled Area Scheduled Tribe seats should be rotated. The Delimitation Body should, however, reflect the plural composition of society.

[Para 4.17]

(53) *The provisions of the Tenth Schedule of the Constitution should be amended specifically to provide that all persons defecting - whether individually or in groups - from the party or the alliance of parties, on whose ticket they had been elected, must resign from their parliamentary or assembly seats and must contest fresh elections.* In other words, they should lose their membership and the protection under the provision of split, etc. should be scrapped. The defectors should also be debarred to hold any public office of a minister or any other remunerative political post for at least the duration of the remaining term of the existing legislature or until the next fresh

elections whichever is earlier. The vote cast by a defector to topple a government should be treated as invalid. Further, the power to decide questions as to disqualification on ground of defection should vest in the Election Commission instead of in the Chairman or Speaker of the House concerned.

[Para 4.18.2]

(54) The practice of having oversized Council of Ministers should be prohibited by law. A ceiling on the number of Ministers in any State or the Union government be fixed at the maximum of 10% of the total strength of the popular house of the legislature.

[Para 4.19]

(55) The practice of creating a number of political offices with the position, perks and privileges of a minister should be discouraged and at all events, their number should be limited to two per cent of the total strength of the lower house.

[Para 4.19]

(56) Independent candidates should be discouraged and only those who have a track record of having won any local election or who are nominated by at least twenty elected members of Panchayats, Municipalities or other local bodies spread out in majority of electoral districts in their constituency should be allowed to contest for Assembly or Parliament.

[Para 4.20.3]

(57) In order to check the proliferation of the number of independent candidates and the malpractices that enter into the election process because of the influx of the independent candidates, the existing security deposits in respect of independent candidates may be doubled. Further, it should be doubled progressively every year for those independents who fail to win and still keep contesting elections. If any independent candidate has failed to get at least five percent of the total number of votes cast in his constituency, he/she should not be allowed to contest as independent candidate for the same office again at least for 6 years.

[Para 4.20.4]

(58) An independent candidate who loses election three times consecutively for the same office as such candidate should be permanently debarred from contesting election to that office.

[Para 4.20.5]

(59) The minimum number of valid votes polled should be increased to 25% from the current 16.67% as a condition for the deposit not being forfeited. This would further reduce the number of non-serious candidates.

[Para 4.20.6]

(60) It should be possible without any constitutional amendment to provide for the election of the Leader of the House (Lok Sabha/State Assembly) along with the election of the Speaker and in like manner under the Rules of Procedure. The person so elected may be appointed the Prime Minister/Chief Minister.

[Para 4.20.7]

(61) The issue of eligibility of non-Indian born citizens or those whose parents or grandparents were citizens of India to hold high offices in the realm such as President, Vice-President, Prime Minister and Chief Justice of India should be examined in depth through a political process after a national dialogue.

[Para 4.21]

(62) *The Chief Election Commissioner and the other Election Commissioners should be appointed on the recommendation of a body consisting of the Prime Minister, Leader of the Opposition in the Lok Sabha, Leader of the Opposition in the Rajya Sabha, the Speaker of the Lok Sabha and the Deputy Chairman of the Rajya Sabha. Similar procedure should be adopted in the case of appointment of State Election Commissioners.*

[Para 4.22]

(63) All candidates should be required to clear government dues before their candidature are accepted. This pertains to payment of taxes and bills and unauthorised occupation of accommodation and availing of telephones and other government facilities to which they are no longer entitled. The fact that matters regarding Government dues in respect of the candidate are pending before a Court of Law should be no excuse.

[Para 4.23]

(64) In order to obviate the uncertainty in identifying certain offices as offices of profit or not, *suitable amendments should be made in the Constitution* empowering the Election Commission of India to identify and declare the various offices under the Government of India or of a State to be 'offices of profit' for the purposes of being chosen, and for being, a member of the appropriate legislature.

[Para 4.24.3]

Political Parties

(65) A comprehensive law regulating the registration and functioning of political parties or alliances of parties in India [may be named as the Political Parties (Registration and Regulation) Act] should be made. The proposed law should -

(a) provide that political party or alliance should, in its Memoranda of Association, Rules and Regulations provide for its doors being open to all citizens irrespective of any distinctions of caste, community or the like. It should swear allegiance to the

provisions of the Constitution and to the sovereignty and integrity of the nation, regular elections at an interval of three years at its various levels of the party, reservation/ representation of at least 30 per cent, of its organizational positions at various levels and the same percentage of party tickets for parliamentary and State legislature seats to women. Failure to do so should invite the penalty of the party losing recognition.

(b) make it compulsory for the parties to maintain accounts of the receipt of funds and expenditure in a systematic and regular way. The form of accounts of receipt and expenditure and declaration about the sources of funds may be prescribed by an independent body of Accounts & Audit experts, created under the proposed Act. The accounts should also be compulsorily audited by the same independent body, created under the legislation which should also prepare a report on the financial status of the political party which along with the audited accounts should be open and available to public for study and inspection.

(c) make it compulsory for the political parties requiring their candidates to declare their assets and liabilities at the time of filing their nomination before the returning officers for election to any office at any level of government.

(d) provide that no political party should sponsor or provide ticket to a candidate for contesting elections if he was convicted by any court for any criminal offence or if the courts have framed criminal charges against him.

(e) specifically provide that if any party violates the provision mentioned at sub-para (d) above, the candidate involved should be liable to be disqualified and the party deregistered and derecognised forthwith.

[Paras 4.30.1, 4.30.3, 4.30.4, 4.30.5 and 4.34]

(66) The Election Commission should progressively increase the threshold criterion for eligibility for recognition so that the proliferation of smaller political parties is discouraged. Only parties or a pre-poll alliance of political parties registered as national parties or alliances with the Election Commission be allotted a common symbol to contest elections for the Lok Sabha. State parties may be allotted symbols to contest elections for State legislatures and the Council of States (Rajya Sabha).

[Para 4.31.2]

(67) In a situation where no single political party or pre-poll alliance of parties succeeds in securing a clear majority in the Lok Sabha after elections, the Rules of Procedure and Conduct of Business in Lok Sabha may provide for the election of the Leader of the House by the Lok Sabha along with the election of the Speaker and in the like manner. The Leader may then be appointed as the Prime Minister. The same procedure may be followed for the office of the Chief Minister in the State concerned.

[Para 4.33.2]

(68) An amendment in the Rules of Procedure of the Legislatures for adoption of a system of constructive vote of no confidence should be made. For a motion of no-confidence to be brought out against a government at least 20% of the total number of members of the House should give notice. Also, the motion should be accompanied by a proposal of alternative Leader to be voted simultaneously.

[Para 4.33.3]

(69) A comprehensive legislation providing for regulation of contributions to the political parties and towards election expenses should be enacted by consolidating such laws. This new law should =

(a) aim at bringing transparency into political funding;
(b) permit corporate donations within higher prescribed limits and keep them transparent;
(c) make all legal and transparent donations up to a specified limit, tax exempt and treat this tax loss to the state as its contribution to state funding of elections;
(d) contain provisions for making both donors and donees of political funds accountable. The Government should encourage the corporate bodies and agencies to establish an electoral trust which should be able to finance political parties on an equitable basis at the time of elections;
(e) provide that audited political party accounts like the accounts of a public limited company should be published yearly with full disclosures under predetermined account heads; and
(f) provide for immediate de-recognition of the party and enforcement of penalties for filing false or incorrect election returns.

[Paras 4.35.2, 4.35.3, 4.35.4 and 4.36]

CHAPTER 5: PARLIAMENT AND STATE LEGISLATURES

(70) The presiding officers, the minister for parliamentary affairs, and the chief whips of parties should periodically meet to review the work of the departmental parliamentary committees and take remedial action. It should be entirely possible for the Parliament to sanction budgets to secure the services of specialist advisors to assist these committees in conducting their inquiries, holding public hearings, collecting data about legislation and administrative details pertaining to countries which have relevance to the Indian conditions.

[Para 5.6.3]

(71) Immediate steps be taken to set up a Nodal Standing Committee on National Economy with adequate resources in terms of both in house and advisory expertise, data gathering and computing and research facilities for an ongoing analysis of the national economy for assisting the members of the Committee to report on a periodic basis to the full House.

[Para 5.7]

(72) The Parliament should be associated with the initial stage itself in the matter of formulating proposals for constitutional amendment. The actual drafting should be taken up only after the principles underlying the amendment have been thoroughly considered in a parliamentary forum and subjected to *a priori* scrutiny by the constituent power. A Standing Constitution Committee of the two Houses of Parliament for *a priori* scrutiny of amendment proposals should be set up.

[Paras 5.8.2 and 5.8.3]

(73) With the proposed establishment of three new Committees, namely, the Constitution Committee, the Committee on National Economy and the Committee on Legislation, the existing Committees on Estimates, Public Undertakings and Subordinate Legislation may not be continued.

[Para 5.9.1]

(74) The Petitions Committee of Parliament has tremendous potential as a supplement to the proposed Lok Pal institution. It should be made more widely known and used for ventilation, investigation and redressal of people's grievances against the administration.

[Para 5.9.2]

(75) Major reports of all Parliamentary Committees ought to be discussed by the Houses of Parliament especially where there is disagreement between a Parliamentary Committee and the Government.

[Para 5.9.3]

(76) For a more systematic approach to the planning of legislation, the following steps should be taken:-

(a) Adequate time for consideration of Bills in committees and on the floor of the Houses as also to subject the drafts to thorough and rigorous examination by experts and laymen alike should be provided;

(b) All major social and economic legislation should be circulated for public discussion by professional bodies, business organisations, trade unions, academics and other interested persons;

(c) The functions of the Parliamentary and Legal Affairs Committee of the Cabinet should be streamlined;

(d) More focussed use of the Law Commission should be made;

(e) A new Legislation Committee of Parliament to oversee and coordinate legislative planning should be constituted; and

(f) All Bills should be referred to the Departmental Related Parliamentary Standing Committees for consideration and scrutiny after public opinion has been elicited and all comments, suggestions and memoranda are in. The Committees may schedule public hearings, if necessary, and finalise with the help of experts the second reading stage in the relaxed Committee atmosphere. The time of the House will be saved thereby without impinging on any of its rights. The quality of

drafting and the content of legislation will necessarily be improved as a result of following these steps.

[Paras 5.10.1 and 5.10.2]

(77) The Parliament may consider enacting suitable legislation to control and regulate the treaty-power of the Union Government whenever appropriate and necessary after consulting the State Governments and Legislatures under article 253 "for giving effect to international agreements".

[Para 5.10.3]

(78) The Parliamentarians have to be like Caesar's wife, above suspicion. They must voluntarily place themselves open to public scrutiny through a parliamentary ombudsman. Supplemented by a code of ethics which has been under discussion for a long time, it would place Parliament on the high pedestal of people's affection and regard.

[Para 5.11.1]

(79) Mass media should be encouraged to accurately reflect the reality of Parliament's working and the functioning of Parliamentarians in the Houses. Televising all important debates nationwide in addition to the Question Hours, publication of monographs, handouts, radio, TV, press interviews, use of audio-visual techniques, especially to arouse curiosity and interest of the younger generation, and regular briefing of the press will go a long way in making people better acquainted with the important national work that is being done inside the historic parliament building.

[Para 5.11.2]

(80) It is a legitimate public expectation that membership of Legislatures should not be converted into an office of lucrative gain but remain an office of service. The question of salaries, allowances, perks and pensions of lawmakers should be looked into on a rational basis and healthy conventions built.

[Para 5.11.3]

(81) The Parliament and the State Legislatures should assemble and transact business for not less than a minimum number of days. The Houses of State Legislatures with less than 70 members should meet for at least 50 days in a year and other Houses for at least 90 days while the minimum number of days for sittings of Rajya Sabha and Lok Sabha should be fixed at 100 and 120 days respectively.

[Para 5.11.4]

(82) In order to maintain basic federal character of the Rajya Sabha, the domiciliary requirement for eligibility to contest elections to Rajya Sabha from the concerned State is essential. This should be maintained.

[Para 5.11.5]

(83) Better and more institutionalized arrangements are necessary to provide the much-needed professional orientation to newly elected members. The emphasis should be on imparting practical knowledge on how to be an effective member.

[Para 5.12]

(84) The findings and recommendations of the Public Accounts Committees (PACs) should be accorded greater weight. A convention should be developed with the cooperation of all major parties represented in the legislature to treat the PACs as the conscience-keepers of the nation in financial matters.

[Para 5.13]

(85) Union Government should take necessary steps for the early enactment of the Fiscal Responsibility Bill pending before Parliament. The State Assemblies should enact similar legislation as provided for in article 293 to put their respective fiscal houses in order.

[Para 5.14]

(86) The privileges of legislators should be defined and delimited for the free and independent functioning of Parliament and State Legislatures. It should not be necessary to run to the 1950 position in the House of Commons every time a question arises as to what kind of legal protection or immunity a Member has in relation to his or her work in the House.

[Para 5.15.3]

(87) *Article 105(2) may be amended to clarify that the immunity enjoyed by Members of Parliament under parliamentary privileges does not cover corrupt acts committed by them in connection with their duties in the House or otherwise.* Corrupt acts would include accepting money or any other valuable consideration to speak and/or vote in a particular manner. For such acts, they would be liable for action under the ordinary law of the land. It may be further provided that no court will take cognisance of any offence arising out of a Member's action in the House without prior sanction of the Speaker or the Chairman, as the case may be. *Article 194(2) may also be similarly amended in relation to the Members of State Legislatures.*

[Para 5.15.6]

(88) An Audit Board should be constituted for better discharge of the vital function of public audit, but the number of members to be appointed, the manner of their appointment and removal and other related matters should be dealt with by appropriate legislation, keeping in view the need for ensuring independent functioning of the Board.

[Para 5.16.2]

(89) Though no specific change is needed in the existing provisions of the Constitution insofar as appointment of the Comptroller and Audit General of India (C&AG) and other related matters are concerned, yet a healthy convention be developed to consult the Speaker of the Lok

Sabha, before the Government decides on the appointment of the C&AG so that the views of the Public Accounts Committee are also taken into account.

[Para 5.16.3]

(90) The considerations that apply at the Union level in regard to the functioning of the office of C&AG should apply with equal force at the State level. The State Accountants General (AGs) should be given greater authority by the C&AG, while maintaining its general superintendence, direction and control to bring about a broad uniformity of approach in the sphere of financial discipline. The C&AG should evolve accounting policies and standards and norms for all bodies and entities that receive public funds, such as autonomous bodies and the Panchayat Raj institutions.

[Para 5.16.4]

(91) The operations of the office of the C&AG itself should be subject to scrutiny by an independent body. To fulfil the canons of accountability, a system of external audit of C&AG's organization should be adopted for both the Union and the State level organizations.

[Para 5.17]

(92) The MP LAD Scheme, as being inconsistent with the spirit of the Constitution in many ways, should be discontinued immediately.

[Para 5.19.2]

(93) Legislation envisaged in article 98(2) should be undertaken to reorganise the Secretariats as independent and impartial instruments of Parliament, with special emphasis on upgrading professional competence.

[Para 5.20.1]

(94) It would be useful to reform the budgetary procedure for streamlining the work of Parliament.

[Para 5.21.2]

(95) The number of days on which voting is considered essential should be reduced to the barest minimum and the time for such voting in a given session be fixed in advance with appropriate whips requiring full attendance of members.

[Para 5.21.3]

(96) In order to ensure better scrutiny of administration and accountability to Parliament, parliamentary time in the two houses may be suitably divided between the government and the opposition.

[Para 5.21.4]

(97) The best way to deal with issues of procedural reforms in a professional (and not political) manner is to have them studied by a Study Group outside Parliament as was done in U.K. The conclusions and suggestions of the Group can be considered by the Rules

Committees of the houses of Parliament. Accordingly, a Study Group outside Parliament for study of Parliament should be set up.

[Para 5.21.5]

CHAPTER 6: EXECUTIVE AND PUBLIC ADMINISTRATION

(98) While improving the nature and institutional response of administration to the challenges of democracy is imperative, the system can deliver the goods only through devolution, decentralisation and democratisation thereby narrowing the gap between the base of the polity and the super structure.

[Para 6.2.8]

(99) District should be considered as a basic unit of planning for development. Functions, finances, and functionaries relating to the development programmes would have to be placed under the direct supervision and command of elected bodies at the district levels of operation to give content and substance to such programmes of development and public welfare. This would, to a substantial degree, correct the existing distortions and make officials directly answerable to the people to ensure proper implementation of development programmes under the direct scrutiny of people.

[Para 6.4.1]

(100) India should move to a system where the State guarantees the title to land after carrying out extensive land surveys and computerizing the land records. It will take some time but the results would be beneficial for investment in land. This will be a major step forward in revitalizing land administration in the country as it would enable Right to access, Right to use and Right to enforce decisions regarding land. Similar rationalization of records relating to individuals rights in properties other than privately held lands (which are held in common) would improve operational efficiency which left unattended foment unrest. A coherent public policy addressed to the modern methods of management would contribute to better use of assets and raise dynamic forces of individual creativity. Run away expansion in bureaucratic apparatus of the State would also get curtailed by new management system.

[Para 6.4.2]

(101) Energetic efforts should be made to establish a pattern of cooperative relationship between the State and associations, NGOs and other voluntary bodies to launch a concerted effort to regenerate the springs of progressive social change. State and civil society are not to be treated antithical but complementary.

[Para 6.5.4]

(102) The questions of personnel policy including placements, promotions, transfers and fast-track advancements on the basis of forward-looking career management policies and techniques should be managed by

autonomous Personnel Boards for assisting the high level political authorities in making key decisions. Such Civil Service Boards should be constituted under statutory provisions. They should be expected to function like the UPSC. The sanctity of parliamentary legislation under article 309 is needed to counteract the publicly known trends of the play of unhealthy and destabilizing influences in the management of public services in general and higher civil services in particular.

[Para 6.7.1]

(103) Above a certain level--say the Joint Secretary level - all posts should be open for recruitment from a wide variety of sources including the open market. Government should specialize some of the generalists and generalize some of the specialists through proper career management which has to be freed from day to day political manipulation and influence peddling.

[Para 6.7.2]

(104) Social audit of official working should be done for developing accountability and answerability. Officials, before starting their career, in addition to the taking of an oath of loyalty to the Constitution, should swear to abide by the basic principles of good governance. This would give renewed sense of commitment by the executives to the basic tenets of the Constitution.

[Para 6.7.3]

(105) The services have remained largely immune from imposition of penalties due to the complicated procedures that have grown out of the constitutional guarantee against arbitrary and vindictive action (article 311). The constitutional safeguards have in practice acted to shield the guilty against swift and certain punishment for abuse of public office for private gain. A major corollary has been erosion of accountability. It has accordingly become necessary to re-visit the issue of constitutional safeguards under article 311 to ensure that the honest and efficient officials are given the requisite protection but the dishonest are not allowed to prosper in office. A comprehensive examination of the entire corpus of administrative jurisprudence has to be undertaken to rationalize and simplify the procedure of administrative and legal action and to bring the theory and practice of security of tenure in line with the experience of the last more than 50 years.

[Para 6.7.4]

(106) The civil service regulations need to be changed radically in the light of contemporary administrative theory to introduce modern evaluation methodology.

[Para 6.7.5]

(107) The administrative structure and systems have to be consciously redesigned to give appropriate recognition to the professional and technical services so that they may play their due role in modernizing our economy and society. The specialist should not be required to play second fiddle to the generalist at the top. Conceptually we need

to develop a collegiate style of administrative management where the leader is an energizer and a facilitator, and not an oracle delivering verdicts from a high pedestal.

[Para 6.7.6]

(108) A parliamentary legislation under article 312(1) should be enacted. It should be debated in professional circles as well as by the general public.

[Para 6.7.7]

(109) Right to information should be guaranteed and needs to be given real substance. In this regard, government must assume a major responsibility and mobilize skills to ensure flow of information to citizens. The traditional insistence on secrecy should be discarded. In fact, we should have an oath of transparency in place of an oath of secrecy. Administration should become transparent and participatory. Right to information can usher in many benefits, such as speedy disposal of cases, minimizing manipulative and dilatory tactics of the babudom, and, last but most importantly, putting a considerable check on graft and corruption.

[Para 6.10]

(110) The Union Government should take steps to move the Parliament for early enactment of the Freedom of Information Legislation. It will be a major step forward in strengthening the values of a free and democratic society.

[Para 6.11]

(111) To remain actively involved in new development programmes the people would also need the support of well organized, well prepared, knowledge-oriented personnel and well thought out policies. Think tanks and organized intellectual groups would have to be promoted through state funding, etc. without abridging their autonomy.

[Para 6.12]

(112) The structural problems of foreign policy would be to constantly aim at making the best possible use of the international order and use it to our advantage. In the country's governance, the duality of foreign and domestic policy should end. The two should not be antithetical. A serious effort is required to combine the two to recast relations and launch a creative initiative to achieve strategic partnerships the world over on the principles of inter-dependence without domestic interests being relegated to the background. This calls for a thorough change in the form, working and structuring of Foreign Affairs mechanisms including the External Affairs Ministry. Foreign policy implementation calls for cutting through the mind-set of a generation.

[Para 6.14]

(113) One of the measures adopted in several western countries to fight corruption and mal-administration is enactment of Public Interest

Disclosure Acts which are popularly called the Whistle-blower Acts. Similar law may be enacted in India also. The Act must ensure that the informants are protected against retribution and any form of discrimination for reporting what they perceived to be wrong-doing, i.e., for *bona fide* disclosures which may ultimately turn out to be not entirely or substantially true.

[Para 6.16.3]

(114) The Government should examine the proposal for enacting a comprehensive law to provide that where public servants cause loss to the State by their *mala fide* actions or omissions, they would be made liable to make good the loss caused and, in addition, would be liable for damages.

[Para 6.17]

(115) The Union Government should frame rules, without further loss of time, under Section 8 of the Benami Transactions (Prohibition) Act, 1988 for acquiring *benami* property. Further, a law should be enacted to provide for forfeiture of benami property of corrupt public servants as well as non-public servants.

[Para 6.19]

(116) The Government should examine enacting a law for confiscation of illegally acquired assets on the lines suggested by the Supreme Court in *Delhi Development Authority* vs. *Skipper Construction Co. (P) Ltd.* (AIR 1996 SC 2005). There is no need to set up an additional independent Authority to determine this issue of confiscation. The Tribunal constituted under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, (SAFEMA) 1976, which could deal with similar situation arising out of other statutes may be conferred additional jurisdiction to determine cases of confiscation arising out of the Benami Transactions (Prohibition) Act, 1988 and the Prevention of Corruption Act, 1988, (as may be amended) and other legislations which empower confiscation of illegally acquired assets. Tribunal will exercise distinct and separate jurisdictions under separate statutes.

[Para 6.20.2]

(117) The Prevention of Corruption Act, 1988 should be amended to provide for confiscation of the property of a public servant who is found to be in possession of property disproportionate to his/her known sources of income and is convicted for the said offence. In this case, the law should shift the burden of proof to the public servant who was convicted. In other words, the presumption should be that the disproportionate assets found in possession of the convicted public servant were acquired by him by corrupt or illegal means. A proof of preponderance of probability shall be sufficient for confiscation of the property. The law should lay down that the standard of proof in determining whether a person has been benefited from an offence and for determining the amount in which a confiscation order is to be made, is that which is applicable to civil cases, i.e. a mere

preponderance of probability only. A useful analogy may be seen in Section 2(8) of the Drug Trafficking Act 1994 in United Kingdom.

[Para 6.20.3]

(118) *The Constitution should provide for appointment of Lok Pal.* The Prime Minister should be kept out of the purview of the Lok Pal.

[Para 6.21.1]

(119) The Union Government should take steps for early enactment of the Central Vigilance Commission Bill, already introduced in Parliament.

[Para 6.22]

(120) *The Constitution should contain a provision obliging the States to establish the institution of Lokayuktas in their respective jurisdictions in accordance with the legislation of the appropriate legislatures.*

[Para 6.23.2]

(121) When once a Commission of Inquiry is constituted under the Commissions of Inquiry Act, 1952 or otherwise, the Government should consult the Chairperson of the Commission in respect of time required for completion / finalisation of the report. Once such a time is specified, the Commission should adhere to it. The Action Taken Report on the report should be announced by the Government within a period of three months from the date of submission of the report.

[Para 6.24.2]

CHAPTER 7: THE JUDICIARY

(122) In the matter of appointment of Judges of the Supreme Court, it would be worthwhile to have a participatory mode with the participation of both the executive and the judiciary in making recommendations. The composition of the Collegium gives due importance to and provides for the effective participation of both the executive and the judicial wings of the State as an integrated scheme for the machinery for appointment of judges. *A National Judicial Commission under the Constitution should be established.*

The National Judicial Commission for appointment of judges of the Supreme Court shall comprise of:

(1) The Chief Justice of India	:	Chairman
(2) Two senior most judges of the Supreme Court:		Member
(3) The Union Minister for Law and Justice	:	Member
(4) One eminent person nominated by the President after consulting the Chief Justice of India:		Member

The establishment of a National Judicial Commission and its composition are to be treated as integral in view of the need to preserve the independence of the judiciary.

[Para 7.3.7]

(123) A committee comprising the Chief Justice of India and two senior-most Judges of the Supreme Court will comprise the committee of the National Judicial Commission exclusively empowered to examine complaints of deviant behaviour of all kinds and complaints of misbehaviour and incapacity against judges of The Supreme Court and the High Courts. If the committee finds that the matter is serious enough to call for a fuller investigation or inquiry, it shall refer the matter for a full inquiry to the committee [constituted under the Judges' (Inquiry) Act, 1968]. The committee under the Judges Inquiry Act shall be a permanent committee with a fixed tenure with composition indicated in the said Act and not one constituted ad-hoc for a particular case or from case to case, as is the present position under section 3(2) of the Act. The tenure of the inquiry committee shall be for a period of four years and to be re-constituted every four years. The inquiry committee shall be constituted by the President in consultation with the Chief Justice of India. The inquiry committee shall inquire into and report on the allegation against the Judge in accordance with the procedure prescribed by the said Act, i.e. in accordance with the sub-sections (3) to (8) of Section 3 and sub-section (1) of Section 4 of the said Act and submit their report to the Chief Justice of India, who shall place before a committee of seven senior-most judges of the Supreme Court. The Committee of seven Judges shall take a decision as to - whether (a) findings of the inquiry committee are proper and (b) any charge or charges are established against the judge and if so, whether the charges held proved are so serious as to call for his removal (i.e. proved misbehaviour) or whether it should be sufficient to administer a warning to him and/or make other directions with respect to allotment of work to him by the concerned Chief Justice or to transfer him to some other court (i.e. deviant behaviour not amounting to misbehaviour). If the decision of the said committee of judges recommends the removal of the Judge, it shall be a convention that the judge promptly demits office himself. If he fails to do so, the matter will be processed for being placed before Parliament in accordance with articles 124(4) and 217(1) Proviso (b). This procedure shall equally apply in case of Judges of the Supreme Court and the High Courts except that in the case of a Supreme Court Judge the judge against whom complaint is received or inquiry is ordered, shall not participate in any proceeding affecting him.

In appropriate cases the Chief Justice of the High Court or the Chief Justice of India, may withhold judicial work from the judge concerned after the inquiry committee records a finding against the judge.

[Para 7.3.8]

(124) Article 124(3) contemplates appointment of Judges of Supreme Court from three sources. However, in the last fifty years not a single distinguished jurist has been appointed. From the Bar also, less than half a dozen Judges have been appointed. It is time that suitably meritorious persons from these sources are appointed.

[Para 7.3.9]

(125) The retirement age of the Judges of the High Court should be increased to 65 years and that of the Judges of the Supreme Court should be increased to 68 years.

[Para 7.3.10]

(126) In the matter of transfer of Judges, it should be as a matter of policy and the power under article 222 and its exercise in appropriate cases should remain untouched. The President would transfer a Judge from one High Court to any other High Court after consultation with a committee comprising the Chief Justice of India and the two senior-most Judges of the Supreme Court.

[Para 7.3.11]

(127) *A proviso should be inserted in article 129 so as to provide that the power of court to punish for contempt of itself inherent only in the Supreme Court and the High Courts and is available as part of the privilege of Parliament and State Legislatures, and no other court, tribunal or authority should have or be conferred with a power to punish for contempt of itself.*

[Para 7.4.7]

(128) *A suitable provision may be inserted in the Constitution so as to provide that except the Supreme Court and the High Courts no other court, tribunal or authority shall exercise any jurisdiction to adjudicate on the validity or declare an Act of Parliament or State Legislature as being unconstitutional or beyond legislative competence and so ultra vires. Such a provision may be made as clause (5) of article 226.*

[Para 7.5]

(129) A 'Judicial Council' at the apex level and Judicial Councils at each State at the level of the High Court should be set up. There should be an Administrative Office to assist the National Judicial Council and separate Administrative Offices attached to Judicial Councils in States. These bodies must be created under a statute made by Parliament. The Judicial Councils should be in charge of the preparation of plans, both short term and long term, and for preparing the proposals for annual budget.

[Para 7.7]

(130) The budget proposals in each State must emanate from the State Judicial Council, in regard to the needs of the subordinate judiciary in that State, and will have to be submitted to the State Executive. Once the budget is so finalized between the State Judicial Council and the State Executive, it should be presented in the State Legislature.

[Para 7.8.1]

(131) The entire burden of establishing subordinate courts and maintaining subordinate judiciary should not be on the State Governments. There is a concurrent obligation on the Union Government to meet the expenditure for subordinate courts. Therefore, the Planning Commission and the Finance Commission must allocate sufficient

funds from national resources to meet the demands of the State judiciary in each of the States.

[Para 7.8.2]

(132) The presiding officers in courts should be adequately trained. To ensure competence, there should be a proper selection, freedom of action, training, motivation and experience. To maintain their competence it is necessary to have continuing education for the judges. Some national judicial institutions have to be properly structured to give such training. There should be a proper monitoring of moving the judges where work demands such movement from places where there are no arrears of work. There has to be systematic assessment of training needs of judicial personnel at different levels.

[Para 7.10.2]

(133) The Government should ensure basic infra-structure needed to all courts and arrange to ensure that courts are not handicapped for want of infra-structural facilities. Governments, both at the Centre and in the States, should constitute committee of secretaries to review government litigation with a view to avoid adjudication, wherever possible, give priority in filling of written statements, wherever required, and instruct government advocates to seek early decision on government litigation.

[Para 7.10.4]

(134) In the Supreme Court and the High Courts, judgements should ordinarily be delivered not later than ninety days from the conclusion of the case. If a judgement is not rendered within such time – it is possible that the complexities of the case and the effect the decision may have on another similar situation might compel greater and larger judicial consideration and contemplation – the case must be listed before the court immediately on the expiry of ninety days for the court to fix a specific date for the pronouncement of the judgement.

[Para 7.10.5]

(135) An award of exemplary costs should be given in appropriate cases of abuse of process of law.

[Para 7.11]

(136) The recommendations of the Law Commission of India in regard to the Nagar Nyayalayas, Conciliation Courts, ADR systems of urban litigation, evidence recording by Commissioners, etc. as incorporated in the Code of Civil Procedure (Amendment) Act, 2000 should be brought into force with such modifications as would take care of a few serious objections.

[Para 7.13.3]

(137) The provisions relating to conciliation in the Arbitration and Conciliation Act, 1996 should suitably be amended to provide for obligatory recourse to conciliation or mediation in relation to cases pending in

courts. Further, the scope and functions of the Legal Services Authorities constituted under the Legal Services Authorities Act, 1987 should be enlarged and extended to enable the Authorities to set up conciliation and mediation fora and to conduct, in collaboration of other institutions wherever necessary, training courses for conciliators and mediators.

[Para 7.13.4]

(138) Each High Court should, in consultation with the judicial councils referred to in para 7.7, prepare a strategic plan for time-bound clearance of arrears in courts under its jurisdiction. The plan may prescribe annual targets and district-wise performance targets. High Courts should establish monitoring mechanisms for progress evaluation. The purpose is to achieve the position that no court within the High Court's jurisdiction has any case pending for more than one year. This should be achieved within a period of five years or earlier.

[Para 7.13.5]

(139) The criminal investigation system needs higher standards of professionalised action and it should be provided adequate logistic and technological support. Serious offences should be classified for purpose of specialized investigation by specially selected, trained and experienced investigators. They should not be burdened with other duties like security, maintenance of law and order etc., and should be entrusted exclusively with investigation of serious offences.

[Para 7.14.2]

(140) The number of Forensic Science Institutions with modern technologies such as DNA fingerprinting technology should be enhanced.

[Para 7.14.3]

(141) The system of plea-bargaining (as recommended by the Law Commission of India in its Report) should be introduced as part of the process of decriminalisation.

[Para 7.14.4]

(142) In order that citizen's confidence in the police administration is enhanced, the police administration in the districts should periodically review the statistics of all the arrests made by the police in the district as to how many of the cases in which arrests were made culminated in the filing of charge-sheets in the court and how many of the arrests ultimately turned out to be unnecessary. This review will check the tendency of unnecessary arrests.

[Para 7.14.5]

(143) The legal services authorities in the States should set up committees with the participation of civil society for bringing the accused and the victims together to work out compounding of offences.

[Para 7.14.6]

(144) Statements of witnesses during investigation of serious cases should be recorded before a magistrate under Section 164 of the Code of Criminal Procedure, 1973.

[Para 7.14.7]

(145) The case for a viable, social justice-oriented and effective scheme for compensation victims is now widely felt. The Government at the Union level and in the States are well advised under the directive principles as well as under International Human Rights obligations to legislate on the subject of an effective scheme of compensation for victims of crime without further delay.

[Para 7.15.3]

(146) The tremendous support which the criminal justice might derive from the people once the compensation scheme is introduced even in a modest scale, and the possibilities of advancing the crying need for social justice in a very real sense, are attractive enough for the State to find money to float the scheme immediately.

[Para 7.15.4]

(147) The National Informatics Centre in collaboration with or with the assistance of the Indian Law Institute and the Government Law Departments should set up a Digital Legal Information System in the country so that all courts, legal departments, law schools would be able to access and retrieve information from the data bank of the important law libraries in the country."

[Para 7.17.2]

(148) Progressively the hierarchy of the subordinate courts in the country should be brought down to a two-tier of subordinate judiciary under the High Court. Further, strict selection criteria and adequate training facilities for the presiding officers of such courts should be provided. In order to cope up with the workload of cases at the lower level and also to curtail arrears and delay, the States should appoint honorary judicial magistrates selected from experienced lawyers on the criminal side to try and dispose less serious and petty cases on part-time basis on the pattern of Recorders and Assistant Recorders in UK. They could set for, say, 100 days in a year and hold court later in the evenings after regular court hours. This would relieve the load on the regular magistracy.

[Para 7.18]

(149) Since the issues relating to human rights, more particularly relating to unlawful detention, have now occupied a center-stage, both nationally and internationally, it shall be desirable that the Protection of Human Rights Act, 1993 may be suitably amended to provide that, in addition to the powers generally vested in that Court, such courts shall have the power to issue directions of the nature of a *habeas corpus* as was available to the High Courts under section 491 of the Code of Criminal Procedure, 1898. Vesting of such power will go a long way in

providing help to the indigent and vulnerable sections of the society in view of the proximity and easy accessibility of the Court of Session.

[Para 7.19.3]

CHAPTER 8: UNION-STATE RELATIONS

Legislation

(150) Individual and collective consultation with the States should be undertaken through the Inter-State Council established under article 263 of the Constitution. Further, the Inter-State Council Order, 1990, issued by the President may clearly specify in para 4(b) of the order the subjects that should form part of consultation in the Inter-State Council.

[Para 8.2.13]

(151) *"Management of Disasters and Emergencies, Natural or Man-Made" should be included in List III of the Seventh Schedule.*

[Para 8.2.14]

Finance

(152) It might be worthwhile to provide explicitly for taxing power for the States in respect of certain specified services. For the Union also an explicit entry would be helpful, rather than leaving it to the residuary power of entry 97. However, it may be better to first let a consensus list of services to be taxed by the States come into force to be treated as the exclusive domain of the States, even if the formal taxing power is exercised by the Union. A *de facto* enumeration of services that can be taxed exclusively by the States should get priority from policy makers with a view to augmenting the resource pool of the States. Specific enumeration of services that may become amenable to taxation by the States should be made. *An appropriate amendment to the Constitution in this behalf should be made to include certain taxes, now levied and collected by the Union, to be levied and collected by the States.*

[Para 8.5]

Trade, Commerce and Intercourse

(153) For carrying out the objectives of articles 301, 302, 303 and 304, and other purposes relating to the needs and requirements of inter-State trade and commerce and for purposes of eliminating barriers to inter-state trade and commerce Parliament should, by law, establish an authority called the "Inter-State Trade and Commerce Commission" under the Ministry of Industry and Commerce under article 307 read with Entry 42 of List-I.

[Para 8.8.2]

(154) *Article 139A, which confers power on the Supreme Court to withdraw cases involving the same or substantially the same question of law, which are pending in Supreme Court and one or more High Courts, should be amended so as to provide that it can withdraw to itself cases even if they are pending in one court where such questions as to the legislative competence of the Parliament or State Legislature are involved.*

[Para 8.9.4]

(155) As river water disputes being important disputes between two or more States and/or the Union, they should be heard and disposed by a bench of not less than three Judges and if necessary, a bench of five Judges of the Supreme Court for the final disposal of the suit.

[Para 8.11.7]

(156) Appropriate provisions may be made as envisaged by article 145(1) in consultation with the Supreme Court or if the Supreme Court so opts to provide for the same by the Supreme Court Rules to appoint Commissioners or Masters and to have the evidence recorded not by the Supreme Court itself but by the Commissioners or Masters so that the precious time of the Supreme Court is saved.

[Para 8.11.8]

(157) Appropriate Parliamentary legislation should be made for repealing the River Boards Act, 1956 and replacing it by another comprehensive enactment under Entry 56 of List I. The new enactment should clearly define the constitution of the River Boards and their jurisdiction so as to regulate, develop and control all inter-State rivers keeping intact the adjudicated and the recognized rights of the States through which the inter-State river passes and their inhabitants. While enacting the legislation, national interest should be the paramount consideration as inter-State rivers are 'material resources' of the community and are national assets. Such enactment should be passed by Parliament after having effective and meaningful consultation with all the State Governments.

[Para 8.11.9]

(158) In resolving problems and coordinating policy and action, the Union as well as the States should more effectively utilize the forum of inter-State Council as recommended by the Commission on Centre-State Relations (Sarkaria Commission). This will be in tune with the spirit of cooperative federalism requiring proper understanding and mutual confidence and resolution of problems of common interest expeditiously.

[Para 8.12.4]

(159) In order to reduce tension or friction between States and the Union and for expeditious decision-making on important issues involving States, the desirability of prior consultation by the Union Government

with the inter-State Council may be considered before signing any treaty vitally affecting the interests of the States regarding matters in the State List.

[Para 8.13.3]

Executive

(160) The powers of the President in the matter of selection and appointment of Governors should not be diluted. However, the Governor of a State should be appointed by the President only after consultation with the Chief Minister of that State. Normally the five year term should be adhered to and removal or transfer should be by following a similar procedure as for appointment i.e. after consultation with the Chief Minister of the concerned State.

[Para 8.14.2]

(161) In the matter of selection of a Governor, the following matters mentioned in para 4.16.01 of Volume I of the Sarkaria Commission Report should be kept in mind:-

- ❖ He should be eminent in some walk of life.
- ❖ He should be a person from outside the State.
- ❖ He should be a detached figure and not too intimately connected with the local politics of the State.
- ❖ He should be a person who has not taken too great a part in politics generally, and particularly in the recent past.

In selecting a Governor in accordance with the above criteria, the persons belonging to the minority groups should continue to be given a chance as hitherto.

[Para 8.14.3]

(162) There should be a time-limit – say a period of six months – within which the Governor should take a decision whether to grant assent or to reserve a Bill for consideration of the President. If the Bill is reserved for consideration of the President, there should be a time-limit, say of three months, within which the President should take a decision whether to accord his assent or to direct the Governor to return it to the State Legislature or to seek the opinion of the Supreme Court regarding the constitutionality of the Act under article 143.

[Para 8.14.4]

(163) *Suitable amendment should be made in the Constitution so that the assent given by the President should avail for all purposes of relevant articles of the Constitution.* However, it is desirable that when a Bill is sent for the President's assent, it would be appropriate to draw the attention of the President to all the articles of the Constitution, which refer to the need for the assent of the President to avoid any doubts in court proceedings.

[Para 8.14.6]

(164) *A suitable Article should be inserted in the Constitution to the effect that an assent given by the President to an Act shall not be permitted*

to be argued as to whether it was given for one purpose or another. When the President gives his assent to the Bill, it shall be deemed to have been given for all purposes of the Constitution.

[Para 8.14.7]

(165) *The following proviso may be added to article 111 of the Constitution:*

"Provided that when the President declares that he assents to the Bill, the assent shall be deemed to be a general assent for all purposes of the Constitution."

Suitable amendment may also be made in article 200.

[Para 8.14.8]

(166) Article 356 should not be deleted. But it must be used sparingly and only as a remedy of the last resort and after exhausting action under other articles like 256, 257 and 355.

[Paras 8.18 and 8.19.2]

(167) In case of political breakdown, necessitating invoking of article 356, before issuing a proclamation thereunder, the concerned State should be given an opportunity to explain its position and redress the situation, unless the situation is such, that following the above course would not be in the interest of security of State, or defence of the country, or for other reasons necessitating urgent action.

[Para 8.19.5]

(168) The question whether the Ministry in a State has lost the confidence of the Legislative Assembly or not, should be decided only on the floor of the Assembly and nowhere else. If necessary, the Union Government should take the required steps, to enable the Legislative Assembly to meet and freely transact its business. The Governor should not be allowed to dismiss the Ministry, so long as it enjoys the confidence of the House. It is only where a Chief Minister refuses to resign, after his Ministry is defeated on a motion of no-confidence, that the Governor can dismiss the State Government. In a situation of political breakdown, the Governor should explore all possibilities of having a Government enjoying majority support in the Assembly. If it is not possible for such a Government to be installed and if fresh elections can be held without avoidable delay, he should ask the outgoing Ministry, (if there is one), to continue as a caretaker government, provided the Ministry was defeated solely on a issue, unconnected with any allegations of maladministration or corruption and is agreeable to continue. The Governor should then dissolve the Legislative Assembly, leaving the resolution of the constitutional crisis to the electorate.

[Para 8.20.3]

(169) The problem of political breakdown would stand largely resolved if the recommendations made in Chapter 4 in regard to the election of the leader of the House (Chief Minister) and the removal of the

Government only by a constructive vote of no-confidence are accepted and implemented.

[Paras 8.20.3 and 8.20.4]

(170) Normally, President's Rule in a State should be proclaimed on the basis of Governor's Report under article 356(1). The Governor's report should be a "speaking document", containing a precise and clear statement of all material facts and grounds, on the basis of which the President may satisfy himself, as to the existence or otherwise of the situation contemplated in article 356.

[Para 8.20.5]

(171) *In clause (5) of article 356 of the Constitution, in clause (a) the word "and" occurring at the end should be substituted by the word "or" so that even without the State being under a proclamation of Emergency, President's rule may be continued if elections cannot be held.*

[Para 8.21.3]

(172) Whenever a proclamation under article 356 has been issued and approved by the Parliament it may become necessary to review the continuance in force of the proclamation and to restore the democratic processes earlier than the expiry of the stipulated period. *For this, new clauses (6) & (7) to article 356 may be added on the following lines:* -

"(6) Notwithstanding anything contained in the foregoing clauses, the President shall revoke a proclamation issued under clause (1) or a proclamation varying such proclamation if the House of the People passes a resolution disapproving, or, as the case may be, disapproving the continuance in force of, such proclamation.

(7) Where a notice in writing signed by not less than one-tenth of the total number of members of the House of the People has been given, of their intention to move a resolution for disapproving, or, as the case may be, for disapproving the continuance in force of, a proclamation issued under clause (1) or a proclamation varying such proclamation:

(a) to the Speaker, if the House is in session; or
(b) to the President, if the House is not in session,

a special sitting of the House shall be held within fourteen days from the date on which such notice is received by the Speaker, or, as the case may be, by the President, for the purpose of considering such resolution.".

[Para 8.21.4]

(173) *Article 356 should be amended so to ensure that the State Legislative Assembly should not be dissolved either by the Governor or the President before the proclamation issued under article 356(1) has*

been laid before Parliament and it has had an opportunity to consider it.

[Para 8.22.3]

(174) Government may consider the demands of the Coorgies for a Sainik School, a Development Board and a University for them in Coorg.

[Para 8.23.1]

(175) Steps may be taken for better protection of Sindhi language and culture by setting up of a Centre of Sindhi Language and Culture with the State providing necessary facilities for the same. The difficulties faced by the Sindhi migrants may be examined and corrective measures taken to facilitate grant of citizenship as per the existing law.

[Para 8.23.2]

CHAPTER 9: DECENTRALISATION AND DEVOLUTION

Panchayats

(176) *Article 243K and 243Z should be amended on the following lines:-*

1. **Amendment of article 243K.-**
In article 243K,-

(a) for clause (1), the following clauses shall be substituted, namely:-

"(1) Subject to the provisions of clause (1A), the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(1A) The Election Commission shall have the power to issue any directions or instructions to the State Election Commission for the discharge of its functions under clause (1).".

(b) after clause (4), the following clause shall be inserted, namely:-

"(5) The State Election Commission shall submit its annual report to the Election Commission and to the Governor, every year and it may, at any time, submit special reports on any matter which in its opinion is of such urgency or importance that it should not be deferred till the submission of its annual report.".

2. Amendment of article 243ZA.-

In article 243ZA, for clause (1), the following clauses shall be substituted, namely:-

> "(1) Subject to the provisions of clause (1A), the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K.
>
> (1A) The Election Commission shall have the power to issue any directions or instructions to the State Election Commission for the discharge of its functions under clause (1).".

[Para 9.6.2]

(177) Panchayats should be categorically declared to be 'institutions of self-government' and exclusive functions be assigned to them: *For this purpose, article 243G should be amended to read as follows:-*

"Powers, authority and responsibility of Panchayats

243G. Subject to the provisions of this Constitution, the Legislature of a State shall, by law, vest the Panchayats with such powers and authority as are necessary to enable them to function as institutions of self-government and such law shall contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as shall be specified therein, with respect to-

(a) preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as shall be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.".

Similar amendments should be made in article 243W relating to the powers, authority and responsibilities of Municipalities, etc.

[Paras 9.7.1 and 9.7.2]

(178) *The Eleventh and Twelfth Schedules to the Constitution should be restructured in a manner that creates a separate fiscal domain for Panchayats and Municipalities. Accordingly, articles 243H and 243X should be amended making it mandatory for the legislation of the States to make laws devolving powers to Panchayats and Municipalities.*

[Para 9.8.2]

(179) *In order to enable the Finance Commission to take a macro-level view, the provisions sub-clauses (bb) and (c) of clause (3) of article 280 should be amended. The words "on the basis of the recommendation" in these sub-clauses should be replaced by the words "after taking into consideration the recommendations."*

[Para 9.8.3]

(180) *In the part of clause (1) of article 243-I which calls for constitution of State Finance Commission (SFC) at the expiration of every fifth year, in line with article 280(1), the words "or at such earlier time as the Governor considers necessary" may be added after the words 'fifth year'.* While it is for the State Legislature to ensure that the Government implements fully its assurances, there should be constitutional obligations for placing the Action Taken Report (ATR) before the legislature within 'six months' after the submission of the report. Clause (4) of article 243-I may need to be amended accordingly.

[Para 9.8.4]

(181) *The necessary legislative power of fixing upper limit of taxes on professions, trades, callings and employment under article 276 should be vested in Parliament by suitably amending that article.*

[Para 9.8.5]

(182) All local authorities may be allowed to borrow from the State Government and financial institutions.

[Para 9.8.6]

(183) *An enabling provision should be made in Part IX of the Constitution permitting the State Legislature to make, by law, provisions that would empower the State Government to confer on the Panchayats full power of administrative and functional control over such staff as are transferred following devolution of functions, notwithstanding any right they may have acquired from State Act/Rules.* They should also have the power to recruit certain categories of staff required for service in their jurisdiction.

[Para 9.9.1]

(184) *A proviso to clause (1) of article 243E should be inserted to the effect that a reasonable opportunity of being heard shall be given to a Panchayat before it is dissolved.*

[Para 9.10]

(185) *A provision for constitution of a State Panchayat Council under the chairmanship of the Chief Minister [on the pattern of Gujarat State Council for Panchayats as provided in the Gujarat Panchayats Act, 1993] should be made in the Constitution on the analogy of the provision in article 263 of the Constitution relating to the Inter-State Council.* The leader of the opposition may be made *ex-officio* vice-chairman of the Council to provide a consensual approach to the

development of Panchayats as fully democratic, efficient and responsible institutions.

[Para 9.11]

(186) Necessary provisions should be made for audit of Panchayat accounts to ensure that all works related to audit (conduct of audit, submission of audit report and compliance with audit objections if any) are completed within a year of the close of a financial year. To ensure uniformity in the practice relating to audits of accounts, the Comptroller and Auditor-General of India should be empowered to conduct the audit or lay down accounting standards for Panchayats.

[Para 9.12]

Municipalities

(187) Whenever a Municipality is superseded, a report stating the grounds for such dissolution should be placed before the State Legislature.

[Para 9.13]

(188) All provisions regarding qualifications and disqualifications for elections to local authorities should be consolidated in a single law and until that is done, each State should prepare a manual of existing provisions for public information.

[Para 9.14]

(189) The State Election Commission (SEC) should have the authority to prescribe ceiling of expenses and code of conduct in elections. Further, the State laws should clearly specify the powers of the SEC to disqualify candidates or set aside elections in the event of violations of those laws.

[Para 9.15]

(190) It should be the duty of a State and the Union (in case of Panchayats and Municipalities located in Union territories) to ensure the completion of elections within the stipulated limits. It should also be duty of the State Election Commissioner to ensure this and in the event of possible delay make a report to the Governor of the State drawing his attention to the problems and suggesting remedial action to fulfill the requirements of the Constitution. *Articles 243K and 243 ZA should be suitably amended to specify that the responsibility for the conduct of elections shall include all preparatory steps for the same including the electoral rolls and matters connected therewith and the responsibility for the same shall vest with the State Election Commission.*

[Para

(191) The functions and responsibilities of delimitation, rotation of seats and matters connected therewith a delimitation Commission constituted by legislature and not in the SEC.

1206 LJ&CA/2002—25A

(192) The Representation of the People Act and State laws should specify that common polling stations should be used for elections to local bodies, State Legislatures and Parliament.

[Para 9.17.2]

(193) The State laws should provide guidelines for the delimitation work such as parity, as far as possible, in the ratio between the population of a territorial constituency and the number of seats within the same class of Panchayats or Municipalities.

[Para 9.17.3]

(194) State laws should specify that changes in the administrative boundaries of districts, sub-divisions, taluks, police stations, etc., should not be made within six months prior to a panchayat or a municipal election.

[Para 9.17.4]

(195) *To remove ambiguities, articles 243D and 243T should be suitably amended to provide for rotation and changes only at the time of delimitation and not in between.* State laws should provide the guidelines for the process of reservation which should ensure transparency and adequate opportunities for eliciting voter response.

[Para 9.18.2]

(196) *To clarify the precise position of reservation under clause (6) of article 243D and clause (6) of article 243T to be provided by the State law, the overall total of reserved seats and reserved offices in Panchayats and Municipalities should be specified.*

[Para 9.18.3]

(197) The State Election Commissioner should have a fixed term of 5 years. He/she should be equal to a Judge of the High Court. The broad qualifications for a State Election Commissioner may be specified under the State law.

[Para 9.19.1]

(198) *The concept of a distinct and separate tax domain for municipalities should be recognised. This concept should be reflected in a list of taxes in the relevant schedule. Carving out items from the existing State lists such as item 49 (taxes on land and buildings) and item 52 (taxes on entry of goods into a local area for consumption) should not be difficult.*

[Para 9.21]

Institutions in North East India

(199) The North Eastern part of India with its large number of tribal communities and emerging educated elites has self-governing village councils and organized tribal chiefdoms. Efforts are to be made to give all the States in this region the opportunities provided under the 73rd and 74th Constitution Amendments. However, this should be done

1206 LJ&CA/2002—25B

with due regard to the unique traditions of the region and the genius of the people without tampering with their essential rights and giving to each State the chance to use its own nomenclature for systems of governance which will have local acceptance.

[Para 9.22.3].

(200) Careful steps should be taken to devolve political powers through the intermediate and local-level traditional political organisations, provided their traditional practices carried out in a modern world do not deny legitimate democratic rights to any section in their contemporary society. The details of state-wise steps to devolve such powers will have to be carefully considered in a proper representative meeting of traditional leaders of each community, opinion builders of the respective communities and leaders of State and national stature from these very groups. A hasty decision could have serious repercussions, unforeseen and unfortunate, which could further complicate and worsen the situation. To begin with, the subjects given under the Sixth Schedule and those mentioned in the Eleventh Schedule could be entrusted to the Autonomous District Councils (ADCs). The system of in-built safeguards in the Sixth Schedule should be maintained and strengthened for the minority and micro-minority groups while empowering them with greater responsibilities and opportunities, for example, through the process of Central funding for Plan expenditure instead of routing all funds through the State Governments. The North Eastern Council can play a central role here by developing a process of public education on the proposed changes, which would assure communities about protection of their traditions and also bring in gender representation and give voice to other ethnic groups.

[Para 9.23(i)]

(201) Traditional forms of governance should be associated with self-governance because of the present dissatisfaction. However, positive democratic elements like gender justice and adult franchise should be built into these institutions to make them broader based and capable of dealing with a changing world.

[Para 9.23(ii)]

(202) The implementation of centrally funded projects from various departments of the Union Government should be entrusted to the ADCs and to revived village councils with strict monitoring by the Comptroller and Auditor-General of India.

[Para 9.23(iii)]

(203) The process of protection of identity and the process of development and change are extremely sensitive. These twin processes need to be understood in the framework of a changing world and the role of all communities, small and large, in that world. Therefore, the North Eastern Council should be mandated to conduct an intensive programme of public awareness, sensitization and education through

non-government organizations, State Governments, and its own structure to help bring about such an understanding of the proposals.

[Para 9.23(iv)]

(204) The provisions of the Anti-Defection Law in the proposed revised form as recommended in para 4.18.2 of the Report should be made applicable to all the Sixth Schedule areas.

[Para 9.23(v)]

(205) Given the demographic imbalance which is taking place in the North-East as a result of illegal migration from across the borders, urgent legal steps are necessary for preventing such groups from entering electoral rolls and citizenship rolls of the country. Reservations for local communities and minorities from other parts of the country should be made in the State Legislatures. Issuance of multi-purpose identity cards to all Indian citizens should be made mandatory for all Indian residents in the North East on a *high-priority basis* and the National Citizenship Law to be reviewed to plug the loopholes which enable illegal settlers to become 'virtual' citizens in a short span of time, using a network of touts, politicians and officials.

[Para 9.23(vi)]

(206) A National Immigration Council should be set up under law to examine and report on a range of issues including Work Permits for legal migrants, Identity Cards for all residents, a National Migration Law, a National Refugee Law, review of the Citizenship Act, the Illegal Migrants Determination by Tribunal Act and the Foreigners Act.

[Para 9.23(vii)]

(207) Local communities should be involved in the monitoring of our borders, in association with the local police and the Border Security Force.

[Para 9.23(viii)]

(208) As regards Nagaland, the Naga Councils should be replaced by elected representatives of various Naga society groups with an intermediary tier at the district level. Village Development Boards should be less dependent on State and receive more Centrally-sponsored funds.

[Para 9.25]

(209) As regards Assam, –

(i) the Sixth Schedule should be extended to the Bodoland Autonomous Council with protection for non-tribal, non-Bodo groups,

(ii) other Autonomous Councils be upgraded to Autonomous Development Councils with more Central funds for infrastructure development; within the purview of the 73rd Amendment but also using traditional governing systems at the village level.

[Para 9.28]

(210) As regards Meghalaya, –

(i) A tier of village governance should be created for a village or a group of villages in the Autonomous District Councils, comprising of elected persons from the traditional systems plus from existing village councils with not more than 15 persons at each village unit.

(ii) The number of seats in each of the Autonomous District Councils in Meghalaya should be increased by 10 seats, *i.e.*, to a total number of 40 seats. Of the 10 additional seats, having regard to the non-representation of women and non-tribals, the Governor may nominate up to five members from these categories to each of the ADCs. The other five may be elected as follows:-

(a) By Syiems and Myntris, from among themselves to the Khasi Autonomous Council.

(b) By Dolois from among themselves to the Jaintia Autonomous District Council; and

(c) By Nokmas from among themselves to the Garo Autonomous District Council.

[Para 9.29]

(211) As regards Tripura, –

(i) The changes which may be made in respect of other Autonomous Councils should also apply in respect of the Autonomous District Council(s) in Tripura.

(ii) The number of elected members in the Council should be increased from 28 to 32.

(iii) The number of nominated members should be increased to six from the current two. The existing non-tribal seats (currently, they have three elected seats) be converted to tribal seats. Three non-tribals may be nominated by the Governor and three tribal women may be nominated by the Chief Executive Member.

[Para 9.30]

(212) As regards Mizoram, –

(i) An intermediary elected 30-member tier should be developed at the district level in areas not covered by the Sixth Schedule, *i.e.*, excluding the Chakma, Lai and Mara District Autonomous Councils. There would thus be two tiers below the State Legislature: the District and the Village.

(ii) Village Councils in non-Scheduled areas should be given more administrative and judicial powers; two or more villages be combined to form one village council, given the small population in the State.

(iii) Consideration should be given to groups seeking Sixth Schedule status, depending on viability of the demand, including size of population, territorial and ethnic contiguity.

(iv) Central funding as outlined in general recommendations should be provided to the ADCs.

(v) Nominated seats for women, non-tribals and Sixth Schedule tribes in non-scheduled area (not to exceed six over and above the size of the Councils, making a total of 36 members); current size of ADCs should be increased to 30 with a similar provision for women and non-scheduled tribes.

[Para 9.31]

(213) As regards Manipur,

(i) the provisions of the Sixth Schedule should be extended to hill districts of the State,

(ii) the 73rd Amendment should be implemented vigorously in the areas of the plains where, despite elections, the system is virtually non-existent.

[Para 9.32]

CHAPTER 10: PACE OF SOCIO-ECONOMIC CHANGE AND DEVELOPMENT

(214) The Citizens' Charters be prepared by every service providing department/agency to enumerate the entitlements of the citizens. In case a citizen fails to receive the public goods and the services in the manner and to the extent set out in such charters, he/she should have recourse to an easy and effective system of grievance redressal through chartered Ombudsman. These citizen's charters should include specifically the entitlements of citizens belonging to Scheduled Castes (SCs), Scheduled Tribes (STs) and other deprived classes. In the case of these deprived classes the charters can with advantage provide for National and State Commission for SCs, STs, BCs (Backward Classes), Minorities, women, safai karamcharis to function effectively as ombudsman-bodies. The charter of these National and State Commissions and the way they are constituted should be such as to facilitate the role, *inter alia*, as ombudsman-bodies for different deprived classes.

[Para 10.3.2]

(215) The Civil Services Boards, recommended to be set up under Chapter 6 for considering promotions and placements, should be directed to specifically consider the performance of officers in promoting the welfare of Scheduled Castes, scheduled tribes and other deprived categories. When officers are being considered for promotion and placement economic agencies/ministries, weightage should be given to officers who have worked conscientiously and efficiently to implement constitutional values and norms under the law and rules and regulations for the welfare, development and empowerment of the above disadvantaged categories and those who have failed in this and those who have not worked at least for five years in the areas and sectors pertaining to these categories should be excluded from placements in economic ministries/agencies. For this purpose, the

provision should be made for Social Justice Clearance before an officer of class I or class II is promoted along the lines detailed in para 3.2 at pages 1390-1391 of Book-3, Vol.II.

[Para 10.3.3]

(216) Reservation for members of the SCs and the STs should be brought under the purview of a statute covering all aspects of reservation, as detailed in para 8.10 at pages 1406-1408 of Book-3, Vol.II, including setting up *Arakshan Nyaya Adalats* or Tribunal to adjudicate upon all cases and disputes pertaining to reservation in posts and vacancies in Government, Public Sector, Banks and other financial institutions, Universities and all other institutions and organisations to which reservations are and become applicable. These Tribunals should have the status of High Courts, appeals lying only to the Supreme Court. These Tribunals should have their main Bench at Delhi and other Benches in the States. The Chairperson, Vice-Chairperson and other Members of the Tribunal and its benches should be selected on the basis of their record in the implementation of Reservation in their earlier positions. The statute should, *inter alia*, have a penal provision including imprisonment for those convicted of wilfully or negligently failing to implement reservation. The statute and related provisions should be brought under the Ninth Schedule to the Constitution.

[Para 10.3.4]

(217) The three Constitution amendments enacted in the last two years to undo the harm done in 1997 to the long pre-existing rights of SCs and STs in reservations should be put into effect forthwith. The Central and State Governments should amend the executive orders issued in 1997 regarding the roster and restore the pre-1996 roster. This should also be brought under the purview of the statute mentioned above.

[Para 10.3.5]

(218) The Reservation for backward classes should also be brought under a statute which, while containing the specificities of reservation for BCs should also contain provisions for *Arakshan Nyaya Adalats* or Tribunal for providing Justice in reservation, penal provisions, etc. as recommended in the case of the statute in respect of SCs and STs.

[Para 10.3.6]

(219) It should be mandatorily stipulated in the Memoranda of Understanding (M.O.Us.) of privatisation or dis-investment of public sector undertakings that the policy of reservation in favour of SCs, STs and BCs shall be continued even after privatisation or dis-investment in the same form as it exists in the Government and this should also be incorporated in the respective statutes of reservation. As a measure of social integration there should be a half per cent reservation for children of parents one of whom is SC/ST and the other parent is non-SC/non-ST and this reservation should be termed as reservation for the Casteless.

[Para 10.3.7]

(220) In view of the weighty opinion against the formal introduction of reservation in the higher judiciary, and the fact that over fifty years, the progress of education, however tardy, has certainly produced adequate number of persons of the SC, ST and BC in every State who possess the required qualifications, having necessary integrity, character and acumen required for Judges of Supreme Court and High Courts for appointment as Judge of the superior judiciary, a way could and should, therefore, be found to bring a reasonable number of SCs, STs and BCs on to the Benches of the Supreme Court and High Courts in the same way in which, in practice, it is found is followed in respect of advocates from different social segments/regions of the country/States or different religious communities so that on the one hand the overwhelming opinion against formal reservation in the Supreme Court and High Courts is respected and on the other hand, the feeling of alienation of the vast majority of Indians comprising SCs, STs and BCs that, in spite of having persons of requisite calibre and character among them, they are being ignored in the appointment of Judges, is resolved.

[Para 10.3.9]

(221) There should be reservation for SCs, STs and BCs (including BC minorities and especially More and Most Backward classes), with a due proportion of women from each of these categories in the matter of allotment of shops under the public distribution system, and other allotments like petrol stations, gas agencies, etc. for distribution of commodities by public authority. There is need for support mechanism to help entrepreneurs among these deprived sections to help them to come up in these business ventures. These measures should be taken on the lines as spelt out in para 4.6 at page 1393 of Book-3 Vol.II.

[Para 10.3.10]

(222) Massive programmes of employment should be undertaken and expanded to cover all such people and provide them employment at statutory minimum wage fixed for agricultural labourers at least for 80 days in the year over and above the unsteady employment they normally have. The nature of the work to be undertaken, the mode of payment of wages etc. should be as detailed in para 4.5 at pages 1392 to 1393 of Book-3 of Volume-II. Inclusion of Right to Work as a fundamental right has been recommended in para 3.13.2 of this Report and this will provide the necessary constitutional base and support for this programme.

[Para 10.3.11]

(223) Residential schools for SCs and STs should be established in every district in the country – one each for SC boys and SC girls, and ST boys and ST girls, as one item of an important package of comprehensive measures required for the development and empowerment of SCs and STs. Similarly, the Commission recommends that residential schools should be set up for the BCs in every district, one each for BC boys and BC girls, including minorities

who belong to BCs and with special attention to More Backward and Most Backward classes among BCs. The proportion of the students of the specific category of weaker sections (say 75 per cent) and of other social categories (say 25 per cent), the principles of location, methodology of covering the Minority B.C., phasing and funding, mode of selection of the candidates, management etc. should be as detailed in paras 5.4 and 6.2 at pages 1395 to 1397 of Book 3 of Volume II. This system has got the support of the precedent and experience for the last two decades in Andhra Pradesh state, providing ground for hope in this important and indispensable measure. In addition, the Commission recommends that it is also necessary to see that the SCs, STs and BCs especially the More and Most Backward classes of BCs from poor and middle-class families get due benefit of good and prestigious private educational institutions in the country as well as in foreign educational institutions at all levels and in all disciplines, at state cost. Funding for this can be found by measures outlined in sub-para (v) of para 5.4 at page 1396 of Book 3 of Volume II. The measures detailed in sub para (ii) and (iv) of para 5.4 at pages 1395 and 1396 of Book 3 of Volume II should be followed in the matter.

[Para 10.4.1]

(224) Incentives should be offered to students to prepare for such courses of study in technical, vocational, scientific and professional disciplines. Only a massive transfer of resources to the educational programmes for the scheduled castes and scheduled tribes will enable us to achieve the kind of quantitative expansion needed to bring these communities on par with others in terms of skills and knowledge base to engage with the modern world. It is only then that they would be in a position to compete on the basis of their own strength and rise to the leadership role in different spheres of public life. This aspect of measures for building up a reservoir of highly educated professional, scientific and technological manpower among these categories in population equivalent proportion should be borne in mind along with its earlier recommendations regarding residential schools of high quality and elementary education, and provisions and outlays should be made accordingly.

[Para 10.4.3]

(225) Social policy should aim at enabling the SCs, STs and BCs (including BC minorities and especially the More and Most Backward Classes among BCs) and with particular attention to the girls in each of these categories to compete on equal terms with the general category. This was always necessary but this becomes more important and increasingly urgent in the context of a knowledge society that is emerging. Reservation has helped the above deprived categories to enter state educational institutions from which they had been debarred and / or otherwise excluded in the past. Reservation continues to be necessary since these adverse factors have not ceased to exist. But with the growth of high quality educational institutions built up by the wealthier sections, almost entirely drawn from non-SC, non-ST, non-BC categories, as a high quality stream distinct and separate from the

state educational system, it becomes important to ensure that other measures in addition to reservations are introduced. Without these measures, along with the Commissions, recommendations on elementary education, the gap between the SC, ST and BC on the one hand and the rest of society will inexorably continue and even be widened.

[Para 10.4.4]

(226) The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, should be strictly enforced to bring to an early end to this degrading practice of manual scavenging so offensive to human dignity without abridgement of the employment and income of existing Safai Karamcharis. Automatic applicability of the Act to all States should be brought about by the amendment suggested in para 7.2 at page 1399 of Book 3 of Volume II. Further, the specifics and details of the abolition of the manual scavenging system and the liberation and rehabilitation of safai karamcharis and protection of safai karamcharis during the transition period should be as detailed in para 7.3 of pages 1399 to 1401 of Book 3 of Volume II, including its incorporation in the System of Social Justice Clearance of officers at the time of their consideration for promotion. Limitations placed on the National Commission for Safai Karamcharis should be removed and it should be given the same powers and functional autonomy as is being enjoyed by the National Human Rights Commission; it should be adequately equipped to achieve its objective of total liberation and full rehabilitation of safai karamcharis. This should form an integral part of a National Sanitation Policy-cum-National Social Justice Policy.

[Para 10.5]

(227) The bleak situation will continue to bedevil the SCs and STs and the nation unless appropriate new institutions are created to take charge of the full quantum of outlay of SCP and TSP (i.e. outlay not less than the population equivalent proportion of the total plan outlay of the Centre/each State) and manned by competent experts of SCs and STs and others genuinely working for them, to formulate Plans in accordance with the developmental needs and priorities of the SCs and STs and ensure that these plans are implemented effectively. This new institutional system should consist of an integrated network of National Development Council for SCs and STs, and National SCs and STs Development Authority, State SCs and STs Development Authorities and District SCs and STs Development Authorities. Out of the total plan outlay of the Centre and of each State, before sectoral allocations are made, an outlay equivalent to the population proportion of SCs and STs should be placed at the disposal of the National and respective State Authorities, as the corpus of SCP and TsP for formulation of plans in accordance with the needs and priorities of SC & ST. For this, the system as detailed in para 9.2 at pages 1409 to 1411 of Book-3, Volume-II should be established. The schemes as illustrated in sub-para (9) of para 9.2 at pages 1410-1411 of Book-3, Volume-II should also be taken up on a massive scale.

This will at one stroke remove the various limitations and difficulties faced by the SCP and TSP and create a powerful, integrated instrument of social transformation based on the vision of economic liberation, educational equality and social dignity of the SCs and STs.

[Para 10.6.2]

(228) Land reforms involving distribution and allotment of lands from different sources (i.e. Government lands not required for genuine public use, Bhoodan lands, ceiling surplus lands, etc.) to the SCs and STs along with supportive mechanism in the shape of supply of subsidised capital and credit and extension be made, and development of these lands through irrigation and other means be undertaken. In this context, the measures recommended at (b) of sub-para (9) of para 9.2 at page 1410 of Book-3, Volume-II and in para 14(i) to (vi) at pages 1416 to 1417 of Book-3, Volume-II should be implemented. Similarly, with regard to enforcement of the Minimum Wages Act for agricultural labour, the methodology recommended at (c) of sub-para (9) of para 9.2 of page 1410 Book-3, Volume-II should be followed. Strong legal action is needed to prevent alienation of lands belonging to the tribal communities and effective prior rehabilitation of tribals before displacement due to developmental projects. For this purpose, the measures listed in para 13.2 at page 1414 to 1415 of Book-3, Volume-II should be undertaken. Additionally, the tribal communities have to be associated with the management of forest resources, for not only their livelihoods, but also for protecting their way of life and cultural identity which are indissolubly linked to forests. For this purpose, action as recommended in sub-paras (10) and (11) of para 13.2 at page 1416 of Book-3, Volume-II should be taken.

[Para 10.7.1]

(229) In the matter of harmonising the preservation of the land ownership of STs, industrial and other development, action should be taken as outlined in sub-paras (6), (8) and (9) of para 13.2 of pages 1415 to 1416 of Book-3, Volume-II.

[Para 10.7.2]

(230) Special safeguards should be provided to protect the wholesome traditions of the cultural heritage and of the intellectual property rights of the tribal people. This is no less important for the tribal identity than the effort to prevent alienation of land and land-related institutional rights of tribal people.

[Para 10.7.3]

(231) *All areas governed by the Fifth Schedule to the Constitution should be forthwith transferred to the Sixth Schedule extending the applicability of the Sixth Schedule to tribal areas other than the North Eastern States to which alone the Sixth Schedule now applies, and all tribal areas which are neither in the Fifth Schedule nor in the Sixth Schedule should also be brought forthwith under the Sixth Schedule.* Special programmes of training and orientation for the elected representatives

of the Sixth Schedule bodies and related officials should be undertaken and conducted regularly in order to secure the full potential of local developmental and administrative autonomy envisaged under the Sixth Schedule.

[Para 10.7.4]

(232) The Government should step in firmly and clearly, if the gap is to be bridged between private prejudices, in the name of "efficiency" on the one hand and the just aspirations of the SC, ST, BC including BC minorities, and women. For this, the Government should take the initiative along the lines suggested in para 11.3 at pages 1412 and 1413 of Book-3, Volume-II.

[Para 10.7.5]

(233) Further, the Government should examine other economic and activity sectors at every level of each such sector and see whether the SCs and STs are adequately represented in each of them. If they are not, remedial measures either through reservation or through other means should be undertaken to see that they are adequately represented at every level in every such sector. Similar action should also be taken with regard to backward classes including BC minorities, especially More and Most Backward Classes and women of all categories. This is possible, if non-economic prejudices are excluded, without watering down the genuine requirements of efficiency.

[Para 10.7.6]

(234) Agriculturists and other traditional producing classes face certain adverse effects of sudden and unprepared exposure to the regimes of WTO, IPR, etc. In order to protect them from these adverse effects while at the same time to secure the benefits of those regimes, a national convention should be convened involving Ministers in charge of Ministries connected with globalisation and Ministers in charge of Agriculture and other sectors of traditional produce and authentic representatives of the peasant organizations as well as organisations of other traditional producing classes, to identify remedial Steps arrive at a consensus about them and these should be implemented quickly. There should be a continuing mechanism involving all these to continuously monitor implementation and corrections and modifications required from time to time.

[Para 10.7.7]

(235) Agriculturists and many other traditional producing classes suffer from the adverse effects of natural calamities like drought, cyclone, floods, etc. A similar national convention should identify the measures required to protect them from such adverse effects of natural calamities including crop insurance, preparedness etc., arrive at a consensus about these measures and institute a continuing machinery of continuous monitoring and corrections and modifications.

[Para 10.7.8]

(236) On the one hand, there should be an effective legal structure to protect the SCs and STs against atrocities and discriminatory practices based on untouchability and along with such structure and its efficient functioning and on the other hand, there should also be attitudinal change of a profound nature in the general society.

[Para 10.8.1]

(237) With regard to legal structure, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 needs to be strengthened and its effective enforcement ensured. This include the establishment of special courts exclusively to try offences under this Act, inclusion of certain crimes in the list of atrocities, certain penal provisions where they do not exist, appropriate plugging of certain loopholes and comprehensive rehabilitation of victims and so on. For this purpose, the measures suggested in para 8.2.1, 8.2.2, 8.2.3, 8.3 and 8.4 (a) to (p) of Book-3, Vol.II at pages 1401 to 1404 should be taken.

[Para 10.8.2]

(238) Regarding untouchability which continues to be widely prevalent in old classic forms as well as in new forms in line with modern developments, multi-pronged measures covering human rights education, moral education, building up of a strong democratic movement against untouchability and effective punitive action under the Protection of Civil Right Acts, 1955 (PCR Act) are required. In view of this, the entire gamut of measures suggested in paras 8.6 to 8.8 at pages 1404 and 1405, Book-3, Vol.II should be taken.

[Para 10.8.3]

(239) The National Science and Technology Commission referred to in Chapter 6 should also promote measures for extending the umbrella of modern science and technology and higher scientific and technological research to cover SCs, STs and BCs, women and other poor sections of the society, devise means by which they can also be introduced into this field and potential talent among them identified and nurtured so that they also are enabled to contribute to the advancement of higher scientific and technological research in the country and so that there is no feeling that they are shut out from this important area on account of non-scientific prejudices.

[Para 10.9]

(240) The Constitution of India contains distinct provisions for the protection and promotion of the interests of Scheduled Castes and Scheduled Tribes, Backward classes, women, minorities and other weaker sections. It is necessary to strengthen these provisions by amendments, etc. and certain other similar steps. Accordingly, *the amendments to the Constitution listed in para 15 at pages 1417 and 1418 of Book-3, Vol.II, covering articles 46, 335, 16, 15 and List III of the Seventh Schedule should be carried out.*

[Para 10.10]

(241) As regards the minorities, the following shall be implemented:-

(a) Steps should be taken for improvement of educational standards amongst the minority communities. Special programmes should be drawn up after the widest consultation with the leaders of minority communities including leaders of BCs, SCs and STs among Minorities from academic, professional, business, and socio-political spheres and from low-occupational spheres. Such programmes should be generously funded. Only educational and cultural advancement will help the cause of national integration as well as raise the capabilities of the communities. This is the high road to national cohesion.

(b) At present the political representation of minority communities in legislatures, especially Muslims, has fallen well below their proportion of population. The proportion of BCs among them is next to nil. This can lead to a sense of alienation. It is recommended that in situations of this kind, it is incumbent for political parties to build up leadership potential in the minority communities, including BCs, SCs and STs among them, for participation in political life. The role of the state for strengthening the pluralism of Indian polity has to be emphasised.

(c) Backward classes belonging to religious minorities who have been identified and included in the list of backward classes and who, in fact, constitute the bulk of the population of religious minorities should be taken up with special care along with their Hindu counterparts in the developmental efforts for the backward classes. This should be on the pattern of the approach to the development of Backward Classes formulated by the Working Group for the Development and Empowerment of Backward Classes in the Tenth Plan referred to separately under Backward Classes.

(d) An effort needs to be made to carry out special recruitment of persons belonging to the underrepresented minority communities in the police forces of States, para military forces and armed forces.

[Para 10.11.2]

(242) In every State, the linguistic minorities should be provided the facility of having instruction for their children at elementary stage of education in their mother tongue. Numerous recommendations in this behalf and other matters have been made by the Commissioner for Linguistic Minorities in his successive Annual Reports regarding the various problems faced by the linguistic minorities. The Government of India in the Ministry of Social Justice and Empowerment and the Ministry of Human Resources Development should collate all these recommendations and see that substantive action is taken on each of them.

[Para 10.11.3]

(243) The denotified tribes/communities have been wrongly stigmatized as crime prone and subjected to highhanded treatment as well as exploitation by the representatives of law and order as well as by the general society. Some of them are included in the list of Scheduled Tribes and others are in the list of Scheduled Castes and list of backward classes. The special approach to their development has been delineated and emphasized in the Reports of the Working Groups for the Development of Scheduled Tribes, Scheduled Castes and Backward Classes in successive Plans and also in the Annual Reports of the Commissioners for Scheduled Castes and Scheduled Tribes, National Commission for Scheduled Castes and Scheduled Tribes and the National Commission for Backward Classes. There are also special reports available on de-notified tribes. Their recommendations have not received attention. The Ministry of Social Justice and Empowerment and the Ministry of Tribal Welfare should collate all these materials and recommendations contained in the reports of the working groups and the reports of the National Commissions and other reports referred to and strengthen the programmes for the economic development, educational development, generation of employment opportunities, social liberation and full rehabilitation of denotified tribes. Whatever has been said about vimuktajatis also holds good for nomadic and semi-nomadic tribes/communities. Similar action should be taken in respect of nomadic and semi-nomadic tribes/communities as done in the case of de-notified tribes or vimuktajatis. The continued plight of these groups of communities distributed in the list of Scheduled Castes, Scheduled Tribes and backward classes is an eloquent illustration of the failure of the machinery for planning, financial resources allocation and budgeting and administration in the country to seriously follow the mandate of the Constitution including article 46. The setting up of an integrated net work of National Scheduled Castes and Scheduled Tribes Development Authority, etc. recommended in para 10.5.2 to 10.5.3 will provide a structural mechanism to deal in a practical way with the vimuktajatis as well as nomadic and semi-nomadic tribes/ communities within the frame work of the SCP and TsP. Similarly the approach to the development of backward classes referred to at para 10.14 contains the approach to deal in a practical way with the Vimuktajatis and nomadic and semi-nomadic tribes/communities who are in Backward Class list.

[Para 10.12.1]

(244) The Commission also considered the representations made on behalf of the De-notified and Nomadic Tribal Rights Action Group and decided to forward them to the Ministry of Social Justice & Empowerment with the suggestion that they may examine the same preferably through a Commission.

[Para 10.12.2]

(245) The Union legislation for agricultural workers, drafted as far back as 1978-80, should be introduced and passed immediately. A realistic scheme of credible implementation of minimum wages Acts with

particular attention to agricultural labours, relying to a suitable degree on the district Collectors/Dy. Commissioners and district superintendents of police, should be immediately put into action. For this purpose the measures suggested in para 17.2 at page 1413 of Book 3 Vol.II should be followed.

[Para 10.13.2]

(246) Despite prohibition of begar and other forms of forced labour by the Constitution, the practice of bonded labour has not ended as it is patronised by the most powerful sections in the rural areas. Child labour too is widespread. In order to deal effectively with this problem in keeping with the mandate of the Constitution, the Commission recommends that a fully empowered National Authority for the Liberation and Rehabilitation of bonded labour, as recommended by the Commission for Rural Labour in 1990-91, should be set up immediately along with similar authorities at the State level. In addition, simultaneous rehabilitation of released Bonded Labourers and education for released bonded child labourers and other measures referred to in para 19.2 at page 1414 of Book 3,Vol.II should be taken.

[Para 10.14]

(247) The Government should immediately implement every one of the recommendations of the Working Group on Employment of Backward Classes in the Tenth Plan which covers all aspects and fields of their development – Economic, Educational, social, employment, reservation, etc. – taking in with particular care those backward classes who belong to religious minorities along with their Hindu counterparts in a cohesive manner. For example, some of the residential talent schools earmarked for Backward Classes should be located in areas of concentration of Muslim B.Cs. Further there should be residential talent schools for backward classes as separately recommended for SCs and STs at the rate of one each for boys and girls in each district, 75% being taken from backward classes and 25% from other categories. The Government should without any delay introduce reservation for backward classes in seats in educational institutions since absence of promotion of their education through reservation and other means when there is reservation of employment is anomalous.

[Para 10.15]

(248) Action in accordance with the suggestions made in para 16.2 at page 1412 of Book 3 Vol.II, covering reservation, development, empowerment, health including malnutrition and maternal anaemia and protection against violence should be taken.

[Para 10.16]

(249) The problems relating to prostitution, child prostitutes and children of prostitutes have been the subject of a landmark judgment of the Supreme Court in Gaurav Jain's case of 9th July, 1997 and the Report of Committee of Secretaries on Prostitution, Child Prostitutes and children of Prostitutes set up in 1997 as explained in para 20.1 and

20.2 at pages 1414 to 1415 of Book 3 Vol.II. In respect of this area of problem, the Government should take action according to the suggestion listed at para 20.3 at page 1415 of Book 3 of Vol. II, covering implementation of the judgement and the Secretaries' report, eliminating the Devadasi system, provision of development and education and prevention of HIV / AIDS.

[Para 10.17]

1206 LJ&CA/2002—26A

NOTES OF MEMBERS

CONTENTS

		Page No.
1.	Note of Justice Shri B.P. Jeevan Reddy	372
2.	Note of Dr. Subhash C. Kashyap	375
3.	Note of Shri C.R. Irani	386
4.	Note of Smt. Sumitra G. Kulkarni	392

Dissenting Note by Justice B.P. Jeevan Reddy, Member,
National Commission to Review the Working of the Constitution

1. Superior Judiciary

A Consultation Paper was prepared and circulated by the Commission. The Consultation Paper dealt with the appointment and removal of the Judges of the High Courts and the Supreme Court and the transfer of the Judges of the High Court.

The paper was considered by the Commission on 18-12-2001 when I was not present on account of my absence from India and certain decisions were taken regarding the procedure for appointment. After I returned, and at the instance of the members, including myself, a special session (15th meeting of the Commission) was convened from 5th to 8th January, 2002, to consider this issue and two other controversial issues. So far as the procedure for appointment of Judges to the High Courts and the Supreme Court was concerned, there was a sharp division of opinion at the special session/meeting. The first question put to vote was whether there should be any change in the existing procedure. By a majority of six to four, it was decided that no change is called for in the existing procedure. In this view of the matter, the necessity of constituting a National Judicial Commission for the said purpose and/or its composition did not come up for consideration. It may be remembered that this session/meeting was attended by all the members and the Chairman of the Commission. One should have thought that this decision was final. But when the draft Report prepared by the Editorial Committee was being finalized, the said issue was re-opened again, even though all the members were

not present. There appears to have been a change in the opinion of some members meanwhile on this subject. With some members absent, the Commission now decided in its Sixteenth meeting held from 25th February, 2002 to 1st March, 2002, that a National Judicial Commission should be constituted with a particular composition. In my opinion, there was no occasion or justification for re-opening an issue which was considered and decided upon at a special session/meeting of the Commission convened specially to consider this issue along with two other controversial issues. In view of the change of opinion by some members and absence of some other members, I did not call for a division and voting, yet, my view is that the very re-opening of the said issue was not called for and not justified in the circumstances aforestated. In my view, the existing procedure relating to the appointment of Judges to the High Courts and the Supreme Court should be allowed to work for some more years – it is hardly nine years since it is in vogue before one can consider a change. There is no material before the Commission warranting a change in the existing procedure.

2. Liability of the State in Torts

An elaborate Consultation Paper was prepared and circulated by the Commission on this subject and in the light of the responses received, a draft report was also prepared for consideration of the Commission. However, when the draft report came up for consideration of the Commission during its Fifteenth meeting held from 5th to 8th January, 2002, the very subject was dropped on the ground that the draft report (and the Consultation Paper) did not suggest any amendments to the Constitution and it merely recommended enactment of a law; it was observed

by some members that this issue need not be considered by the Commission and that it is a more appropriate subject for, may be, the Law Commission of India to consider.

In my view, the ground upon which the said subject was dropped was not tenable or justified. The recommendations being made by the Commission do not all pertain to the amendment of the Constitution; in deed, a large majority of them pertain to amendment of laws or enactment of new laws. If so, dropping of this subject on the aforesaid ground is inconsistent with the principle underlying the majority of its recommendations. Secondly, as pointed in the Consultation Paper and the draft Report, the law on the subject, evolved by the decisions of the Courts, is wholly unsatisfactory and is putting the rights of the citizens in serious jeopardy. Though Article 300 of the Constitution contemplates a law being made on the subject clarifying the position and, notwithstanding the repeated observations of the Supreme Court and the High Courts, neither the Parliament nor the State Legislatures have deemed it fit to enact a law. In my opinion, there could be no principled opposition to making a recommendation by the Commission for enactment of a law clarifying the State's liability in the matter of torts committed by its officers and the exemptions to that rule (including the defence of 'exercise of sovereign powers'). Such a recommendation would have been salutary and would have advanced the public interest.

[*Justice* **B.P. JEEVAN REDDY**]
Member, N.C.R.W.C.

Dated: 21 March, 2002.

Note by Dr. Subhash C. Kashyap, Member of the Commission and Chairman of its Drafting and Editorial Committee.

1. It is with extreme reluctance and a deep sense of sadness that I am constrained to pen this note to qualify the report of the Commission of which in the words of the Chairman I was "the principal author" as the Chairman of the Drafting and Editorial Committee.

2. My sadness at the results becomes more poignant because for nearly ten years, I had personally crusaded for a review of the working of the Constitution and appointment of a Commission for the purpose. Five books, a host of articles in national dailies and several seminars and conferences all over the country suggesting, *inter alia,* setting up of such a body preceded the appointment of the Commission. Finally, in pursuance of the national agenda for good governance, the NCRWC was appointed by the President in February 2000.

3. The Commission was entrusted with a historic task of great responsibility. It was expected to act independently and objectively, without fear or favour and with a sense of serving the best interests of the country and thereby helping the Government and the Parliament of India to consider desirable reforms in the working of the Constitution within the parameters of the parliamentary system and the basic structure of the Constitution. I had the pleasure of defending the appointment and work of the Commission at dozens of seminars and conferences in different parts of India during the last two years (without any cost to the Commission).

4. The positive outcome of the whole exercise is that it has been possible to see through the Commission a number of very significant suggestions and to arrive at unanimity in several matters. The most important recommendations made by the Commission are those concerning electoral processes and political parties, Union-State Relations, Decentralization and Devolution and parliamentary reforms. The entire Commission is in full agreement on matters like (1) the election of the Leader of the House by the Lok Sabha/State Assembly and appointment of such leader as P.M./C.M., (2) constructive vote of no-confidence, (3) freedom of the press and other media and freedom of information as fundamental rights, (4) truth in public interest as good defence in contempt of court cases, (5) ridding the election process of evils like booth capturing, bogus voting, criminalisation and spreading caste and communal hatred, (6) maintenance and audit of election and political party accounts and declaration of assets and liabilities by candidates for election and those holding public office, (7) limiting by law the size of Councils of Ministers, (8) disqualifying all defectors – individual or group – and (9) rotation of reserved seats.

5. The Commission also recommends (1) examination of the issue of prescribing a minimum of 50% plus vote for winning an election, (2) discouraging independent candidates, (3) regulating by law the registration, recognition and functioning of parties, (4) codification of parliamentary privileges, (5) discontinuation of MP LAD Scheme, and (6) measures for combating corruption and confiscation of ill-gotten property.

6. The following comments and reservations in regard to some of the chapters may be noted :-

(i) It was decided by the Commission that each chapter of the Report would not exceed 15 to 20 pages and that unnecessary quotations particularly from foreigners would be avoided. It was, however, left to the Chairperson himself to prepare and finalise the Introductory chapter on the 'The Basic Approach and Perspective".

(ii) In regard to Chapter 3 titled 'Fundamental Rights, Directive Principles and Fundamental Duties', I would like to iterate some of the unanimous decisions of the Drafting and Editorial Committee (DEC) which were as follows:

(a) "It may be neither necessary nor proper to include in the text of our Constitution all the provisions of international conventions etc., for, where acceptable, many of these can be adopted by ordinary legislation. Also, enlargement of fundamental rights through judicial verdicts does not always call for constitutional amendments, for judicial interpretations and verdicts are amenable to review by courts themselves."

(b) "The Commission noted that the ultimate aim of affirmative action of reservation should be to raise the levels of capabilities of people of the disadvantaged sections and to bring them at par with the other sections of society. Reservations should not separate certain sections from others and should not become a permanent feature of Indian society. In this connection, it is important to recall that Dr. Ambedkar was opposed to reservations for Scheduled Castes in perpetuity. He would have liked it to be for forty years instead of ten years but thereafter he did not want Parliament to have the power to extend it by law because he did not like the dalit class stigma on Indian society to become permanent. Unfortunately, during the last fifty years and more, reservations have not enabled these disadvantaged sections come closer to others to desired levels. Reservations have also not really benefited those sections for whom these were meant. In many instances, these have been monopolized by certain privileged sections within those groups."

(c) "In regard to articles 29 and 30, the Commission recommends that the cultural and educational rights available under the articles should be available equally to all groups in society so that there is no discrimination between communities or social groups in the matter of establishment and maintenance of educational institutions, etc."

It is difficult to understand why some members of the Commission could not agree to the Drafting and Editorial Committee's unanimous suggestion of extending to all religious and linguistic groups without any discrimination the right to establish and administer educational institutions of their choice insofar as this could be done without in any way adversely affecting the existing rights of minorities.

(iii) Para 3.20.2 of the Report recommends that besides every child having the right to free education until he completes the age of 14 years, every girl and members of the Scheduled Castes/Scheduled Tribes will have a judicially enforceable fundamental right to education until the age of 18 years. It is doubtful whether the actual costs of providing free and compulsory education to nearly half of India's population upto the age of 18 years have been worked out before making such recommendation.

(iv) In regard to Chapter 4 titled 'Electoral Process and Political Parties', I would like to iterate the following unanimous decisions of the Drafting and Editorial Committee which were based on the decisions taken by the whole Commission earlier with one Member expressing some reservations in regard only to (a):

(a) "The second approach which the Commission recommends for adoption, suggests that **we should only have representatives who win on the basis of 50%+1 vote. If, in the first round, nobody gets over 50% then there should be a run-off contest the very next day or soon thereafter between the top two candidates so that one of them will win on the basis of over 50% of the votes polled.** Several representations from organisations and individuals favoured this option to achieve the objective of better representation. The Chief Election Commissioner confirmed that the task of run-off elections can be managed. Actually, the run-off vote is like a re-poll in certain constituencies. There is no revision of electoral rolls, no fresh nominations, no fresh campaigning or the like. It is the same polling booth with the same administration and therefore there are no complications of heavy costs or fresh security arrangements. There are substantial advantages of following the policy of 50%+1 vote. On the one hand, it resolves the problem of representation. On the other, it also makes it in the self-interest of various political parties to widen their appeal to the electorate. It can help push political rhetoric in a direction that the mobilizing language might take on comparative "universal" tones as opposed to "sectoral" tones of the present day. With the need to be more broad based in their appeal, issues that have to do with good governance rather than with cleavages and narrow identities might start to surface in the political vocabulary. With EVMs we can easily plan on a two-day election all over the country. The second day may be for

run-offs. This means that at the end of the day, through the use of computer technology, the constituency will know whether someone has won by getting over 50% or that a run-off is necessary. If it is the latter, the announcement would mention the names of the two candidates. The final results can be announced with all others. If implemented properly, this suggestion has the potential of forcing political parties and candidates to think of strategies to obtain over 50% votes in the first election itself. This will discourage the non-serious candidates and fringe players from jumping in the fray and it will encourage making of pre-election agreements between parties and this should lead to moderation and stability. Also, while on the first occasion, there may be many run offs, with each successive election the number may be reduced to only a few.

The proposal evoked favourable response from the people. Also, it found overwhelming support in the Commission and the general feeling was that this one proposal had the greatest potential of service to the cause of national integration and ridding Indian politics of the scourge of casteism and communalism."

(b) "Some scholars and concerned citizens suggested that voting should be made a citizenship obligation. Voting is compulsory in many countries. Many eminent Indians, including the distinguished former President and elder statesman, Shri R. Venkataraman strongly favoured making voting compulsory. He suggested that the responsibility of ensuring that all the voters exercise their franchise may be entrusted to Panchayats at the village level. "The advantage of compulsory voting is that the voter realises that he is not conferring a favour on the candidate but exercising his duty as a citizen." **The Commission recommends that voting be made compulsory as a fundamental citizenship obligation under the law."**

(c) "After careful consideration of all the aspects of the problem, the Commission reached the conclusion that only recognised national parties and pre-poll alliances (*i.e.* those that secure at least 10% of the votes cast) should be allotted common symbols to contest elections to Lok Sabha. This would, by prompting pre-poll alliances, automatically consolidate the vote and help in evolving some sort of federal parties or alliances providing more stable governments."

(d) "Section 60 of the Representation of the People Act, 1951, inter alia, makes a provision enabling the persons of the armed forces to cast their votes through postal ballot. It is reported that there have been inordinate delays in delivery of the postal ballots sometimes resulting in disenfranchising the personnel of the armed forces. Some suggestions have been made to the

effect that as an alternative at their option, the members of the armed forces may be allowed to cast their vote by appointing someone as proxy. **The Commission recommends that by making necessary changes in the Representation of the People Act, 1951, the facility of voting either by proxy or the existing postal ballot system, may be provided to members of the armed forces."**

(v) In para 4.31.2 of the Report, there is a serious typographical error which seems to suggest that national parties or alliances may be allowed to contest elections only for State legislatures or Council of States. Actually, it should read as follows:

> "Only parties or pre-poll alliances of political parties registered as national parties or alliances with the Election Commission be allowed a common symbol to contest elections for the Lok Sabha. State Parties may be allowed common symbols to contest elections for State Legislatures and the Council of States (Rajya Sabha)."

It is hoped this correction would be made in the Report before it is submitted even though several members have already signed it.

(vi) Para 4.21 of the Report as already signed by some of the members, *inter alia*, reads as follows :

> "At the same time, the other point of view put forward was that denial of the said high offices solely on account of the fact that the person was not a natural born citizen of India or his parents or grand parents were not citizens of India, would deprive worthy citizens from occupying these high offices".

This seems to imply or suggest that natural born citizens of India are not "worthy" and only those not born in India or of Indian parentage are "worthy". It is, therefore, suggested that the para may be modified before submission of the Report to read as follows:

> "At the same time, the other point of view put forward was that denial of the said high offices solely on account of the fact that the person was not a natural born citizen of India or his parents or grand parents were not citizens of India, might deprive some citizens from occupying these high offices even if they were otherwise worthy and acceptable".

(vii) In Chapter 5 of the Report devoted to 'Parliament and State Legislatures' as already signed by some of the Members, the last sentence in para 5.21.5 reads "the Commission recommends the setting up of a study Group of Parliament outside Parliament". It should actually read, "The Commission recommends the setting up of a

'Study of Parliament Group' outside Parliament. It is suggested that the correction may be carried out before the submission of the Report.

There may be some other similar typographical, factual or inadvertent errors. These may be taken care of.

(viii) Chapter 7 of the Report is titled 'The Judiciary'. This chapter particularly is seriously flawed and distorted. The much needed Judicial Reform issues have not been even touched or these got deleted in the final draft. In matters like appointment of judges, the approach in the final chapter is heavily and unconstitutionally weighed in favour of the judges themselves selecting their own colleagues thereby striking at the legitimate powers of the Executive and the Parliament and disturbing the delicate balance in the polity.

The Report of the Drafting and Editorial Committee which was unanimous in all matters, *inter alia*, contained the following useful observations:

> "The Commission took into account the consultation paper, the responses thereto and the views of eminent persons like the former President of India and some of the former Chief Justices of India including the one who delivered the majority judgement in the second judges case. When the matter came to be discussed before the Commission, divergent views were advanced and cited. According to one former C.J.I. (Justice E.S. Venkataramaiah), in the interpretation placed by the majority of judges on article 124, the "text of the Constitution seems to have been departed from. ..... The interpretation now given neutralises the position of the President and makes article 74 which requires the President to act on the aid and advice of the Council of Ministers irrelevant. ..... The construction now placed by the court makes the Supreme Court and the High Courts totally undemocratic. While in a parliamentary democracy the President may be a mere constitutional head when the power is exercised by him on the advice of the Council of Ministers he cannot be asked to play the same limited role where the Chief Justice of India who is not an elected representative advises him. One cannot ignore that this may lead on a future occasion to tyranny in another unexpected place... The new meaning given by the Supreme Court appears to be beyond the scope of mere interpretation and virtually amounts to re-writing the relevant constitutional provisions....."*.
>
> "Obviously there has been some rethinking on the subject. A former C.J.I. (Justice J.S. Verma) seemed to have revised his opinion and favoured "a review" in the light of the experience after the verdict in the *Second Judges'* case inasmuch he came

* E.S. Venkataramaih, *The Working of Indian Democratic Polity – An Appraisal*, Dr. Zakir Hussain Educational & Cultural Foundation and Indian Institute of Public Administration, New Delhi.

to advocate that the intent of the Constitution was not to accord "primacy to either" the judiciary or the executive, the "responsibility" of both was "to find the most suitable person for appointment" and this could best be done by a "National Judicial Commission, representing all wings, headed by the Vice President/ Prime Minister/ Chief Justice of India".

"The Judiciary, the Legislature and the Executive are the creatures of the Constitution and it is the Constitution, which is supreme. The Constitution is what it says and there should not be any attempt to alter it by an interpretative process by any of the limbs of the state. Power to interpret or declare the law does not include any power to change or make the law. It is a *fortiori* when a question arises as to in which of the limbs, the Constitution has vested the power of appointment. When it involves questions as to whether the power is in the Judiciary or Legislature or Executive, the Supreme Court's approach has to be in the following manner as observed by the Supreme Court *In Re Special Reference 1 of 1964* [1965(1) SCR 413 at 446] "... Legislators, Ministers and Judges all take oath of allegiance to the Constitution for it is by the relevant provisions of the Constitution that they derive their authority and jurisdiction and it is to the provisions of the Constitution that they owe allegiance.....". Also, it was noted that there is no country whose constitution provides for vesting the power of appointment of judges of superior courts in the judiciary itself. In this context, there was a general consensus in the Commission on the desirability of suggesting the mechanism of the National Judicial Commission to ensure that the power of appointment of judges was not exercised arbitrarily either by the executive or the judiciary."

The above observations are reiterated for consideration by the powers that be.

(ix) Attention is also invited to the decision taken by the Commission at its 14th Meeting held on 14-18 December, 2001. Para 16 of the minutes records that

"There shall be a National Judicial Commission for making recommendation as to the appointment of a Judge of the Supreme Court (other than the Chief Justice of India), a Chief Justice of a High Court and a Judge of any High Court."

"The composition of the National Judicial Commission would be as under:

a) The Vice-President of India
b) The Chief Justice of India

J.S. Verma, The Judiciary and Judicial Reforms in *Political Reforms: Asserting Civic Sovereignty*, Konark, New Delhi 2001, pp.145-180.

c) Two senior-most Judges of the Supreme Court, next to the Chief Justice
d) The Union Minister for Law & Justice."

"The National Judicial Commission shall meet as a round table. While meeting for making recommendation as to the appointment of a Judge of a High Court, the Chief Justice of the concerned High Court shall also be associated as a Member of the Commission."

"Proposals for appointment of Judges should originate either from the Chief Justice of India or the Chief Justice of a High Court, as the case may be."

"The retirement age of High Court and Supreme Court Judges should be uniform and it can be 65 years."

"The retired judges should not be appointed to any paid appointment under the Government. However, even for post-retirement non-paid assignments, it is recommended that, to eliminate room for irrelevant considerations, it would be appropriate to provide as a matter of law that where a retired Judge is sought to be appointed to a Tribunal/Commission or similar other body, such appointment should be made in consultation with the concerned Chief Justice. In the case of appointment of a retired Judge/Chief Justice of the Supreme Court, the Chief Justice of India will be consulted and in the case of appointment of a judge/Chief Justice of the High Court, the Chief Justice of that Court should be consulted. Such a course would help in eliminating irrelevant considerations and would also facilitate appointment of appropriate persons to these bodies."

"As regards the transfer of Judges, it should be as a matter of policy and the power under article 222 and its exercise in appropriate cases should remain untouched. The President would transfer a Judge from one High Court to any other High Court after consultation with a committee comprising the Chief Justice of India and the two senior-most Judges of the Supreme Court."

(x) At the 11th meeting of the Commission held on 15-18 September, 2001, the following suggestions about the 'The Judiciary" were made for being taken up for discussion by the Commission at the appropriate time.

"(i) Intensive training and orientation programmes should be organized for the members of the Judiciary at all levels at the time of their entry.
(ii) There should be refresher courses for upgradation of training and orientation programmes at regular intervals during the service for judicial officers from the lowest to the highest courts.
(iii) Similar training camps need to be organized for the lawyers for improving their professional skills and responsibilities.
(iv) There should be regulation of fee of the lawyers on the basis of their classification as categories, say A, B, C, etc.

(v) Cash payment of professional fees to the lawyers should be made illegal.

(vi) Limits should be prescribed on adjournments in courts.

(vii) The Judgments given by the Courts should not be unduly lengthy. Plurality and prolixity of judgments should be discouraged.

(viii) There should be only one judgment, whether unanimous or by a majority. There need not be any concurring or dissenting judgments.

(ix) Written arguments should be permitted and encouraged.

(x) The judges should not make laws or amend the Constitution by interpreting the same. The function of working of the Constitution and applying its provisions has been entrusted to various functionaries such as Speaker, Police and Magistrates, in addition to the Judges.

(xi) There should not be any summer or winter vacations for courts as these are colonial legacies.

(xii) A minimum of 220 days of working of the courts should be ensured in a calendar year.

(xiii) Fixed time schedules should be prescribed for clearing the arrears of cases.

(xiv) There should be time bound disposal of the cases.

(xv) The age limit for retirement should be increased for the judges of High Court and Supreme Court uniformly, say 70 years or 75 years and simultaneously judges should not be allowed to take up any paid appointments after their retirement.

(xvi) There should be increased use of alternative modes of resolution of disputes.

(xvii) Lawyers should encourage out-of-court settlement of disputes.

(xviii) There should be better use of the latest technological devices in the working of the courts.

(xix) The court procedures have to be made more citizen friendly.

(xx) The accountability to people applies as much to the judiciary as to the legislators.

(xxi) Neither the Parliament nor the Supreme Court is supreme under our Constitution as the duties and powers of each organ have been defined and delimited under the Constitution. In case of any doubt about the supremacy, it has to be vested in Parliament, which represents the will of the people."

The above suggestions are reiterated.

7. The chapter on the Pace of Socio-economic Change and Development is largely ill conceived and likely to cause tremendous damage to the social fabric and unity of the nation. The recommendations in this Chapter would strike at the roots of economic development and nation building efforts. These go counter to the basic preambular principles including those of justice, equality and fraternity. Perhaps some of the recommendations made unwittingly are bound to be detrimental to the interests of the scheduled castes and minorities in particular and the people at large in general.

8. While no comments are being made on what went wrong in the procedure, priorities and perspective, it may be put on record that several of the recommendations now forming part of the report go directly counter to the clear decisions of the Commission on which the unanimously adopted draft report of the Drafting and Editorial Committee was based.

9. The Commission was appointed to review the working of the Constitution, I believe, so as to strengthen Indian polity and contribute to national rejuvenation. Unfortunately, as the minutes of the Commission in Volume II would show, before passing on the work to the Drafting and Editorial Committee only three meetings of the Commission (13th, 14th and 15th held late in November 2001 to early January, 2002) were devoted to any substantive discussion on the subject of the working of the Constitution. The three extensions brought the term of the Commission to over two years but the total period that the Commission itself and its Drafting and Editorial Committee could devote to the actual task was hardly three months. After the Draft Report was submitted to the Commission in time by the Drafting and Editorial Committee, the third extension for the Commission was sought and obtained without the Commission taking any such decision. It was during this third extended period that some of the decisions of the Commission arrived at after due deliberation and incorporated in the Draft Report were changed and several new points added.

10. If the independence, primacy and supremacy of the judiciary in its sphere is important – and doubtless it is important – so is the independence, primacy and supremacy of the Parliament in its sphere. After all, Parliament is the supreme representative institution of the people. The powers and functions of all the three organs of the State are only as defined and delimited by the Constitution which binds all the three of them equally. The purpose of recommending any amendments can only be to ensure control over any tendencies of any organ claiming overall supremacy or arbitrary powers disturbing the basic balance in polity. The effort has to be to make all the three organs more citizen-friendly and people-oriented rather than judge, lawyer, administrator or M.P./M.L.A interest-oriented.

11. Unfortunately, in some vital matters, certain recommendations have not found place in the final Report simply because one of the Members had some reservations. Also, some highly controversial matters of doubtful legitimacy have found place in the final report because of the insistence of one Member and the fear of a dissent from him while a matter very dear to one of the Members and which as many as 5 Members supported could not find place among the positive recommendations and this led to the resignation of the Hon'ble Member concerned. Also, while in some matters decisions were taken by majority, in others unanimity was insisted upon. In my humble opinion, it would have been better not to have relatively more exclusive focus only on the wish-list or demands of some individuals or groups and to think of the interest of the nation at large.

12. Lastly, I would like to mention that I had taken the liberty of reproducing large portions of my own earlier copyrighted writings and books published before the setting up of the Commission. I hereby accord my 'No Objection' to all such reproductions and use.

13. I would thank all the Hon'ble Members of the Commission for their indulgence, courtesy and consideration extended to me. In particular, I am most beholden to the Hon'ble Chairperson who has gone out of the way to say some of the nicest things about me personally. I shall always cherish my association with all the Hon'ble Members and look forward to their enduring friendship and companionship in the service of the nation.

(Subhash C. Kashyap)

30/3/2002

ADDITIONAL NOTE
to the Report of the
National Commission to Review the Working of the Constitution.

By C R Irani

I request that this Note be read in conjunction with my signature to the Report of the Commission.

1) Some aspects of the question of restricting eligibility to high public offices on the part of foreign-born nationals require to be elaborated in order to avoid misunderstandings. I would like to clarify that on the occasions on which this matter was discussed in my presence, I could not shake off the impression that we, in the Commission, feared that any endorsement of the view canvassed by our colleague, Purno Sangma, although on merits, would be interpreted as being directed against one individual. I had urged that it should be possible to de-link the question from individuals and it would be wrong to proceed that this would not be possible. Our decisions ought not to be influenced by possible or even probable reactions. It is also true that the division on the issue was at the instance of my friend Sangma and this was the only occasion that I can recall when an issue was so decided. As we have recorded faithfully in the Report the issue is important, in these days of multiple citizenship and we do not need to wait for a Fujimori case to arise before deciding that the safeguards in the American Constitution deserve a fuller and more public debate.

2) I am seriously concerned at the abuse of the provisions of law relating to criminal defamation by politicians and others. I wish to offer some illustrations from my personal experience in the last few months and years:

a) In January 2000, the RSS unit in Delhi send us a letter complaining of an article by AG Noorani, a respected commentator, on the RSS organisation, published that month. The letter is promptly published in full and without comment. On 14 March 2000, a criminal complaint is filed before a Magistrate in Midnapore District of West Bengal. Then follow 11 hearings and the matter is still pending in March 2002. On the same facts another functionary of the RSS in Delhi, files a criminal complaint in the Tees Hazari Courts in Delhi on 29 February 2000. Some of the defendants are not given exemption from personal appearance and the issue goes to Delhi High Court, where the judge rejects the terms suggested by the RSS for settlement and finally disposes of the entire matter by a consent order on terms acceptable to us on 25 February 2002. It had taken 19 hearings.

However the Midnapore Magistrate is still considering the terms endorsed by the Delhi High Court.

b) Jyoti Basu the West Bengal chief minister, at a time when he had resigned and had been asked to continue in office, sought and was denied sanction to file a prosecution by the Governor and later by the State Cabinet but nevertheless ordered his own departmental secretary to issue the sanction letter. It included three statements, which were false to the knowledge of the signatory, i.e. – that the papers were sent to the Governor, that he did apply his mind to it and that he did sanction the prosecution. The official is now the State's new Chief Secretary. The words complained of were in an Editorial *Unending Violence* –and read as follows:-

Just as in 1981 Basu justified the burning alive of 18 Ananda Margis in Bijan Setu which assured that the police did not proceed, now he and his party are defending the killing of Trinamul supporters for being anti-socials.

The judgment of the Hon. Mr Justice Kundu of the City Sessions Court, held that the sanction was invalid; the whole editorial should have been read and not a single sentence out of context; and that in any event there was no defamation of Jyoti Basu on a plain reading of the words complained of. Further, the judge held that by referring to the five cases filed in the Anada Marg case, all of which resulted in acquittal on the admission that witnesses were either not available or had turned hostile, the Public Prosecutor had not advanced his case. The summons had been issued on 7th November 2000 and judgment delivered on 18 May 2001. It was decided on our Application that there was no case to answer, otherwise it would have been prolonged further. Jyoti Basu suffered no inconvenience and the case was conducted at the expense of the state.

c) Prafulla Kumar Mahanta, when he was chief minister of Assam, similarly abused the provisions of the Criminal Procedure Code to get the Government of Assam to launch a criminal prosecution for an editorial, which criticised him in the discharge of his official duties. As in the case of Jyoti Basu, the sanction was purportedly granted by the Governor of Assam; when, it was stated, the papers were placed before him but His Excellency the Governor has confirmed to me later that he knew nothing about it! The case was filed in October, 1997, in the court of the Sessions Judge, Guwahati, several witnesses were examined; the High Court did not entertain an Application on

several pretexts and finally the new Government of Tarun Gogoi directed the Public Prosecutor that *the complainant* (the state of Assam) *was not interested to proceed with the case any further – in the changed circumstances.* It was withdrawn in November 2001 that is after four years and considerable expense and inconvenience. Let it be noticed that the proceedings were withdrawn in *the changed circumstances*, confirming that the prosecution was mala fide and motivated but Mahanta has suffered no inconvenience.

d) Sahara India Ltd were investigated by the Reserve Bank of India and several restrictions were imposed on them in the matter of collecting deposits from the public. We published two reports, based entirely on the Press Note issued by the RBI and confirmed by the Income-Tax authorities. We made no value judgments. In June 1997, Sahara India filed a criminal defamation case in the Alipore Court in Kolkata. The trial began, witnesses including myself were examined, after several hearings and arguments, the magistrate acquitted all the accused holding that no offence was committed. This was in 2002, after five years.

e) Sanchayani Savings and Investments (India) Ltd. file a criminal complaint of defamation in the Court of a Magistrate in Nagpur for publishing a report on the Reserve Bank of India's action taken to stop violation of the Bank's guidelines. Magistrate takes cognisance despite the fact that both complainant and The Statesman are based in Calcutta and issues summons. The case commences in June 1999 and is pending in the High Court for quashing.

I emphasise that these are illustrative examples and not by any means exhaustive. They demonstrate how the provisions of the Criminal Procedure Code are being misused and which has a chilling effect on the freedom of speech and expression. The specific inclusion of Freedom of the Press in the Fundamental Rights, recommended by the Commission, is small consolation if it is not matched with removal of criminal defamation from the statue book. Failing that or, I would like to hope, pending that, immediate action should be taken to require anyone complaining of defamation to enter the witness box first to prove that he or she has a reputation capable of being defamed. It follows that provisions of the Criminal Procedure Code allowing public servants or those who *have been* public servants to shelter behind state governments to harass those in the press who are doing their duty should be deleted. These provisions are – Section 199 (2), (3), (4) and (5) and consequential provisions.

3) It is now my unpleasant duty to refer to something that has happened for which I have no explanation. When we were working on the Chapter on Fundamental Rights we were very clear that our objective was to leave existing Rights inviolate and indeed to see whether we could enlarge and strengthen them. When we received the draft of the final Report however we found the following paragraph numbered 3.22.2. It read:-

> *In regard to Articles 29 and 30, the Commission recommends that the cultural and educational rights available under the Articles should be available equally to all groups in society so that there is no discrimination between communities or social groups in the matter of establishment and maintenance of educational institutions, etc.*

Article 29 already extends to *any section of citizens....* So it is not clear what was intended but the effect of this on Article 30 would be to

extinguish at one stroke the rights of minorities to establish and administer educational institutions of their choice. My colleague, Soli Sorabjee, who was abroad at the time appears to have spotted this at the same time as I did. I emphasise that as soon as the draft final Report came up before a meeting of the Commission, all members present promptly agreed to delete this paragraph but the fact remains that it appeared in bold type and was reflected in the Summary of Recommendations. Apart from the seriousness of this incident, I have two other comments to make. One, the abbreviation appears in the Summary of Recommendations also - whoever was responsible did not even stop to think that – etc – is wholly inappropriate in any statute let alone in the Constitution of the country! The other is to enter a caveat. We have not had the opportunity to examine the whole of the revised final draft thoroughly because of time constraints. While this is understandable in the circumstances I must state that I cannot be sure that another incident of this nature has not disfigured our work in some other part. I attribute no motives and accuse no one. I merely draw attention to something that is not, to my mind explained as a typographical error or a misunderstanding.

Subject to the foregoing Note, I have pleasure in signing this Report.

C.R. Irani

March 21, 2002

I, Sumitra Gandhi Kulkarni am signing this document with grave concerns and reservations. My concerns and reservations should be a part of the record of this Commission's work and its final report. My signature on this final report is conditional to the reservations and concerns as highlighted below.

(a) The Commission was set up to contemplate the challenges faced by the existing Constitution in dealing with issues that India will face in the 21st century and beyond – and consequently make recommendations in areas where the Constitution can be strengthened. We as members were expected to identify, debate and finally take a stand on issues. Members of this commission were not expected to sit o the fence with regards to serious issues. Unfortunately, there has been fence sitting.

(b) I have always believed that for a Constitution to be an effective framework for governance it must first be a framework for unification. I believe in a Unified and truly Secular India, however, the Commission debates seemed often to reduce the Constitution to being a platform for divisiveness and not unification.

(c) The Commission never initiated or promoted any debate in the public with regard to the issues that it was contemplating. The whole effort was to "evade and defer" instead of to "identify issues, table them for debate and to deal with them."

I feel that the Government met its promise to the People of India with regards to initiating a review of the Constitution, but I feel disappointed that the Commissio failed both the People and the Government by not delivering a top quality eff

Sumitra Gandhi Ku

11.3.2002

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REVIEW OF THE WORKING OF THE CONSTITUTION

REPORT OF THE NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION



VOLUME—II
Book 1



REPORT

OF

THE NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

VOLUME – II
(Book – 1)

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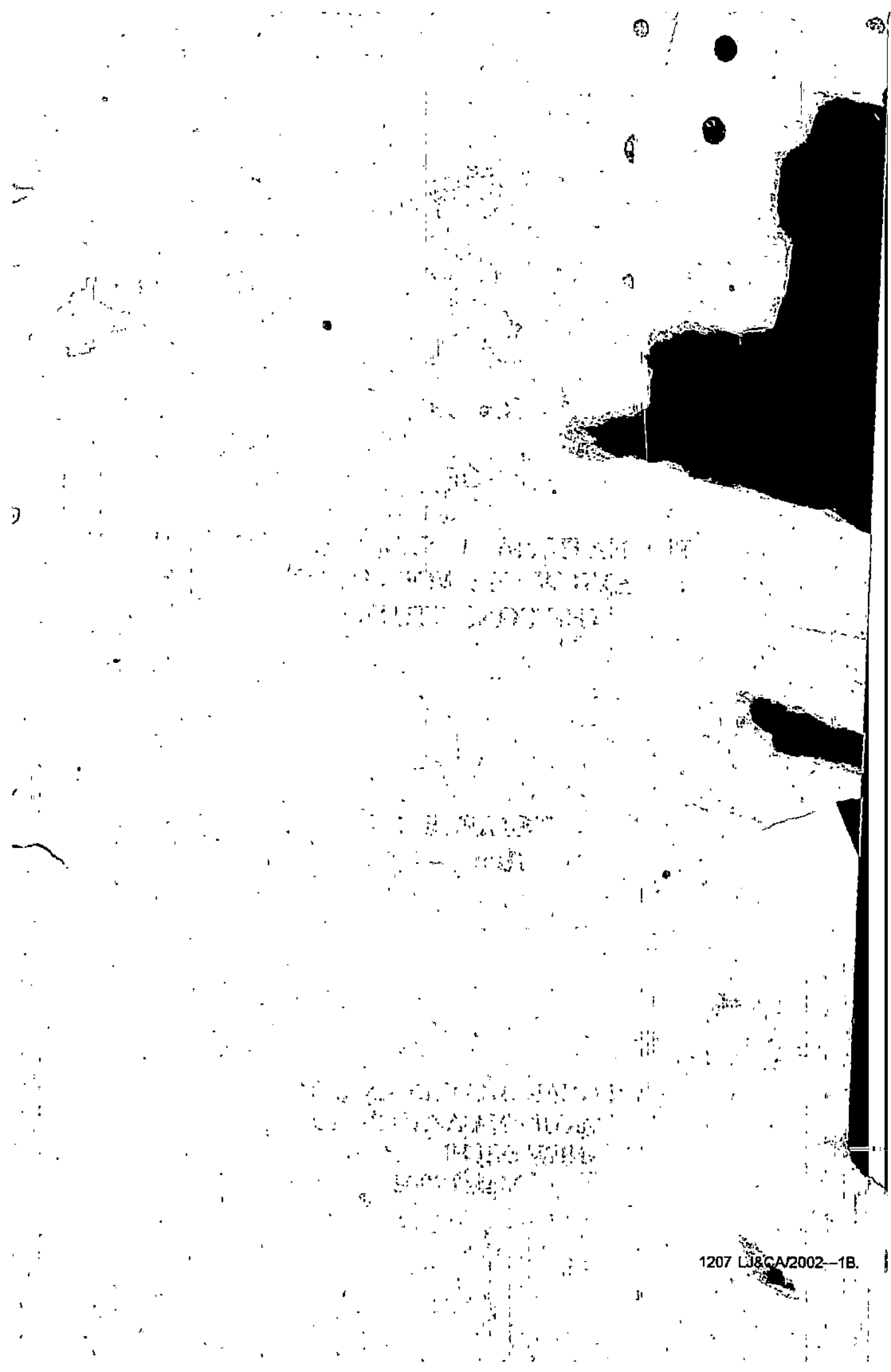
NEW DELHI – 110 011
March 2002



1207 LJ&CA/2002—1B.

NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

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Members
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National Commission to Review the Working of the Constitution

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- Justice Shri R.S. Sarkaria
- Justice Shri Kottapalli Punnayya
- Shri P.A. Sangma (since resigned)
- Shri Soli J. Sorabjee
- Shri K. Parasaran
- Dr. Subhash C. Kashyap
- Shri C.R. Irani
- Dr. Abid Hussain
- Smt. Sumitra G. Kulkarni

CONTENTS

VOLUME I

		Page No.
Letter from the Chairperson forwarding the Report		(i)
Acknowledgements		(iii)
Chapters		
1.	Introduction	1
2.	Basic Approach and Perspective	23
3.	Fundamental Rights, Directive Principles and Fundamental Duties	83
4.	Electoral Processes and Political Parties	119
5.	Parliament and State Legislatures	154
6.	Executive and Public Administration	175
7.	The Judiciary	198
8.	Union-State Relations	222
9.	Decentralization and Devolution	259
10.	Pace of Socio-Economic Change	289
11.	Summary of Recommendations	315
Notes of Members		371

VOLUME II

BOOK - 1

1.	**Gazette Notifications**		1
2.	**Advisory Panels**		13
3.	**Consultation Papers**		
	(i)	Enlargement of Fundamental Rights	23
	(ii)	Pace of Socio-Economic Change under the Constitution	55
	(iii)	Literacy in the context of the Constitution of India	233
	(iv)	Social Security and Employment	285
	(v)	Effectuation of Fundamental Duties of Citizens	369
	(vi)	Review of the Working of Political Parties specially in relation to Elections and Reform Options	419
	(vii)	Review of Election Law, Processes and Reform Options	473
	(viii)	Immunity of Legislators: What do the words 'in respect of anything said or any vote given by him' in article 105(2) signify?	539
	(ix)	Efficacy of Public Audit System in India: C&AG	559
	(x)	Probity in Governance	583
	(xi)	Liability of State in Tort	665
	(xii)	Superior Judiciary	703
	(xiii)	All India Judicial Service	749

BOOK – 2

3. **Consultation Papers (Contd.)**

(xiv)	Financial Autonomy of the Indian Judiciary	765
(xv)	Constitutional Mechanism for the settlement of Inter-State Disputes	831
(xvi)	Treaty-making power under our Constitution	861
(xvii)	The Institution of Governor under the Constitution	889
(xviii)	Article 356 of the Constitution	925
(xix)	Review of the Working of the Constitutional Provisions for Decentralisation (Panchayats)	955
(xx)	Decentralization and Municipalities	1007
(xxi)	Empowering and Strengthening local self-government in Cantonments	1093
(xxii)	Empowerment and Strengthening of Panchayat Raj Institutions/ Autonomous District Councils/Traditional tribal governing institutions in North East India	1135

BOOK – 3

4. **Background Papers**

(i)	Working of Parliament and Need for Reforms	1213
(ii)	Some ideas in Governance	1229
(iii)	Concurrent Power of Legislation under List III of the Indian Constitution	1245
(iv)	Fiscal and Monetary Policies	1259
(v)	Barriers to Inter-State Trade & Commerce – The Case of Road Transport	1273
(vi)	Article 262 and Inter-State Disputes relating to Water	1353
(vii)	Pace of Socio-Economic Change and Development under the Constitution	1385

5. **List of Organisations/Individuals who sent representations to the Commission** 1423

6. **List of Organisations/Individuals who responded to the Consultation Papers/Questionnaires issued by the Commission** 1451

7. **List of Organisations/Delegations/Individuals who interacted with the Commission** 1465

8. **List of Seminars sponsored by the Commission** 1469

9. **Minutes of meetings of the Commission** 1473

10 **Report of the Drafting and Editorial Committee** 1581

GAZETTE NOTIFICATIONS



The Gazette Of India

EXTRAORDINARY

PART I - Section 1

PUBLISHED BY AUTHORITY

No.27 NEW DELHI, TUESDAY, FEBRUARY 22, 2000/PHALGUNA 3, 1921

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Department of Legal Affairs)

RESOLUTION

New Delhi, the 22nd February, 2000

No.A-45012(2)/98-Admn.III(LA). – Whereas the National Agenda for Governance contains a pledge that a Commission shall be appointed to review the Constitution of India in the light of more than 50 years of its working and to make suitable recommendations for any possible changes and this pledge was affirmed in the President's Address followed by a Motion of Thanks from both Houses of Parliament;

NOW, THEREFORE, in fulfillment of that pledge, it is resolved to constitute the "National Commission to Review the Working of the Constitution".

1. The Commission shall consist of a whole-time Chairperson who shall be a person of distinction with knowledge and expertise of constitutional issues and in the working of the democratic institutions of the Nation. In addition to the Chairman, the Commission shall have not more than ten other Members who shall be selected on the basis of their proven expertise and knowledge in the field of Constitutional law, economics, politics, law, sociology, political science and other relevant subjects.

2. The Terms of Reference – The Commission shall examine, in the light of the experience of the past 50 years, as to how best the Constitution can respond to the changing needs of efficient, smooth and effective system of governance and socio-economic development of modern India within the framework of Parliamentary democracy and to recommend changes, if any, that are required in the provisions of the Constitution without interfering with its basic structure or features.

3. The Chairperson shall be paid a consolidated honorarium of Rs.30,000/- per month. His or her pension, if any, shall be deductible from the honorarium, in case he or she is a Government pensioner. The Chairperson shall be entitled to Government accommodation for residence of the type permissible to a public servant drawing pay of Rs.30,000/- per month.

4. The Government may appoint a Secretary to the Commission who shall be paid a consolidated pay of Rs.25,000/- per month. His or her pension, if any, shall be deductible from the pay, in case he or she is a Government pensioner. The Secretary shall be entitled to Government accommodation for residence of the type permissible to a public servant drawing a pay of Rs.25,000/- per month and if the Secretary is a serving public servant, he or she will draw his existing pay and allowances and will be entitled to a Government accommodation for residence as per his or her entitlement as such public servant.

5. Members of the Commission shall be paid only a daily allowance of Rs.1000/- while on duty.

6. The Chairperson of the Commission shall be his own controlling officer for the purpose of travelling allowance. The Chairperson shall also be the controlling officer for the purpose of travelling allowance in respect of Members and Secretary. The Chairperson and Members shall be allowed travelling allowance at the rates and as per rules applicable to the government servants of the highest grade. Secretary to the Commission shall be entitled to travelling allowance at the rates applicable to the public servant drawing a pay of Rs.25,000/- per month and if he or she is a serving public servant, he will draw travelling allowance as per his entitlement as such public servant.

7. The Commission shall decide its own procedure and hear and entertain all persons, representations and communications which in the opinion of the Commission shall facilitate its work and final recommendation.

8. The Commission shall complete its work and make its recommendations within one year.

9. The Headquarters of the Commission shall be in New Delhi.

10. The research and other staff for the Commission shall be provided separately as part of the Department of Legal Affairs. Supervisory control over the research and other staff of the Commission, shall, however, vest in the Secretary of the Commission who will discharge his functions under the overall control of the Chairman.

11. The funding of the Commission shall be through separate budgetary allocation by the Government under the relevant budget heads of the Ministry of Law, Justice & Company Affairs (Department of Legal Affairs).

R.L. MEENA
SECRETARY

सत्यमेव जयते

The Gazette of India

PART I - Section 2

PUBLISHED BY AUTHORITY

No.10 NEW DELHI, SATURDAY, MARCH 4, 2000/PHALGUNA 14, 1921

MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS
(DEPARTMENT OF LEGAL AFFAIRS)
New Delhi, the 23rd February, 2000

No.A-12023(2)/2000-Admn.III (LA) – The President is pleased to appoint the following as Members, National Commission to Review the Working of the Constitution with immediate effect.

1. Shri Justice B.P. Jeevan Reddy
2. Shri Justice R.S. Sarkaria
3. Shri Justice Kondapalli Punniah
4. Shri P.A. Sangma, M.P.
5. Shri Soli J. Sorabjee
6. Shri K. Parasaran
7. Shri Subhash Kashyap
8. Shri C.R. Irani
9. Shri Abid Hussain
10. Smt. Sumitra Kulkarni

B.A. AGRAWAL
Joint Secretary & Legal Adviser

No.A-12023(2)/2000-Admn.III (LA) – The President is pleased to appoint Shri Justice M.N. Venkatachalaiah, Retd. Chief Justice of India as Chairperson, National Commission to Review the Working of the Constitution from the date he assumes charge and till the completion of the term of the Commission.

B.A. AGRAWAL
Joint Secretary & Legal Adviser

सत्यमेव जयते

The Gazette of India

EXTRAORDINARY

PART I - Section 1

PUBLISHED BY AUTHORITY

No.49 NEW DELHI, SATURDAY, MARCH 18, 2000/PHALGUNA 28, 1921

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Department of Legal Affairs)

AMENDMENT

New Delhi, the 17th March, 2000

No.A-45012(2)/98-Admn.III(LA).- In partial modification of the Resolution dated 22.2.2000, providing for constitution of the 'National Commission to Review the Working of the Constitution',-

(i) para 3 shall be substituted as under :-

"The Chairperson shall be paid a consolidated honorarium of Rs.33,000/- per month. In case he or she is Government pensioner, he or she will be entitled to such honorarium minus pension. In case the Chairperson is a retired Chief Justice of India, his or her conditions of service will be the same as applicable to a serving Chief Justice of India. The Chairperson shall be entitled to Government accommodation for residence of the type which is serving Chief Justice of India is entitled to."

(ii) after para 6, para 6A shall be added as follows:-

"6A. Notwithstanding anything contained in paras 5 and 6 above, a Member of the Commission, who is a Member of Parliament, shall not be entitled to any remuneration or allowance other than the allowance as defined in clause (a) of section 2 of the Parliament (Prevention of Disqualification) Act, 1959."

R.L. MEENA
Secretary

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The Gazette of India

EXTRAORDINARY

PART I – Section 1

PUBLISHED BY AUTHORITY

No.56 NEW DELHI, TUESDAY, MARCH 22, 2000/CHAITRA 8, 1922

MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS
(Department of Legal Affairs)
AMENDMENT

New Delhi, The 27th March, 2000

No. A-45012(2)/98-Admn.III(LA). – In partial modification of the Resolution dated 22-2-2000, providing for constitution of the 'National Commission to Review the Working of the Constitution', para 4 of the said Resolution shall be substituted as follows:-

"4. The Government may appoint a Secretary to the Commission who shall be paid a consolidated remuneration of Rs.26,000/- per month. His or her pension, if any, shall be deductible from the remuneration, in case he or she is a Government pensioner. Other terms and conditions of service will be same as applicable to a Secretary to the Government of India. The Secretary shall be entitled to Government accommodation for residence of the type permissible to a public servant drawing a remuneration of Rs.26,000/- per month and if the Secretary is a serving public servant, he or she will draw his existing pay and allowances and will be entitled to a Government accommodation for residence as per his or her entitlement as such public servant. In case a retired Secretary to the Government of India is appointed as Secretary to the Commission, the terms and conditions of his service shall be the same as applicable to a Secretary to the Government of India."

R.L. MEENA
Secretary

सत्यमेव जयते

The Gazette of India

PART I – Section 2

PUBLISHED BY AUTHORITY

No.14 NEW DELHI, SATURDAY, APRIL 1, 2000/CHAITRA 12, 1922

MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS
(DEPARTMENT OF LEGAL AFFAIRS)

New Delhi, the 17th March, 2000

No.A-12023(2)/2000-Admn.III(LA). – In partial modification of the Notification of even number dated 23rd February, 2000 appointing Shri Justice M.N. Venkatachalaiah, Retired Chief Justice of India, as Chairperson, National Commission to Review the Working of the Constitution, Shri Justice M.N. Venkatachaliah will draw a token salary of Rupee one per month, as desired by him: The other conditions of service will be the same as applicable to a serving Chief Justice of India.

B.A. AGRAWAL
Joint Secretary & Legal Adviser

The Gazette of India

PART I - Section 2

PUBLISHED BY AUTHORITY

No.17 NEW DELHI, SATURDAY, APRIL 22, 2000/VAISAKHA 2, 1922

MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS
(DEPARTMENT OF LEGAL AFFAIRS)
New Delhi, the 4th April, 2000

No.A-45012/2/98-Admn.III(LA).—The President is pleased to appoint Dr. Raghbir Singh, former Secretary, Legislative Department, as Secretary, National Commission to Review the Working of the Constitution, Department of Legal Affairs, Ministry of Law, Justice & Co. Affairs, New Delhi with immediate effect from the forenoon of the 1st April, 2000 until the completion of the term of the Commission.

B.A. AGRAWAL
Joint Secretary & Legal Adviser



The Gazette of India

EXTRAORDINARY

PART I – Section 1

PUBLISHED BY AUTHORITY

No.46 NEW DELHI, TUESDAY, FEBRUARY 20, 2001/PHALGUNA 1, 1922.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Department of Legal Affairs)

AMENDMENT

New Delhi, the 20th February, 2001

No.A-45012/2/98-Admn.II(LA)(Pt.).- In partial modification of the Resolution dated 22.2.2000, providing for Constitution of National Commission to Review the Working of the Constitution, for paragraph 8, the following paragraph shall be substituted, viz.:-

"8. The Commission shall complete its work and make its recommendations by 31st October, 2001."

A. SINHA
Joint Secretary and Legal Adviser

1207 LJ&CA/2002—2B.



The Gazette of India

EXTRAORDINARY

PART I – Section 1

PUBLISHED BY AUTHORITY

No.288 NEW DELHI, TUESDAY, OCTOBER 30, 2001/KARTIKA 8, 1923

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Department of Legal Affairs)
AMENDMENT

New Delhi, the 30th October, 2001

No.A-45012/2/2001-Admn.III(LA).- In partial modification of the Resolution dated 22.2.2000, as amended vide Notification dated 20th February, 2001, providing for constitution of National Commission to Review the Working of the Constitution, for paragraph 8 thereof, the following paragraph shall be substituted, viz. :

"8. The Commission shall complete its work and make its recommendation by 28th February, 2002."

A. SINHA
Joint Secretary and Legal Adviser



The Gazette of India

EXTRAORDINARY

PART I — Section 1

PUBLISHED BY AUTHORITY

No. 47 NEW DELHI, TUESDAY, FEBRUARY 26, 2002/PHALGUNA 7, 1923

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Department of Legal Affairs)

AMENDMENT

New Delhi, the 26th February, 2002

No.A-45012/2/2001-Admn.III(LA).- In partial modification of the Resolution dated 22.2.2000, as amended vide Notifications dated 20th February, 2001 and 30th October, 2001, providing for constitution of National Commission to Review the Working of the Constitution, for paragraph 8 thereof, the following paragraph shall be substituted, viz. :-

"8. The Commission shall complete its work and make its recommendation by 31st March, 2002."

A. SINHA
Joint Secretary and Legal Adviser

ADVISORY PANELS

1. Enlargement of Fundamental Rights

Member-In-charge
Shri Soli J. Sorabjee

Chairperson
Justice Shri V.R. Krishna Iyer

Members

- Justice Shri B.P. Jeevan Reddy
- Justice Shri M. Jagannadha Rao
- Shri C.R. Irani
- Prof. Amrik Singh
- Prof. Andre Beteille
- Prof. Mushirul Hassan

Member-Secretary
Dr. Raghbir Singh

2. Effectuation of Directive Principles and Achievement of the Preambular Objectives of the Constitution

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Chairperson
Justice Shri O. Chinnappa Reddy

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- Shri Raju Ramachandran
- Shri R. Venkataramani
- Shri Vinod Bobde
- Shri Gopal Subramaniam
- Prof. (Smt.) S.K. Verma

Member-Secretary
Dr. Raghbir Singh

3. Pace of Socio-Economic Change and Development under the Constitution

Member-In-Charge
Justice Shri K. Punnayya

Chairperson
Justice Dr. K. Ramaswamy

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- **Shri P.S. Krishnan**
- **Dr. Sukumar Azhikode**
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Dr. Raghbir Singh

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Member Secretary
Dr. Raghbir Singh

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- Dr. N.C. Saxena
- Dr. E.A.S. Sarma
- Dr. R.V. Vaidyanatha Ayyar

Member-Secretary
Dr. Raghbir Singh

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Chairperson
Shri R.K. Trivedi

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- Shri Mohan Dharia
- Shri N.N. Vohra
- Shri S.K. Mendiratta
- Dr. Vir Chopra
- Smt. Nalini Singh
- Prof. R.B. Jain

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- Shri U.C. Aggarwal
- Shri S.D. Sharma
- Dr. V.A. Pai Panandikar

Member-Secretary
Dr. Raghbir Singh

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Justice Shri B.P. Jeevan Reddy

Chairperson

Justice Shri H.R. Khanna

Members

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- Dr. Jayaprakash Narayan
- Dr. V. A. Pai Panandikar

Member-Secretary

Dr. Raghbir Singh

8. Legal Control of Fiscal and Monetary Policies; Public Audit Mechanism; Standards in Public Life

Member-in-charge

Dr. Abid Hussain

Chairperson

Shri M. Narasimham

Members

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- Dr. Ashok Lahiri
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- Shri S.S. Tarapore
- Shri B.P.R. Vithal

Member-Secretary

Dr. Raghbir Singh

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Member-in-charge & Chairperson

Justice Shri R.S. Sarkaria

Members

- Justice Shri B.P. Jeevan Reddy
- Dr. M.G. Rao
- Shri G.V. Ramakrishna

Member-Secretary

Dr. Raghbir Singh

10. Decentralisation and Devolution; Empowerment and Strengthening of Panchayati Raj Institutions

Member-in-charge

Shri P.A. Sangma

Chairperson

Shri L.C. Jain

Members

- Dr. Abid Hussain
- Shri K.C. Sivaramakrishnan
- Shri M.C. Gupta
- Shri Sanjoy Hazarika

Dr. George Mathew **(Special Invitee)**

Member-Secretary

Dr. Raghbir Singh

CONSULTATION PAPERS



NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

ENLARGEMENT OF FUNDAMENTAL RIGHTS

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating a public debate and eliciting public response.

May 11, 2001
VIGYAN BHAWAN ANNEXE, NEW DELHI – 110 011.
Email: <ncrwc@nic.in> Fax No. 011-3022082

Advisory Panel

on

Enlargement of Fundamental Rights

Member-in-charge
Shri Soli J. Sorabjee

Chairperson
Justice Shri V.R. Krishna Iyer

Members

- Justice Shri B.P. Jeevan Reddy
- Justice Shri M. Jagannadha Rao
- Shri C.R. Irani
- Prof. Amrik Singh
- Prof. Andre Beteille
- Prof. Mushirul Hassan

Member-Secretary
Dr. Raghbir Singh

1207 LJ&CA/2002—3A.

ACKNOWLEDGEMENT

This Consultation Paper on 'Enlargement of Fundamental Rights' is based on a paper prepared by the Advisory Panel on Enlargement of Fundamental Rights under the guidance of Shri Soli J. Sorabjee, Member-in-charge of the Advisory Panel.

The Commission places on record its profound appreciation of and gratitude to all members of the panel for their contribution.

CONTENTS

		Pages
	Introduction	31
I.	Article 12 of the Constitution	31
II.	Article 14 –Equality before Law	34
III.	Inclusion of Judicially deduced Fundamental Rights in Part III of the Constitution	35
IV.	Preventive Detention	40
V.	Right to Property	41
VI.	Rights of Children	42
VII.	Article 31B and the Ninth Schedule	42
VIII.	Capital Punishment	43
IX.	Articles 359 and 359 (1A) of the Constitution	43
	Questionnaire	45
	Annexures	51-54
Annexure-I	UK Human Rights Act, 1998 (Section 6 : Acts of Public Authorities) The Constitution of the Republic of South Africa 1996 - Article 8(1): Application	51
Annexure-II	The Constitution of the Republic of South Africa 1996 - Article 9(3) International Covenant on Civil and Political Rights 1966 - Article 26	51
Annexure III	Universal Declaration of Human Rights of December 10, 1948 - Article 5 International Covenant on Civil and Political Rights, 1966 - Article 7	52
Annexure IV	Universal Declaration of Human Rights of December 10, 1948 - Article 13(2) International Covenant on Civil and Political Rights 1966 – Article 12 (2), (3) and (4)	52
Annexure V	International Covenant on Civil and Political Rights 1966 – Article 17(1) and (2)	52
Annexure VI	The Constitution of the Republic of South Africa 1996 – Article 29	52
Annexure VII	The Constitution of the Republic of South Africa 1996 - Article 24	53
Annexure VIII	The Constitution of the Republic of South Africa 1996 - Article 34	53
Annexure IX	The Constitution of India – Article 39	53
Annexure X	Second Optional Protocol to the International Covenant on Civil and Political Rights 1966 - Relevant Extracts – Article 1 and Article 2	53
Annexure XI	International Covenant on Civil and Political Rights 1966 – Article 4.	54

INTRODUCTION

1. The working of the Constitution during the last fifty one years has manifested the need to afford greater protection to fundamental rights, for example by express inclusion in the Chapter on Fundamental Rights of certain human rights which have been judicially deduced or by removing or modifying certain provisions of the Constitution which in their actual operation have weakened the protection to fundamental rights - for example, preventive detention, article 31-B and the Ninth Schedule.

2. The objective of the Commission and its Advisory Panel is to strengthen fundamental rights. With that end in view public opinion is sought to be elicited regarding various articles guaranteeing fundamental rights and questions have been formulated for that purpose.

3. The Commission would like to make it abundantly clear that it is seeking the views and opinions of the public by circulation of this consultation paper and nothing therein should be considered as the Commission's views or recommendations.

4. References have been made in the paper mainly to the International Covenant on Civil and Political Rights 1966 [ICCPR]. The reason is that our country has acceded to the ICCPR on 10th April 1979. The ICCPR is considered as the International Bill of Rights.

5. The reference to the Constitution of the Republic of South Africa is because it is the most recent of the national Constitutions. It has been framed by a developing country which was also the victim of colonialism and which has experienced the worst form of racial discrimination in the form of apartheid.

I. ARTICLE 12 OF THE CONSTITUTION

6. Constitutional guarantees for the human rights of our people was one of the persistent demands of our leaders throughout the freedom struggle. It was made as far back as in 1895 in the Constitution of India Bill, popularly called the Swaraj Bill, which was inspired by Lokmanya Tilak. The demand was repeated in Mrs. Annie Besant's Commonwealth of India Bill finalised by the National Convention of Political Parties in 1925, by the Motilal Nehru Committee in 1928 at the Karachi Session of the Indian National Congress in 1932, and by the Tej Bahadur Sapru Committee in 1944-1945.

7. The immaculate premise of human rights is that an individual is not a mere mass of molecules but there is a spiritual spark in every individual irrespective of race, religion, caste, color, sex or status. The philosophy of human rights is that human personality is precious and invaluable. It is not expendable. Human rights flow from the common humanity and the inherent dignity of every human being and the equal and inalienable rights of all members of the human family. Human Rights are not gifts conferred by the State. Constitutions and laws do not create human rights. They are enacted to protect human rights which inhere in individuals antecedent to constitutions and the laws. Fundamental Rights are essential for development of the human personality and for full realization of the human potential.

8. The subject of fundamental rights was extensively discussed in the Constituent Assembly. Thereafter the Assembly guaranteed in Part III of the Constitution a fairly comprehensive array of basic human rights covering a wide spectrum such as equality, freedom of expression, assembly and association, freedom of movement, freedom to carry on profession or business, freedom of conscience and freedom of religion. There are guarantees against

retrospective criminal laws, double jeopardy and self-incrimination and against deprivation of life and personal liberty. Minorities are guaranteed linguistic and cultural rights, and the right to establish and administer educational institutions of their choice.

9. Fundamental rights occupy a pride of place in our Constitution. According to Dr. Radhakrishnan they were a pledge to our people and a pact with the civilised world.

10. Fundamental rights are judicially enforceable. Any law which is violative of any fundamental rights is void [article 13(1) and (2) of the Constitution]. The right to approach the Supreme Court directly for enforcement of fundamental rights is guaranteed as a fundamental right by article 32 of the Constitution, which was described by Dr. Ambedkar as the heart and soul of the Constitution. Enforcement of fundamental rights has provided great protection and given relief to our people.

11. In India fundamental rights guaranteed by the Constitution, in the absence of specific constitutional provisions, are mainly enforceable against 'the State', which is defined in article 12 of the Constitution as follows:

> **"12. Definition** – In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India".

12. Courts have ruled that where there is pervasive or predominant governmental control or significant involvement in the activities, such bodies, entities and organisations fall within the definition of "the State". As a result of judicial interpretation, "the State" has been held to include statutory bodies such as insurance corporations,[1] nationalised banks,[2] airline corporations,[3] electricity boards,[4] educational institutions[5] and societies[6] whose composition and administration are predominantly controlled by the government. Consequently the reach and extent of protection of fundamental rights has been widened and greater protection has been afforded especially in the area of employment against discriminatory practices.

13. Again there are private, non-State entities which discharge important quasi-governmental or important public functions, which have repercussions on the life and welfare of the community. Such entities and bodies can be regarded as "the State", as would appear from the concurring opinion of Justice Mathew. "Institutions engaged in matters of high public interest or performing public functions are, by virtue of the nature of the functions performed, government agencies.

---

1 *Life Insurance Corporation* v. *Manubhai D. Shah*, AIR 1993 SC 171

2 *M.K. Agarwal* v. *Gurgaon Gramin Bank*, AIR 1988 SC 286; *Chairman, Prathama Bank, Moradabad* v. *Vijay Kumar*, AIR 1989 SC 1977

3 *Air India International* v. *Nergesh Meerza*, AIR 1981 SC 1829; *Lena Khan* v. *Union of India*, 1987 (2) SCC 402

4 *Rajasthan State Electricity Board* v. *Mohan Lal*, AIR 1967 SC 1857

5 *Ajay Hasia* v. *Khalid Mujib Sehravardi & Ors.*, 1981 (1) SCC 722

6 *B.S. Minhas* v. *Indian Statistical Institute*, 1983 (4) SCC 582

Activities which are too fundamental to the society are by definition too important not to be considered government function".[7]

14. In the UK Human Rights Act 1998 the definition of public authority includes "any person certain of whose functions are functions of a public nature" [Section 6(3)(b)].

15. It is a matter for consideration whether the definition of "the State" should be widened to include such non-State entities and make them subject to the discipline of fundamental rights. The consequence will be not to make all actions and decisions of non-State entities subject to judicial review but only those acts or omissions which are violative of fundamental rights guaranteed in Part III of the Constitution.

16. Another matter for consideration is whether the judiciary should be included in the definition of "the State" in article 12.

17. Divergent views have been expressed by the Supreme Court on the question whether a judicial order can be violative of a fundamental right.[8]

18. In the UK Human Rights Act 1998 the definition of public authority includes "a court or tribunal". The provisions of section 6(3)(a) and (b) are reproduced in Annexure-I.

19. The Bill of Rights in the South African Constitution applies to the judiciary by virtue of Article 8(1) which is reproduced in **Annexure I.**

20. Another strand of thought is that the inclusion of the judiciary in the definition of 'the State' should be confined to article 21 of the Constitution which guarantees that "no person shall be deprived of his life or personal liberty except according to procedure established by law". It is article 21 which is mainly invoked in the case of judicial orders. The controversy has centered round the question whether a judicial order which is without jurisdiction can be challenged as violative of article 21 of the Constitution.

Your views and responses are elicited on the following :

QUESTION: 1 Should the definition of "the State" in article 12 be expanded to include (a) statutory corporations, other bodies and institutions in which there is substantial State financial assistance or predominant State control and involvement; (b) Non-State entities, bodies and institutions which perform quasi-governmental or public functions which have repercussions on the life and welfare of the community?

QUESTION: 2 Should it be provided in the Constitution that a judicial order which is without jurisdiction and null and void can be violative of the fundamental right guaranteed by article 21?

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7 *Sukhdev Singh* v. *Bhagatram*, AIR 1975 SC 1331, 1355

8 *Naresh Shridhar Mirajkar* v. *State of Maharashtra*, AIR 1967-SC 1. *Contra dicta* in *Antulay* v. *Naik*, 1988 (2) SCC 602.

II. ARTICLE 14 – EQUALITY BEFORE LAW

21. It is proposed to add a new clause, say clause (2) to article 14 after re-numbering it as clause (1) thereof, to bring out the full amplitude and scope of the general guarantee under article 14. The proposed inclusion of article 14(2) is in the following terms:

> Article 14(2): Equality includes the full and equal enjoyment of all rights and freedoms. Nothing in article 14 shall prevent the State from making any provision or adopting any measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination, for the purpose of achievement of equality".

22. The prohibited heads of discrimination in articles 15 and 16 of the Constitution are at present restricted to religion, race, caste, sex or place of birth.

23. It is proposed that these heads be extended so as to include ethnic or social origin; colour; age; language; political or other opinion; property; birth.

24. This would be in keeping with the Constitution of the Republic of South Africa 1996 [Section 9(3)], as also with the International Covenant on Civil and Political Rights 1966 [ICCPR] [article 26], which India has ratified. [*See* **Annexure - II** for these provisions]

25. In order to clarify that discrimination whether direct or indirect is prohibited and to give it a wide operation the following clause is proposed to be added :

> Discrimination shall include any distinction, exclusion, restriction or preference based on race, religion, caste, sex or place of birth, ethnic or social origin, colour, age, language, political or other opinion, property, birth, which has the purpose or effect of nullifying or impairing the enjoyment or exercise on an equal footing of rights, benefits and entitlements in the political, economic, social, cultural or any other field of public life.

26. A similar provision is contained in the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 [CEDAW] (Part I Article 1) and in International Convention on the Elimination of All Forms of Racial Discrimination, 1965 [CERD] (Part I Article 1).

QUESTION 1: Whether article 14(2) be added after article 14(1) in the following terms?

> Article 14(2): Equality includes the full and equal enjoyment of all rights and freedoms. Nothing in article 14 shall prevent the State from making any provision or adopting any measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination, for the purpose of achievement of equality".

QUESTION 2: Whether the prohibited heads of discrimination be extended and the following heads may be added?

> Ethnic or social origin; colour; age; language; political or other opinion; property; birth.

QUESTION 3: Whether to give the guarantee against non-discrimination a wide operation the following clause may be added?

Discrimination shall include any distinction, exclusion, restriction or preference based on race, religion, caste, sex or place of birth, ethnic or social origin, colour, age, language, political or other opinion, property, birth, which has the purpose or effect of nullifying or impairing the enjoyment or exercise on an equal footing of rights, benefits and entitlements in the political, economic, social, cultural or any other field of public life.

III. INCLUSION OF JUDICIALLY DEDUCED FUNDAMENTAL RIGHTS IN PART III OF THE CONSTITUTION

27. As a result of judicial decisions certain fundamental rights, which are not explicitly mentioned in Part III of the Constitution which guarantees fundamental rights, have been inferred or deduced from the specified guaranteed fundamental rights. These judicially deduced fundamental rights are:

A. Freedom of the Press;[9]

B. Freedom of Information;[10]

C. Prohibition of torture and cruel, inhuman or degrading treatment or punishment;[11]

D. Right to travel abroad and return to one's country;[12]

E. Remedy for violation of article 21;[13]

F. Right to privacy;[14]

G. Right to free elementary education up to age of 14;[15]

H. Right to a clean and healthy environment;[16]

I. Right to have access to courts;[17]

J. Legal aid[18]

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9 *Romesh Thappar* v. *State of Madras*, 1950 SCR 594; *Brij Bhushan* v. *State of Delhi*, 1950 SCR 605; *Bennett Colemann & Co.* v. *Union of India*, AIR 1973 SC 106

10 *S.P. Gupta & Ors.* v. *President of India & Ors.*, AIR 1982 SC 149

11 *Sunil Batra* v. *Delhi Administration*, 1978 (4) SCC 494 at 518-9 [para 52]; 579 [para 241]

12 *Satwant Singh* v. *A.P.O., New Delhi*, AIR 1967 SC 1836; *Maneka Gandhi* v. *Union of India*, 1978 (1) SCC 248.

13 *Nilabati Behera* v. *State of Orissa*, AIR 1993 SC 1960; *D.K. Basu* v. *State of West Bengal*, 1997 (1) SCC 416

14 *R. Rajagopal* v. *State of Tamil Nadu & Ors.*, 1994 (6) SCC 632

15 *Unnikrishnan* v. *State of Andhra Pradesh*, 1993 (1) SCC 645

16 *Virender Gaur* v. *State of Haryana*, 1995 (2) SCC 577

17 *All India Judges' Association* v. *Union of India*, 1993 (4) SCC 288 at 298 para 14

18 *Madhav Hoskot* v. *State of Maharashtra*, AIR 1978 SC 1548

28. Many of these judicially deduced fundamental rights find a place in the ICCPR as well as in the Constitution of the Republic of South Africa. These rights afford greater protection to our people. At present they are the outcome of judicial interpretation of different Articles of the Constitution. In order to consolidate and impart finality to the beneficial interpretation of the highest court in the land, it would be advisable to specifically incorporate these rights in Part III of the Constitution.

[A&B] **Freedom of the Press & Freedom of Information**

These freedoms are the bedrock of democracy. In a majority of national Constitutions freedom of the press is guaranteed in specific terms. It is felt that our Constitution should also expressly include freedom of the press and the right to information as guaranteed fundamental rights in Part III. As pointed out above, the Right to Know and the right to information have been spelled out by the Supreme Court in *S.P. Gupta*'s[19] case.

QUESTION: 1 Whether Freedom of the Press and Freedom of Information may be specifically incorporated in Part III of our Constitution for example in the following terms?

> Article 19(1): All citizens shall have the right:
> (a) to freedom of speech and expression which shall include the freedom of the press and other media, the freedom to hold opinion and to seek, receive and impart information and ideas regardless of frontiers.

At present the specified heads of restriction in article 19(2) are: "the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence".

QUESTION: 2 In light of the suggested expansion of article 19(1)(a) whether another head of restriction may be added, namely, preventing the disclosure of information received in confidence?

[C] **Torture and inhuman, degrading and cruel treatment or punishment** grossly violate human dignity. There is no express provision in the Constitution prohibiting torture or cruel and degrading treatment and punishment. Our Supreme Court has deduced this freedom from a reading of article 21, article 14 and the Preamble to our Constitution which recognizes human dignity as the base of all human rights. A majority of national Constitutions have a provision prohibiting torture and cruel, inhuman and degrading treatment and punishment. The Universal Declaration of Human Rights 1948 [UDHR] and the International Covenant of Civil and Political Rights 1966 [ICCPR] also prohibit such acts by Articles 5 and 7 respectively. [For text *see* **Annexure III**].

QUESTION: Whether a specific article may be incorporated in Part III of the Constitution for example in the following terms?

> No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

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19 Supra note 10.

[D] **Right to travel abroad and return to one's country.** This right has been spelt out by our Supreme Court in its decisions in *Satwant Singh*[20] and *Maneka Gandhi*[21] on its interpretation of article 21 of the Constitution. This right finds a place in the Universal Declaration of Human Rights [UDHR] Article 13(2) as well as in the ICCPR [Article 12 (2), (3) & (4)]. *See* **Annexure IV** for these provisions.

Fundamental right guaranteed under article 21 is guaranteed to every person, viz. citizen and non-citizen alike.

QUESTION: Whether right to travel abroad and return to one's country be specifically incorporated as a fundamental right subject to restrictions for example in the following terms?

> 21A (1) Every person has the right to leave and return to one's country.
>
> (2) Nothing in clause (a) shall prevent the State from making any law imposing reasonable restrictions in the interest of the sovereignty and integrity of India, security of India and friendly relations of India with any foreign country.

[E] **Remedy for violation of article 21.** The Supreme Court of India has, in the case of Nilabati Behera[22] and in D.K. Basu[23] ruled that a person whose fundamental right under article 21 has been violated has a right to monetary compensation as a remedy in public law.

It may be mentioned that Article 9(5) of the ICCPR provides that "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation". India entered a reservation to article 9(5) when it ratified the ICCPR. The Supreme Court in D.K. Basu has observed that after its pronouncement in Nilabati Behera the reservation has no effect.

It is proposed that an enforceable right to compensation for violation of article 21 be specifically incorporated in Part III of the Constitution, as for example in the following terms:

> Every person who has been illegally deprived of his right to life or liberty shall have an enforceable right to compensation.

QUESTION: Whether an enforceable right to compensation should be provided for example in the following terms?

> Every person who has been illegally deprived of his right to life or liberty shall have an enforceable right to compensation.

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20 Supra note 12

21 Ibid

22 *Nilabati Behera*, Supra note 13

23 *D.K. Basu*, Supra note 13

[F] **Privacy** is recognized as one of the most invaluable human rights. The right to privacy has been described as "the right to be let alone". The object of privacy is to protect one's "inviolate personality". It is said that an intrusion on privacy threatens that liberty just as assault, battery or imprisonment. It is an offence to personal dignity. Privacy finds a place in the ICCPR. [For text of the provisions regarding Privacy in the ICCPR *See* **Annexure V**].

Right to privacy like any other fundamental rights cannot be absolute and should be subject to reasonable restrictions.

QUESTION: Whether the Right to Privacy may be specifically included as a fundamental right and subject to reasonable restrictions for example in the following terms?

(1) Every person has the right to respect for his private and family life, his home and his correspondence.

(2) Nothing in clause (1) shall prevent the State from making any law imposing reasonable restrictions on the exercise of the right conferred by clause (1), in the interest of national security, public safety or for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others.

[G] **Right to free Education.** The importance of education cannot be overemphasized. "Education is both a human right in itself and an indispensable means of realising other human rights. As an empowerment right, education is a primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities".[24]

Article 45 of our Constitution in the Chapter on Directive Principles requires the State to "endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years". This provision has not been implemented.

Our Supreme Court in its decision in *Unnikrishnan*[25] has deduced it as a fundamental right.

The right to education has been accorded the status of a fundamental right by Article 29 in the South African Constitution [For text see **Annexure VI**].

QUESTION: Whether the right to free education may be specifically included in the Constitution for example in the following terms?

(a) Every child shall have the Right to Free Elementary Education from the age of five years until he completes the age of fourteen years; (b) Every person shall have the right to education beyond the age of 14

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24 General Comment No.13 of the Committee on Economic, Social and Cultural Rights.

25 Supra note 15.

years within the limits of the State's economic capacity and development.

[H] **Right to clean and healthy environment.** The expression "life" in article 21 has been interpreted by the Supreme Court as the right to live in a clean and hygienic environment.[26] Clean and healthy environment has a direct impact on the lives and well being of our people. The South African Constitution has included this right in its Bill of Rights by article 24. [*See* **Annexure VII** for this provision].

QUESTION: Whether the right to clean and healthy environment may be specifically incorporated in the Chapter of Fundamental Rights for example in the following terms?

> Every person has the right
> (a) to an environment that is not harmful to his health or well-being; and
> (b) to have the environment protected, for the benefit of present and future generation, through reasonable legislative and other measures that -
> (i) prevent pollution and ecological degradation;
> (ii) promote conservation; and
> (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

[I] **Right to have access to courts.** Right to access to Courts is a human right. The right to 'access to courts' entails the right to disposal of a case within a reasonable time. Excessive delay in disposal of cases leads to denial of this basic human right, erodes the credibility of the justice delivery system and leads to the emergence of extra legal system of administration of justice frequently dominated by the mafia. Access to courts will be meaningful only if there is reasonably quick 'access to justice'.

Article 34 of the Bill of Rights in the South African Constitution provides rights to access to courts. [For text *see* **Annexure VIII**].

QUESTION: Whether the right to have access to courts may be incorporated as a fundamental right for example in the following terms?

> The right of access to courts shall be deemed to include the right to a reasonably speedy and expeditious disposal of all cases before all courts, tribunals or other fora and the State shall take all reasonable steps to achieve the above objective.

[J] Legal aid is also essential for effective enforcement of the fundamental rights of the needy and the indigent. article 39A in the Directive Principles of our Constitution reads as follows:

> "**39A. Equal justice and free legal aid** – The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular provide free legal aid, by suitable legislation or schemes or in any other way,

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26 Supra note 16

to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities".

By a liberal interpretation of article 21, the Supreme Court in the case of *Madhav Hoskot*[27] held that free legal services to the poor and needy is an essential element of any "reasonable, fair and just" procedure and ruled: "(1) Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicado situation, the court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so require, assign competent counsel for the prisoner's defence, provided the party does not object to that lawyer; (2) The State which prosecuted the prisoner and set in motion the process which deprived him of his liberty shall pay to assigned counsel such sum as the court may equitably fix".[28]

QUESTION: Whether article 39A of the Directive Principles, which deals with equal justice and free legal aid may be suitably incorporated in Part III of the Constitution?

IV. PREVENTIVE DETENTION

29. **Preventive detention** finds a place in article 22 of the Constitution. Preventive detention, that is detention without trial, is a negation of the Rule of Law and the principle of fair trial. A person is deprived of his or her liberty and incarcerated on the basis of suspicion. It is an anathema to some minds. Some regard it as a necessary evil in certain situations where it is not possible to secure evidence of witnesses who are unwilling to testify because of threat to their lives and their family members. Experience shows that preventive detention has been frequently misused. It also provides a pretext for the law enforcement agencies not to carry out thorough investigations under the existing law and to conveniently resort to laws providing for preventive detention. It is also felt that there should be a reasonable ceiling on the maximum period of detention which at present in certain circumstances can extend to two years.

30. Under article 22(4) of the Constitution, the Advisory Board to review detention can consist of persons who are or have been, or are qualified to be Judges of a High Court. It is a matter for consideration whether the Advisory Board should compose only of sitting and not retired High Court judges.

QUESTION: 1 (a) Whether preventive detention should be abolished or (b) whether recourse to preventive detention should be had only when there is a declaration of emergency under article 352 of the Constitution or (c) there is internal disturbance in the country?

QUESTION: 2 If ultimately it is decided to retain preventive detention whether (a) maximum period of detention should not exceed six months and (b) the Advisory Board to review cases of preventive detention should be composed entirely of sitting High Court judges?

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27 Supra note 18

28 Ibid at 1557

V. RIGHT TO PROPERTY

31. **Right to property** was a guaranteed fundamental right under article 19(1)(f) and article 31 of the Constitution. Despite constitutional amendments aimed at preventing judicial interventions with regard to compensation for acquisition of property, legislations were struck down on the ground of violation of article 31(2) because of inadequacy of compensation. By Constitution (Forty-fourth Amendment) Act, 1998 article 19(1)(f) and article 31 were deleted from the Chapter on Fundamental Rights.

Article 300A was enacted in these terms:

"300A. Persons not to be deprived of property save by authority of law. No person shall be deprived of his property save by authority of law".

32. Article 300A merely embodies the principle that there should be a law for deprivation of property. There is no requirement of public purpose or payment of any sum for acquisition of property.

33. It is a matter for consideration whether article 300A may be amended making the existence of public purpose a requirement for acquisition and also providing for payment of a sum which is not illusory. In the light of previous experience it is felt that an express provision be enacted excluding judicial intervention regarding the quantum of payment, except where it is illusory.

34. Article 12 of the ILO Convention No.107 to which India is a signatory provides that the tribal populations shall not be removed from their habitual territories without their free consent except in accordance with the national laws and regulations for reasons relating to national security or in the interest of national economic development or of the health of the said populations. The Convention also provides that in case where the removal of tribal populations is necessary as an exceptional measure, they shall be provided with lands of quality at least equal to that of the lands they previously occupied.

35. It is for consideration that it may be further provided that in a case where the deprivation of property takes place because of acquisition of agricultural and homestead lands, the persons so deprived of their lands where they belong to weaker sections shall be provided with lands of quality at least equal to the lands they previously occupied or otherwise adequately rehabilitated.

QUESTION: Whether article 300A may be amended by adding at the end for example the following words?

> Deprivation or acquisition of property shall be only for a public purpose and upon payment of a sum which is not illusory. No deprivation or acquisition of property shall be invalidated on the ground that the sum awarded is inadequate unless the same is patently illusory :
>
> Provided further that no deprivation or acquisition of agricultural and homestead land belonging to weaker sections shall be done without providing the persons so deprived, lands of quality at least equal to the lands such persons previously occupied or otherwise adequately rehabilitated.

1207 LJ&CA/2002—4A.

VI. RIGHTS OF CHILDREN

36. There is no specific article in Part III of our Constitution dealing with rights of children. The UN Convention on the Rights of the Child 1989 has been ratified by India. The Convention consists mainly of four types of rights: (i) the participation of children in decisions affecting their own destiny; (ii) the protection of children against discrimination and all forms of neglect and exploitation; (iii) the prevention of harm to children; and (iv) the provision of assistance for their basic needs.

QUESTION: Whether children's right falling under the heads of non-discrimination, best interests of child, right to life, survival and development and the needs of the child may be specifically incorporated in the Constitution, preferably as article 23A?

VII. ARTICLE 31B AND THE NINTH SCHEDULE

37. **Article 31B and the Ninth Schedule** were introduced by the Constitution (First Amendment) Act in 1951 with a view to immunise laws dealing with agrarian or land reforms from challenge on the ground of violation of fundamental rights. The occasion for the First Amendment was the invalidation of laws dealing with abolition of *zamindari* and land reforms by the Patna and Allahabad High Courts. In the beginning only 13 Acts and Regulations were included in the Ninth Schedule. Thereafter the list of laws has grown enormously. Experience has shown that laws which are not in any manner connected with land reforms or agrarian reforms have been included in the Ninth Schedule in order to avoid judicial scrutiny of their constitutionality on the ground of violation of fundamental rights. For example, (i) The Industries (Development and Regulation) Act, 1951; (ii) The Monopolies and Restrictive Trade Practices Act, 1969; and (iii) The Foreign Exchange Regulation Act, 1973. This is contrary to the purpose and object of article 31B.

QUESTION: Whether article 31B be suitably amended to provide that the laws in the Ninth Schedule which enjoy immunity from challenge on the ground of violation of fundamental rights will be those laws which, in pith and substance relate to agrarian or land reforms or laws relating to social security, quantum of reservation and laws which give effect to the Directive Principles of State Policy in articles 39(b) and 39(c)? [For text of articles 39(b) and 39(c) *see* **Annexure IX**].

1207 LJ&CA/2002—4B.

VIII. CAPITAL PUNISHMENT

38. Supreme Court has upheld the constitutionality of capital punishment in *Bachan Singh*[29]. There is a growing body of national and international opinion against capital punishment. The Second Optional Protocol to the International Covenant on Civil and Political Rights 1966 aiming at the abolition of the Death Penalty was adopted by the General Assembly in 1989 [A/RES/44/128] and entered into force on 11th July 1991. [For relevant parts of the Second Optional Protocol of ICCPR *see* **Annexure X**].

39. The Supreme Court has ruled that death penalty should be imposed in the rarest of rare cases[30]. An element of subjectivity is inevitable in that determination. How does one determine which case is "rare" – leave alone "rarest of the rare"? In practice, it is the judge's perception which ultimately tilts the balance for or against imposition of such a sentence.

QUESTION: (a) Should capital punishment be abolished? (b) If it is to be retained should its retention be confined to certain grave offences like waging war against the government [Section 121 of the IPC], sedition [124A of the IPC] or terrorist acts?

IX. ARTICLE 359 AND 359-1A OF THE CONSTITUTION

40. The Supreme Court in the case of *A.D.M. Jabalpur*[31] ruled that the consequence of a Presidential Order passed under article 359 whilst a proclamation of emergency is in operation was that all fundamental rights stood suspended during emergency.

41. Thereafter the Constitution was amended by Constitution (Forty-Fourth) Amendment Act and it was provided by article 359-1A that articles 20 and 21 cannot be suspended when a proclamation of emergency is in operation.

42. Under Article 4(2) of the International Covenant on Civil and Political Rights 1966 [ICCPR] no derogation is permissible even during an emergency which threatens the life of the nation in respect of certain human rights specified therein. [*See* **Annexure XI** for the text of Article 4]. It is apparent that under ICCPR more fundamental rights/human rights have been made non-suspendable/non-derogable.

43. Under Article 2 (2) of ICCPR "each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the present Covenant".

44. Apart from and independently of the ICCPR it is a matter for consideration whether Article 17 of the Constitution which abolishes untouchability and forbids its practice and Article 24 of the Constitution which prohibits employment of children under the age of 14 years in any factory or mine or other hazardous employment be made non-suspendable by amendment of Article 359.

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29 *Bachan Singh* v. *State of Punjab*, 1980 (2) SCC 684

30 *Machhi Singh & Ors.* v. *State of Punjab*, 1983 (3) SCC 470 at 489

31 *A.D.M. Jablpur* v. *Shukla*, AIR 1976 SC 1207

QUESTION: 1 **Whether article 17 and article 24 of the Constitution be made non-suspendable during the operation of a proclamation of emergency?**

45. **It is a matter for consideration whether Article 359-1A may be amended so as to bring it in conformity with the requirements of ICCPR?**

QUESTION: 2 **Should Article 359-1A be amended to provide that Articles 23 and 25 of the Constitution cannot be suspended by a Presidential Order passed under Article 359 whilst a proclamation of emergency is in operation?**

QUESTIONNAIRE
ON
ENLARGEMENT OF FUNDAMENTAL RIGHTS

I ARTICLE 12 OF THE CONSTITUTION

No. 1 Should the definition of "the State" in article 12 be expanded to include (a) statutory corporations, other bodies and institutions in which there is substantial State financial assistance or predominant State control and involvement;

YES ☐ NO ☐

(b) Non-State entities, bodies and institutions which perform quasi-governmental or public functions which have repercussions on the life and welfare of the community?

YES ☐ NO ☐

No. 2 Should it be provided in the Constitution that a judicial order which is without jurisdiction and null and void can be violative of the fundamental right guaranteed by article 21?

YES ☐ NO ☐

II ARTICLE 14 – EQUALITY BEFORE LAW

No. 3 Whether article 14(2) be added after article 14(1) in the following terms?

Article 14(2) Equality includes the full and equal enjoyment of all rights and freedoms. Nothing in article 14 shall prevent the State from making any provision or adopting any measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination, for the purpose of achievement of equality.

YES ☐ NO ☐

No. 4 Whether the prohibited heads of discrimination be extended and the following heads may be added?

Ethnic or social origin; colour; age; language; political or other opinion; property; birth.

YES ☐ NO ☐

No. 5 Whether to give the guarantee against non-discrimination a wide operation the following clause may be added?

> Discrimination shall include any distinction, exclusion, restriction or preference based on race, religion, caste, sex or place of birth, ethnic or social origin, colour, age, language, political or other opinion, property, birth, which has the purpose or effect of nullifying or impairing the enjoyment or exercise on an equal footing of rights, benefits and entitlements in the political, economic, social, cultural or any other field of public life.

YES □ NO □

III INCLUSION OF JUDICIALLY DEDUCED FUNDAMENTAL RIGHTS IN PART III OF THE CONSTITUTION

[A&B] Freedom of the Press & Freedom of Information

No. 6 Whether Freedom of the Press and Freedom of Information may be specifically incorporated in Part III of our Constitution for example in the following terms?

> Article 19(1): All citizens shall have the right:
> (a) to freedom of speech and expression which shall include the freedom of the press and other media, the freedom to hold opinion and to seek, receive and impart information and ideas regardless of frontiers.

YES □ NO □

No. 7 In light of the suggested expansion of article 19(1)(a) whether another head of restriction may be added, namely, preventing the disclosure of information received in confidence?

YES □ NO □

[C] Torture and inhuman, degrading and cruel treatment or punishment

No. 8 Whether a specific article may be incorporated in Part III of the Constitution for example in the following terms?

> No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

YES □ NO □

[D] **Right to travel abroad and return to one's country.**

No. 9 Whether right to travel abroad and return to one's country be specifically incorporated as a fundamental right subject to restrictions for example in the following terms?

(a) Every person has the right to leave and return to one's country.

(b) Nothing in clause (a) shall prevent the State from making any law imposing reasonable restrictions in the interest of the sovereignty and integrity of India, security of India and friendly relations of India with any foreign country.

YES □ NO □

[E] **Remedy for violation of article 21**

No. 10 Whether an enforceable right to compensation should be provided for example in the following terms?

Every person who has been illegally deprived of his right to life or liberty shall have an enforceable right to compensation.

YES □ NO □

[F] **Privacy**

No. 11 Whether the Right to Privacy may be specifically included as a fundamental right and subject to reasonable restrictions for example in the following terms?

(1) Every person has the right to respect for his private and family life, his home and his correspondence.

(2) Nothing in clause (1) shall prevent the State from making any law imposing reasonable restrictions on the exercise of the right conferred by clause (1), in the interest of national security, public safety or for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others.

YES □ NO □

[G] **Right to free Education.**

No. 12 Whether the right to free education may be specifically included in the Constitution for example in the following terms?

(a) Every child shall have the Right to Free Elementary Education from the age of five years until he completes the age

of fourteen years; (b) Every person shall have the right to education beyond the age of 14 years within the limits of the State's economic capacity and development.

YES ☐ NO ☐

[H] Right to clean and healthy environment.

No. 13 Whether the right to clean and healthy environment may be specifically incorporated in the Chapter of Fundamental Rights for example in the following terms?

Every person has the right

(a) to an environment that is not harmful to his health or well-being; and

(b) to have the environment protected for the benefit of present and future generation, through reasonable legislative and other measures that

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

YES ☐ NO ☐

[I] Right to have access to courts.

No. 14 Whether the right to have access to courts may be incorporated as a fundamental right for example in the following terms?

The right of access to courts shall be deemed to include the right to a reasonably speedy and expeditious disposal of all cases before all courts, tribunals or other fora and the State shall take all reasonable steps to achieve the above objective.

YES ☐ NO ☐

[J] Legal aid.

No. 15 Whether article 39A of the Directive Principles, which deals with equal justice and free legal aid may be suitably incorporated in Part III of the Constitution?

YES ☐ NO ☐

IV PREVENTIVE DETENTION

No. 16 (a) Whether preventive detention should be abolished or (b) whether recourse to preventive detention should be had only when there is a declaration of

emergency under article 352 of the Constitution or (c) there is internal disturbance in the country?

YES ☐ NO ☐

Suggestions

No. 17 If ultimately it is decided to retain preventive detention whether (a) maximum period of detention should not exceed six months and (b) the Advisory Board to review cases of preventive detention should be composed entirely of sitting High Court judges?

YES ☐ NO ☐

V RIGHT TO PROPERTY

No. 18 Whether article 300A may be amended by adding at the end for example the following words?

> Deprivation or acquisition of property shall be only for a public purpose and upon payment of a sum which is not illusory. No deprivation or acquisition of property shall be invalidated on the ground that the sum awarded is inadequate unless the same is patently illusory.
>
> Provided further that no deprivation or acquisition of agricultural and homestead land belonging to weaker sections shall be done without providing the persons so deprived, lands of quality at least equal to the lands such persons previously occupied or otherwise adequately rehabilitated.

YES ☐ NO ☐

VI RIGHTS OF CHILDREN

No. 19 Whether children's right falling under the heads of non-discrimination, best interests of child, right to life, survival and development and the needs of the child may be specifically incorporated in the Constitution, preferably as article 23A?

YES ☐ NO ☐

VII ARTICLE 31B AND THE NINTH SCHEDULE

No. 20 Whether article 31B be suitably amended to provide that the laws in the Ninth Schedule which enjoy immunity from challenge on the ground of violation of fundamental rights will be those laws which in the pith and substance relate to agrarian or land reforms or laws relating to social security, quantum of reservation and laws which give effect to the Directive Principles of State Policy

in articles 39(b) and 39(c)? [For text of articles 39(b) and 39(c) *see* **Annexure IX**].

YES ☐ NO ☐

VIII : CAPITAL PUNISHMENT

No. 21 (a) Should capital punishment be abolished? (b) If it is to be retained should its retention be confined to certain grave offences like waging war against the government [Section 121 of the IPC], sedition [124A of the IPC] or terrorist acts?

YES ☐ NO ☐

IX ARTICLE 359 OF THE CONSTITUTION

No. 22 Should article 359-1A be amended to provide that articles 23 and 25 of the Constitution cannot be suspended by a Presidential Order passed under article 359 whilst a proclamation of emergency is in operation?

YES ☐ NO ☐

No. 23 Whether article 17 and article 24 of the Constitution be made non-suspendable during the operation of a proclamation of emergency?

YES ☐ NO ☐

ANNEXURE – I

U. K. Human Rights Act, 1998
Section 6: - Acts of Public Authorities

(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

(2) Sub-Section (1) does not apply to an act if -

(a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or
(b) in the case of one or more provisions of, or made under primary legislation which cannot be read or given effect in a way which is compatible with the convention rights, the authority was acting so as to give effect to or enforce those provisions.

(3) In this section 'public authority' includes -

(a) a court or tribunal, and
(b) any person certain of whose functions are functions of a public nature.
But does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.

(4) In sub-section (3) 'Parliament' does not include the House of Lords in its judicial capacity.
(5) In relation to a particular act, a person is not a public authority by virtue only of sub-section (3)(b) if the nature of the act is private.
(6) 'An act' includes a failure to act but does not include a failure to -

(a) introduce in, or lay before, Parliament a proposal for legislation; or
(b) make any primary legislation or remedial.

The Constitution of the Republic of South Africa 1996
Article 8 (1): Application

The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of State.

ANNEXURE – II

The Constitution of the Republic of South Africa 1996

Article 9 (3): The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth.

International Covenant on Civil and Political Rights 1966

Article 26: all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ANNEXURE – III

Universal Declaration of Human Rights of December 10, 1948

Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

International Covenant on Civil and Political Rights 1966

Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

ANNEXURE – IV

Universal Declaration of Human Rights of December 10, 1948

Article 13 (2): Everyone has the right to leave any country, including his own, and to return to his country.

International Covenant on Civil and Political Rights 1966

Article 12 (2): Everyone shall be free to leave any country, including his own.

Article 12 (3): The above mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (order public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

Article 12 (4): No one shall be arbitrarily deprived of the right to enter his own country.

ANNEXURE – V

International Covenant on Civil and Political Rights 1966

Article 17 (1): No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

(2) Everyone has the right to the protection of the law against such interference or attacks.

ANNEXURE – VI

The Constitution of the Republic of South Africa 1996

Article 29:

(1) Everyone has a right -

(a) to a basic education, including adult basic education; and

(b) to further education, which the State, through reasonable measures, must make progressively available and accessible.

(2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the State must consider all reasonable educational alternatives, including single medium institutions, taking into account -

(a) equity;

(b) practicability; and

(c) the need to redress the results of past socially discriminatory laws and practices.

ANNEXURE – VII

The Constitution of the Republic of South Africa 1996

Article 24: Everyone has the right –

(a) to an environment that is not harmful to their health or well being; and

(b) to have the environment protected, for the benefit of present and future generation, through reasonable legislative and other measures that –

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of national resources while promoting justifiable economic and social development.

ANNEXURE – VIII

The Constitution of the Republic of South Africa 1996

Article 34: Access to Courts and Tribunals and Speedy Justice: –

(1) Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or tribunal or forum or where appropriate, another independent and impartial court, tribunal or forum.

(2) The right to access to courts shall be deemed to include right to reasonably speedy and effective justice in all matters before the courts, tribunals or other forum and the States shall take all reasonable steps to achieve the above object.

ANNEXURE – IX

The Constitution of India

Article 39: **Certain principles of policy to be followed by the State** – The State shall, in particular, direct its policy towards securing –

(a) ***

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

*** *** *** *** *** *** ***

ANNEXURE – X

Second Optional Protocol to the International Covenant on Civil and Political Rights 1966 - [Relevant extracts]

Article (1) :

(1) No one within the jurisdiction of a State Party to the present Protocol shall be executed.

(2) Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

Article (2):

(1) No reservation is admissible to the present Protocol except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in times of war pursuant to a conviction for a most serious crime of a military nature committed during war time.

ANNEXURE – XI

International Covenant on Civil and Political Rights 1966

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Note:

Article 6 is with regard to Right to life. Article 7 is with reference to torture, or cruel, inhuman or degrading punishment. Article 8 deals with prohibition against slavery. Article 11 proscribes imprisonment merely on the ground of inability to fulfil a contractual obligation. Article 15 prohibits retrospective operation of criminal laws. Article 16 provides that everyone shall have the right to recognition everywhere as a person before the law. Article 18 guarantees the right to freedom of thought, conscience and religion.



NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

PACE OF SOCIO-ECONOMIC CHANGE UNDER THE CONSTITUTION

(Assurance of social and economic rights: How fair? How fast? How equal?)

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating public debate and eliciting public response.

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CONTENTS

		Pages
	EXECUTIVE SUMMARY	65
I.	FOREWORD	85
I.	HISTORICAL BACKGROUND	87
II.	ASPIRATIONS OF FREE INDIA FOR ITS SOCIO-ECONOMIC TRANSFORMATION	91
	The Dominant Divide Framing The Constitution: Stupendous Task	
V.	CONSTITUTIONAL PROVISIONS FOR SOCIO-ECONOMIC CHANGE: FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES OF STATE POLICY	93
	Why Fundamental Rights ? Constitutional Mechanism For Realisation Of Socio-Economic Goals	
'.	RIGHTS AND FREEDOMS	97
	The Right To Survival The Right To Good Health Freedom From Hunger The Right To Education Freedom From Gender-Based Discrimination	
I.	ECONOMIC PERFORMANCE	123
	Significant Economic Growth Dismal Record of Human Development Increasing Disparities Of Income Social Outcome Of Economic Performance	
I.	LEARNING FROM EXPERIENCE:	129
	Getting Priorities Right Not By Growth Alone Ensuring Universal Access To Basic Social Services Rationalize Public Spending Greater Inclusion And Participation	
II.	GOOD GOVERNANCE AND MANAGEMENT OF SOCIAL CONFLICTS	143
	Governance Management Of Social Conflicts	
	ISSUES OF SOCIAL JUSTICE : SCHEDULED CASTES AND SCHEDULED TRIBES AND OTHER BACKWARD CLASSES – AN UNFINISHED NATIONAL AGENDA	149
	Constitutional Mechanism For Uplift Of Scheduled Castes, Scheduled Tribes And Other Backward Classes Fulfilment Of Constitutional Mandate – How Far? How Fair? Pledge Remains Unredeemed Measures To Fulfil The Constitutional Mandate	

X. THE WAY AHEAD : FULFILLING THE CONSTITUTIONAL MANDATES 159

Eliminate Hunger
Provide Universal And Free Elementary Education
Improve Quality Of Basic Health Care
Provide Good Governance
Make Effective Use Of Science And Technology
Give Voice To The People
Making Legislation Work

XI. ISSUES ON WHICH THE COMMISSION INVITES SUGGESTIONS FROM THE PUBLIC FOR FORMULATION OF ITS RECOMMENDATIONS 173

Governance
Elimination Of Hunger
Education
Health
Effective Use Of Science And Technology For Socio-Economic Development
Welfare Of Scheduled Castes, Scheduled Tribes And Other Backward Classes
Giving Voice To The Disadvantaged And Deprived
Other Suggestions

XII. APPENDICES: 193-231

Appendix –I	Distribution of Scheduled Caste population (1991 census) in the 15 States which account for 97.2% of the Scheduled Caste population.	193
Appendix –II	Bar Diagram/Table showing sex-wise percentage of population of Scheduled Caste to the State population in 15 major States.	194
Appendix –III	Distribution of Scheduled Caste population in Other States and Union Territories (1991 census).	196
Appendix –IV	Projected Scheduled Caste Population in 2001	197
Appendix –V	List of 100 Districts that account for 51% of SC population (1991 Census).	198
Appendix-VI	Distribution of Scheduled Tribe Population in States and Union Territories (1991 Census)	201
Appendix-VII	Bar Diagram/Table showing sex-wise percentage of population of Scheduled Tribe to the State Population (1991 Census)	202
Appendix–VIII	Projection of state-wise Scheduled Tribe population for 2001.	204
Appendix –IX	District-wise breakdown of Scheduled Tribe population (1991 census) and list of 35 districts which have no Scheduled Tribe population.	205
Appendix – X	List of 40 districts that account for 50% of the Scheduled Tribe population.	217

Appendix –XI	Bar Diagram/Table showing percentage of SC/ST population below poverty line in Urban India in Major States (1993).	219
Appendix – XII	Bar Diagram/Table showing percentage of SC/ST population below poverty line in Rural India in Major States (1993).	221
Appendix –XIII	Bar Diagram/Table showing Interstate variation of Literacy amongst SC/ST in Rural and Urban India.	223
Appendix– XIV	Bar Diagram/Table showing Major State-wise number of literates per 1000 persons amongst Scheduled Caste/ Scheduled Tribe and others of age 5 years and above in Urban India.	225
Appendix – XV	Bar Diagram/Table showing Major State-wise number of literates per 1000 persons amongst Scheduled Caste/ Scheduled Tribe and others of age 5 years and above in Rural India.	227
Appendix XVI	Availability of civic amenities for SC/ST as in the year 1991 in Rural India.	229
Appendix – XVII	Monitoring of the Scheduled Caste and Scheduled Tribe Households at District level.	230
Appendix –XVIII	Child Prostitution : List of High Risk Areas in India.	231

EXECUTIVE SUMMARY

1. Objectives of the Paper

The paper concentrates on the evaluation of fulfillment of the social and economic rights of the citizens of India recognizing, however, their close inter-dependence with the necessary and simultaneous fulfillment of civil and political rights.

2. It addresses the following questions :

- How far has the State fulfilled its Constitutional obligations to assure every citizen a life of dignity?
- What has been the pace of social and economic progress in India? Has it been fair, fast and equitable?
- To what extent have the constitutional objectives and aspirations in respect of the Scheduled Castes, the Scheduled Tribes, other backward classes, women, children and the other weaker sections of the society been realized and fulfilled?
- How has India fared vis-à-vis other developing countries?
- What has been India's development experience after Independence?

3. It identifies critical achievements as well as significant failings in the aforesaid areas. It points out some of the lessons learnt in the last 51 years of the working of the Constitution and highlights factors that have constrained the pace of India's socio-economic progress. The paper finally raises some key issues and identifies critical areas for action that may help the country realise and fulfil its constitutional commitments.

2. Constitutional Aspirations

4. The Constitution of India rests firmly on the principles of liberty, equality, fraternity and justice. It reflects an uncompromising respect for human dignity, an unquestioning commitment to equality and non-discrimination, and an over-riding concern for the poorest and the weakest in society. The Constitution makes it mandatory to protect and promote freedoms, and to assure every citizen a decent standard of living. Right to dignity, to health and healthy environment, to clean water, to free education upto 14 years and to shelter are emanations of the right to life guaranteed under Article 21 of the Constitution.

5. The Constitutional mechanism for realisation of socio-economic goals is laid in Parts III and IV of the Constitution. Part IV contains Constitutional aspirations and standards for a free and self-governing people and for a just and caring society. Part III declares entrenched basic human rights which are inalienable and not subject to political vicissitudes, are the means for realising and achieving the aspirations of Part IV which though non-justiciable are yet fundamental in the governance of the country.

6. An elaborate Constitutional mechanism has been provided for the uplift and welfare of the Scheduled Castes, the Scheduled Tribes and other backward classes. Special provisions in the Constitution are also provided for ensuring welfare of women and children.

7. An occasion to reviewing the working of the Constitution serves as one for the nation to recall with deep gratitude the services and sacrifices of all those who fought for independence and of those great persons who framed a noble Constitution for India with lofty ideals. In that sense it is an occasion to celebrate the Constitution.

3. Historical Background

8. Citing statistics, the paper indicates that the level of industrialization in India and its share in the world's manufacturing output between 1750 A.D. and 1830 A.D. was superior to England, USA, France and Japan. India was developed when some of the most industrialized countries of this day were "forests and bogs and homes of savages". Indian industry was, however, destroyed during colonial rule and while the conqueror industrialized, India sunk into poverty and misery.

9. A contrast of the country's share in world trade between 1750 to 1900 with the country's share in world trade in late nineties shows that the country, even after fifty one years of the working of the Constitution, is nowhere near the dominant position once enjoined by it. India's pathetic situation at Independence is described in the following words of Pandit Nehru:

> "A servile state, with its splendid strength caged up, hardly daring to breathe freely, governed by strangers from afar; her people poor beyond compare; short – lived and incapable of resisting disease and epidemic; illiteracy rampant; vast areas devoid of all sanitary or medical provision; unemployment on a prodigious scale; both among the middle classes and the masses".

4. Economic Performance

10. There has been, since Independence, a significant and noticeable expansion and diversification of production. New technologies, modern management, and the advances in science, medicine, engineering and information technology have increased domestic production of a wide range of goods and services. The increase in agricultural production has been impressive with more than four fold increase in the index of agricultural production between 1950-2000. Between 1960-2000, wheat production went up from 11 million tonnes to 75.6 million tonnes, and the production of rice increased from 35 million to 89.5 million tonnes. This is no mean achievement for a country that relied on food aid until the early 1960s. There has been similarly a rapid expansion in both the industrial and service sectors. The index of industrial production went up from 7.9 in 1950-51 to 154.7 in 1999-2000 and electricity generation went up from 5.1 billion KWH to 480.7 billion KWH.

11. This economic expansion has contributed to a steady and impressive growth in India's GNP. With the exception of 4 years, the country has enjoyed a positive growth rate in its GNP every year since 1950. Particularly striking are the higher rates of growth after the mid-1980s, and even more so after the initiation of economic reforms in 1991. Prudent fiscal and economic management enabled the country to avert the fiscal crisis that many East Asian experienced in the mid-1990s. In fact, the GDP of India grew by 6-8% per annum between 1994-2000 except in the year 1997-98 when it grew by 4.8%.

12. India's per capita Net National Product (NNP) in 1999-2000 was more than 2.75 times higher than what it was in 1951. Before 1980, the annual average rate of increase of per capita income was around 1.2%. In the first half of the 1980s, per capita NNP grew by 2.4%, and between 1985-90, by 3.2% on average every year. The financial crisis of the early 1990s saw a slowing down in the growth of per capita income, but there has been a quick recovery. Per capita NNP has grown on average by 4.8% every year between 1993-94 and 1998-99.

5. Social Outcome Of Economic Progress

13. Despite enjoying sustained growth, levels of human development in India remain low. The latest Human Development Report 2000 ranks India at 128 on the Human Development Index (HDI) – implying that there are only 45 countries in the world that fare worse than India. Of the

countries that fare better than India on the HDI, many are our close neighbours. Sri Lanka, for instance, reports a HDI value of 0.732 whereas the HDI value for India is only 0.563

14. India's low level of human development reflects the persistence of extensive human deprivations. Despite the growth record, India's backlog of human poverty is indeed enormous.

6. Evaluating Development

15. Development means more than just the expansion of per capita income. It really has to be evaluated in terms of human development. Human development is not the reward of development but is indeed critical to the process of development itself, argues the paper. Human development essentially means enlarging choices, expanding freedoms and assuring human rights. It involves enhancing capabilities – for instance, the capability to live a long healthy and productive life, the capability to acquire knowledge, and the capability to lead a decent life. Human development consists of promoting freedoms – freedom from ignorance, freedom from hunger, and the freedom to participate in decision making. It entails assuring every citizen freedom from fear and repression, freedom from discrimination and exploitation, and the freedom to lead a life of dignity and freedom to be free of traditional social restraints and to achieve full potential so as to lead a life of dignity.

16. Enhancing capabilities and expanding freedoms are what ultimately matter to people. Freedoms are assured when rights are fulfilled – social and economic as well as civil and political. "What ultimately matters is", Dr. Amartya Sen points out, "how free women and men are to do what they want to do and to be what they want to be".

17. India's development over the past 51 years is evaluated in this perspective of freedoms and rights in the paper.

7. Extent of Fulfillment of Rights and Freedoms

18. The extent of fulfillment of various rights and freedoms guaranteed by the Constitution to the citizens is systematically analyzed in the paper with reference to a number of parameters.

7.1 The Right to Survival

7.1.1 Life Expectancy at Birth

19. The gains in life expectancy come from improvements in health and public health conditions, sanitation, levels of environmental cleanliness, and access to safe drinking water – all of which form essential constituents of a decent standard of living. To that extent, life expectancy at birth is not only a measure of the quantity but of the quality of life as well.

- Life expectancy at birth in India has gone up from 32 years in the year 1950-51 to almost 63 years in the year 2000-2001.
- Life expectancy at birth, however, is 17 years less than the life expectancy in Japan (of 80 years), 10 years less than life expectancy in Sri Lanka (73 years), and 7 years less than life expectancy in China (70 years).
- Life expectancy at birth among Indian women is around 63 years. It varies from 57 years in Madhya Pradesh to 75 years in Kerala.
- The record of Kerala in life expectancy at birth is so impressive that it can be said that a child born in Kerala today can expect to live longer than the one born in Washington D.C.

- In most countries and regions of the world, life expectancy among women exceeds that of men by about 5 years. In 1998, among OECD countries, for example, female life expectancy was 79.6 years; it was 73.2 years among men. In India, however, women outlive men by just one year. Sadly, in Bihar, Uttar Pradesh and Orissa, men outlive women – pointing to the persistence of strong anti-female biases in those States.

- Variation in life expectancy also exists between urban and rural areas – pointing to the unequal opportunities for survival in the two areas.

7.1.2 Sex Ratio

20. The paper points out that almost in all countries in the world, the ratio of women to men is 1005:1000. In India this ratio is 933:1000. The lower sex ratio shows existence of anti-female bias in the society. It also implies that some 40-50 millions girls and women are simply 'missing' from the Indian population.

7.1.3 Infant Mortality

21. Infant and child survival are affected by many factors including the earnings and education of parents, the prevalence of malnutrition and disease, the availability of clean drinking water and safe sanitation, the efficacy of health services, and above all by the health and position of women in society. Levels and reductions in Infant Mortality Rates therefore reflect achievements and progress in many of the constituents of decent living.

- Infant mortality in India has almost halved to 72 births per 1000 live births – down from 146 in 1951.

- Many countries, however, do better than India on infant survival. Nepal reports the same levels of infant mortality as exist in India even though India's per capita income is about 80% higher than Nepal's.

- In south Asia, India reported the slowest rates of improvements in child survival between 1970-98. India recorded an annual rate of reduction in Infant Mortality Rates of only 2.1%.

- Inter-State and intra-State disparities exist in infant mortality rates.

- In 1998 the infant mortality rate in rural areas was one-and-half-times higher than in urban areas.

- In 1992-93, infant mortality rates amongst Scheduled Caste communities were more than 30% higher than among non-Scheduled Caste and non-Scheduled Tribe communities.

- Infant Mortality rate was also seen to be typically higher among girls than among boys – though the gap has been narrowing down over the years.

- Progress in terms of reducing infant mortality has also not been even across the Indian States. Kerala has been the best performer in the 20 year period between 1975-77 and 1995-97 – doing three times better than Madhya Pradesh, Karnataka, Orissa and Rajasthan.

7.1.4 Maternal Mortality

- Estimates of maternal mortality rates in India vary from 400 to 540 deaths per 100,000 live births.

- Maternal mortality levels in India are more than 100 times the levels found in many countries of the West.

- Inter-State and intra-State variations exist in maternal mortality.

- In 1998-99, maternal mortality was estimated at 540-619 in rural areas and 267 in urban areas.

7.2 The Right to Good Health

22. The low levels of life expectancy, high rates of infant mortality and maternal deaths reflect the poor health status of Indians. There are, surrogate indicators also that further confirm the persistence of poor health among a majority of the Indian population.

7.2.1 Child Malnutrition

- About 53% children under five remain malnourished – nearly twice the levels reported in many parts of sub-Saharan Africa. This is despite the fact that the country has achieved remarkable expansion in food production and has built up a good safety stock of foodgrains.

- Bangladesh and India report the highest levels of child malnutrition in the world.

- Progress in reducing child malnutrition has been slow. Over a six year period 1992-93 and 1998-99, the proportion of underweight children below the age of 3 years fell by less than 5 percentage points to 46.7%.

7.2.2 Low Birth Weight and Underweight

- In India the percentage of low birth weight babies is 33%. The percentage is only 9% in China and South Korea, 8% in Indonesia and 6% in Thailand.

- The levels of child malnutrition in the country are almost twice the levels reported in sub-Saharan Africa.

The causes for malnutrition and measures required to reduce it are also discussed in the paper.

7.2.3 Anaemia

- Some 52% of married women in reproductive age group viz., between the ages of 15-49 years suffer from anaemia – 46% in urban areas and 54% in rural areas.

- Wide inter-State differences in the percentage of anaemic women in reproductive age group are found in the country. The proportion varies from 23% in Kerala to 86% in Arunachal Pradesh.

- Prevalence of anaemia among children below the age of three is even higher. Close to 74% children below the age of three suffered from anaemia - 71% in urban areas and 75% in rural areas.

7.2.4 Inadequate Provisioning of Quality Health Services

23. Citing statistics, it is shown in the paper that there has been impressive expansion in health services. Improvements in health have no doubt been largely due to the vast expansion of public health services but serious issues of quality, access and efficiency plague the proper

functioning of the system. The poor health and nutritional status of Indians reflects, to a large extent, the lack of adequate and easy access to quality health care. India was a signatory to the Alma Ata Declaration in 1978 that assured 'health for all' by 2000. But even in the year 2001 easy access to quality health care remains a distant dream for many millions.

- Between 1951 to 1997 primary health care centers increased from 725 to 150,000.

- Despite the commitment to assure universal immunization coverage to all children by the year 2000, the National Family Health Survey 1998-99 reports that only 42% children between 12-23 months were fully immunized – 37% in rural areas and 61% of urban areas.

    - There are wide inter-state variations in immunization coverage with coverage being only 11% in Bihar and 17% in Rajasthan.

    - Only a third of deliveries in rural India were attended to by a health professional and the proportion was less than 25% in Bihar and Uttar Pradesh – two of the most populous States in India.

7.2.5 Access to Safe Drinking Water and Sanitation

24. According to official statistics, over 90% of India's population has access to safe drinking water yet ground reality seems to be that large segments of population of the country remains without access to adequate quantities of safe drinking water. The record on providing proper sanitation facilities (principally safe disposal of human excreta) is even worse.

- Many water-borne diseases including diarrhoea continue to threaten the lives of millions of children.

- Water contamination by arsenic and other chemicals pose a serious threat in many parts of the country.

- Indiscriminate drilling, at the same time, is leading to rapid depletion of water levels throughout the country.

- More than 90% of the rural population and about 50% of the urban population does not have proper sanitation facilities.

7.3 Freedom from Hunger

25. Poverty prevents the poor from taking advantage of opportunities that become available to them to improve their lot – be it education, health, work, micro credit etc. Poverty creates externalities that cannot be controlled by individual actors. Reduction of poverty requires collective action. Between the year 1951 to 2000, the incidence of rural income poverty fell from 47% to around 27.09%. 260 million people, however, still live below the poverty live. These people have neither the energy nor the resources to benefit from the development. It is argued that opening of new schools and new clinics and developing new farming techniques would have little significance for those who cannot think beyond finding food for their family.

26. The trend of decline of income poverty between 1951 to 1977-78; between 1977-78 and 1987-88; between 1987-88 and 1993-94 and from 1993-94 onwards, is analysed in the paper.

- Fluctuation is seen in poverty reduction between 1951 and 1977-78.

- Steady and significant improvement in poverty reduction is noticed between 1977-78 and 1987-88.

- Period between 1987-88 and 1993-94 shows setbacks in reduction of poverty.

- After 1993-94, decline in poverty is sharp and significant (there are, however, wide variations between official estimates of poverty and those arrived at by some other economists. The methodologies of estimation of poverty also differ making data not strictly comparable).

- Inter-State variations in poverty are quite large in some cases and the progress in poverty reduction across the States has not been uniform.

7.4 The Right to Education

27. The country has recorded significant achievements in higher education as well as in the spread of literacy but the goal of ensuring universal elementary education is still distant.

- The number of primary schools has increased significantly between 1951 and 1995 from 210,00 to 590,000. Close to 95% of the villages have a primary school within a walking distance of one kilometre.

- The literacy rate has tripled between 1951 to 1991. Elementary education, however, is far from universal despite the Constitutional promise of providing free and compulsory education for all children by the year 1960. The current literacy rate is estimated to be 65.38%.

- India's adult literacy rate in 1991 was 52% - lower than literacy rates in sub-Saharan Africa (57%) and in East Asia (84%).

- India's female literacy rate in 1991 was 38% - lower than the rate in sub-Saharan Africa (47%) and in East Asia (76%).

- In Sri Lanka, average years of schooling for men are 8 years; it is 2.9 years for Indian men – average years of schooling are 6.4 years for women in Sri Lanka; in India, it is just 1.8 years.

- 62% of primary school entrants reach Grade V in India. The proportion is 90% in Indonesia, 94% in China and Malawi and 98% in Sri Lanka.

- Even amongst those who complete Grade V, quite a few cannot even read and write a simple sentence.

- The literacy rate among Indian women is particularly low – just 54.28%. Several African countries report higher rates of female literacy than in India.

- Inter-State variations in literacy rates exist. Variations in literacy rates also exist between rural and urban areas.

Unequal opportunity in education are a major impediment to young girls and women to realize their full potential.

7.5 Freedom from Gender-Based Discrimination

28. According to Dr. Amartya Sen political, economic and social participation and leadership of women is a crucial aspect of 'development with freedom'. The paper examines the progress made by the country in this area and discusses several forms of gender-based discrimination existing in Indian society.

7.5.1 Female-Male Differentials in Basic Education

- Female-male differentials are striking in basic education. Nearly half of the Indian women are unable to read or write; the proportion is a quarter for Indian men.

- Gender differentials in literacy exist in most of the States. The position is especially bad in States of Rajasthan, Madhya Pradesh, Bihar, Uttar Pradesh and Orissa where differences are over 25%.

7.5.2 Anti-female Bias in Mortality

29. The States where female infant mortality rates are higher than those of males and the States where it is other way round are indicated and relevant statistics given in the paper. It is pointed out that anti-female bias is so strong in some parts of the country that instances of female infanticide and foeticide are reported even today from those parts.

7.5.3 Freedom to make Personal Choices

30. Apart from unequal opportunity in education, there are several other socio-economic impediments that curb women's freedoms as is shown by relevant statistics in the paper.

- Women, in general, continue to be denied the freedom to work and equal opportunities in the workplace.

- Female wage rates in unorganized sector are generally lower than male wage rates.

- A large contribution of work of women does not enter national accounts.

- Most young girls do not have the freedom to choose whom to marry – let alone when to marry.
- Most of them are 'forced' to marry young and even today, some 50% of women get married before the legal minimum age of 18 years.

7.5.4 Freedom to participate in Decision Making

31. The representation of women at various levels in services, representative bodies and judiciary as revealed by statistical data given in the paper remains grossly inadequate even after fifty one years of working of the Constitution, which not only deprives them of their due share in income but also of the social benefits that come from enhanced status and independence of women.

- Political participation of women in local bodies has been strengthened by the 73rd and 74th Constitutional Amendments. By 1999 as many as 768,582 women had been elected to Gram Panchayats, and 38,582 women to Panchayat Samitis. Another 4,030 women were elected as Zilla Parishad representatives.

- Between 1952 and 1999, women have never found adequate representation in the Lok Sabha. The average representation of women in Lok Sabha works out to only 6.13%.

- The representation of women in Parliament is lower than the world's average and is even lower than of sub-Saharan Africa and Bangladesh.

- Women representation in Council of Ministers has never been adequate between the period 1985 and 2001. Countries like Sri Lanka had more women in Cabinet than India.

- Women have inadequate representation in Supreme Court and High Courts as well. The representation of women in High Courts in India is compared in the paper with the representation of women in High Courts of countries in South Asia and it is found that even in South Asia, Sri Lanka had higher representation of women in High Courts than India.

- The representation of women at various other levels in the Central and State Governments as shown by statistical data in the paper is far from adequate.

    - In the Indian Administrative Service women have only around 9.92% representation.

    - The percentage of female employees in the Central Government, State Governments and local bodies was 7.1, 16.6 and 25.6% respectively.

7.5.5 Freedom from Fear

32. The status of women though has shown some improvement in last fifty one years but the objective of achieving equality between men and women is still a distant dream. The paper notes with approval the change in focus in recent years from welfare of women to their empowerment, which it argues is of crucial importance in achieving equality between men and women.

- Many women cannot even leave their houses without the permission of men as the results of a survey quoted in the paper show.

- Statistics quoted from National Crime Records Bureau in the paper reveal high incidences of crime against women and poor rate of conviction in those cases.

8. Lessons From Past Experience

33. A variety of factors have collectively contributed to the persistence of human poverty and to the failure to fulfilment of the constitutional commitments in terms of assuring people of their social and economic rights. A few lessons, as discussed below, can, however be gleaned from the Indian experience of the last fifty one years.

8.1 Information Gap

34. There exists a big gap in social sector statistics. Several forms of 'silent deprivations' remain ignored – and their very existence is denied. There is an inherent tendency in the Government reporting to 'black-out' any data that may be embarrassing. Unless people have easy access to a whole range of information, ensuring accountability and performance will remain elusive, observes the paper.

8.2 Getting priorities Right

35. Experience of other countries and of Kerala within the country shows that investment in human development results in sustained economic progress. Human security is essentially the security of people, not just territory.

8.3 Not by Growth Alone

36. Through various examples, it is shown in the paper that higher per capita incomes are not necessarily associated with higher levels of human development. Female-to-male ratio is the lowest in Punjab and Haryana – two of India's most prosperous States. India is among the few developing countries that has since 1951, with the exception of four years, recorded a positive

]1207 LJ&CA/2002—6A.

growth in the GNP but despite it, there has not been a perceptible and significant improvement in the quality of life of the ordinary citizen. There has been marked slowing down in the rates of reduction in infant mortality in recent years. Similarly, as statistics given in the paper show, progress in bridging gender gap in literacy has been slow.

37. The situations in which growth does not necessarily result in human development are discussed in the paper. It is pointed out that there are many ways in which economic growth can be harnessed to improve human development. Essentially, economic growth needs to be broad-based and employment intensive. For human development to occur, people must become active agents of change, not merely passive beneficiaries. They must be allowed to actively participate in generating growth and shaping its direction. For it, it is necessary that people are provided with basic economic and political freedoms. Mining nature and undermining nature support systems, pit present human development against any future human development.

8.4 Ensuring Universal access to Basic Social Services

38. At the centre of empowerment and of development efforts, the paper argues, are investments in basic human capebilities – in primary education, primary health care, nutrition programmes, family planning and essential physical infrastructure, such as housing, electricity and roads. Lacking these essentials tantamount to poverty, the paper points out.

39. Ensuring universal access to basic social services is essential for assuring every citizen a decent standard of living. Much of the human poverty, the paper says, can be attributed to a failure to assign a high priority to it. There is serious under-provisioning and overall shortage of good quality and affordable social services. Several examples are cited in its support in the paper. It notes that a feature of India's development has been the over-emphasis on physical expansion while seriously neglecting quality issues.

8.5 Rationalize Public Spending

40. Government expenditure on poverty alleviation seems to have a strong 'trickle down' characteristic, much more distinct than income growth. Practically all States, the paper notes, that have succeeded in reducing income poverty have made sizeable investments in poverty alleviation programmes. The size of government spending matters, and so does the efficiency of expenditure. Leakage, wastage, corruption and inefficiency greatly reduce its impact on poverty reduction. Big potential for rapidly reducing human poverty exists by securing efficiency and value for money in the implementation and menagement of development programmes.

- The Central Government expenditure as a percentage of GDP at current market prices between 1990-91 and 1996-97, went down from 18.1% to 14.3%. The more worrisome aspect during this period has been that the development expenditure as a multiple of non-development expenditure fell from 3.2 to 2.1 during this period.

- The fiscal situation as revealed by statistics given in the paper of most States is not good.
    - States face serious deficits.
    - The stock of debt has been growing and with it the interest burden.
    - Between 1991and 1998 the debt-to-state GDP ratio went up in Uttar Pradesh from 26% to 31%, in Bihar from 35% to 42%, and in Orissa from 41% to 43%.

- India's fiscal deficit is among the highest in the world between 5 to 6% of the GDP.

1207 LJ&CA/2002—6B.

- As a bulk of social sector spending are from State Government revenues, the poor fiscal situation of States gets typically translated into State Governments cutting down their spending on social sector.

- The fiscal squeeze as shown by statistics in the paper has resulted in lower capital spendings on social sector expenditure. The public expenditure on education, for instance, came down from 3.7% of GNP in 1986-87 to 3.2% in 1995-96.

- More resources for social sector and better returns on spendings are needed, observes the paper.

- It is only when the State invests in the social sectors – in health and education – that there is any possibility of sustaining a more equitable and higher economic growth rate in the years to come.

- The conversion of growth into human development is mediated to a large extent by the levels and patterns of public expenditures. How secure people of a nation feel depends upon the levels of public investments in social sector – and also on the efficiency and effectiveness of spendings.

8.6 Greater Inclusion and Participation

41. Unequal access to opportunities to basic social services is not only because of inadequate provisioning of basic social services but also due to exclusion of many stakeholders from processes of decision making. It is argued that there is an urgent need for greater inclusion and participation of stakeholders.

42. It is important for policy makers to realize that the success in implementation of programmes comes when people co-operate –not when they are forced to do something that they detest. Co-operation – and not coercion- in all important national endeavours is the golden key for ensuring results and achieving goals. The lessons learnt in implementing family planning programmes during the emergency in the mid seventies when coercive measures proved counter-productive, are recalled in this connection.

43. It is argued that even in areas like population stabilization coercion and an authoritarian approach would not work. The one-child policy is neither appropriate nor desirable in this country, argues the paper. It points out that even in China, the population policy went hand-in-hand with a broad and equitable expansion of social and economic opportunities for women – the proven way to reduce the population growth.

44. A number of reasons are cited as to why emulating China's one child policy may not work in India. The paper argues that empowerment of women, decentralization, education and improved access to reproductive health care provide a preferable way towards optimizing population growth as evidenced in Bangladesh, Indonesia and Kerala.

9. Issues of Social Justice: Scheduled Castes and Scheduled Tribes and other Backward Classes – An unfinished national Agenda

45. The paper points out that despite manifest, avowed and determined concern of the Constitution for uplift and welfare of the Scheduled Castes, Scheduled Tribes and backward classes, the objectives have not been achieved. Whatever has been done in this regard has been done hesitatingly, half-heartedly and as a measure of concession forgetting that this relates to their Constitutional rights and not concession to those classes. Supported by relevant statistics the

following observations are made, in the paper, in respect of the Scheduled Castes, Scheduled Tribes and backward classes.

- The high number of cases registered under the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 shows that atrocities against Scheduled Castes and the Scheduled Tribes and untouchability continue unabated even today.

- Representation of Scheduled Castes and Scheduled Tribes in Group 'B' & Group 'A' posts in Central Government itself continues to remain inadequate and Scheduled Tribes are not even adequately represented in Group C and Group D services.

- The paper notes that the reservation for other backward communities in Central services was provided only in 1990 and became operational from 1993 onwards and sufficient statistical data are not yet available to draw any definite conclusions to the extent, their reservation has improved in the central services but the adequate representation of backward classes in public services is, still a far cry.

- Landlessness is increasing amongst the Scheduled Castes and the proportion of the Scheduled Caste agricultural labourers to the Scheduled Caste cultivators is increasing which indicates that the Scheduled Caste cultivators after losing their land holdings are becoming agricultural labourers. The results are not very different for Scheduled Tribes also.

- Some studies, the paper notes, have pointed out that allocation of funds for the development and welfare of the Scheduled Castes and Scheduled Tribes has shown a steadily declining trend since the late eighties.

- Allocations for welfare of the Scheduled Castes, the Scheduled Tribes and backward classes do not match their developmental needs and priorities and implementation of schemes makes the matter worse.

10. Measures to fulfil the Constitutional Mandates

46. The paper invites suggestions from the public on a number of measures that have been proposed to realize and fulfil the constitutional commitments made 51 years ago. The more important amongst them are briefly mentioned below :

10.1 Secure Good Governance

47. Good governance the paper argues is essential for sustainable development and poverty reduction. It alone can ensure sustainable human development. The various strands of good governance are indicated in the paper and it is stated that these need to be strengthened individually and collectively in order to secure good governance. The other proposals made in this regard are stated below.

10.1.1 Change Mind-sets and Attitudes

48. There is a need to surmount the colonial hangover of the notion of the 'Ruler' and the 'Ruled', 'Governors' and the 'Governed', 'Government' and 'People' – the 'us' and 'they' divide. The interaction between the Administrator and the citizenry needs to be informed by the awareness of and respect for the constitutional rights of the people and that the inter-action is essentially as between a free and self-governing people on the one hand and the agents chosen by them to serve them on the other.

10.1.2 Make Governance Participatory

49. The concept of governance is discussed and the issue as to why governance and not Government is needed to solve the present day problems of the society is addressed in the paper. It is argued that the Government alone can neither solve all the problems of the society nor is it the only crucial actor in addressing major societal issues. The State should do what Osborne and Gaebler called 'steering' and not 'rowing'.

50. For sustainable human development the State should enable, enhance and deploy the power from other societal actors. It should network and dialogue with non-state actors including the public, the media, voluntary organisations, self-help groups, the private for profit sector, community organisations etc. and create conditions for the latter to contribute in achieving developmental goals.

51. The vast potential of civil society participation in effective provision and management of quality elementary education, improving basic healthcare, in population stabilization and in preventing exploitation of the weaker sections of the society is recognized in the paper.

10.1.3 Management of Social Conflicts

52. The paper looks into reasons leading to social conflicts and points out to the dangers in leaving them un-resolved. It stresses the need and the importance of recognizing early warning symptoms and advocates combined effort of the Government and civil society institutions in resolution of these conflicts.

10.1.4 Make Government Transparent and Open

53. Openness is in the public interest and that 'sunlight is the best disinfectant' against the virus of corruption, observes the paper and it advocates for ensuring transparency and openness in Government. Potential of information technology in providing greater and easy access to information to the citizens and in providing more user-friendly public services to them is recognised in the paper.

10.1.5 Sensitize Public Servants

54. The paper emphasizes the necessity of sensitization of public servants to the special needs of women, the Scheduled Castes, the Scheduled Tribes and the other weaker sections of the society and suggests steps to be taken to ensure it.

10.1.6 Introduction of Citizens Charters

55. The paper emphasizes the need for introducing citizens charters in respect of every service provider agency of the State and for laying a suitable mechanism for their enforcement in order to ensure improved and user-friendly delivery of public services. Citizens charters would list the entitlement of the citizenry to public-goods and services along with time schedule within which citizen would be entitled to expect services from such government organisations and from each functionary at various levels.

56. Consumer dispute redressal Forums established under the Consumer Protection Act, 1986 can be authorized to enforce the observance of these charters and award suitable monetary compensations in appropriate cases. In case monetary compensations are awarded, it may be mandatory for concerned Departments to fix responsibilities on individuals responsible for lapse. Alternatively, the institutions of a national ombudsman supported by the regional ombudsman could oversee the citizens charters regime and administer marks.

10.1.7 Regulate Public Funding of Institutions of Civil Society

57. Massive financial grants are being released by various departments of the Government for aiding and promoting civil society initiatives in the country. The paper advocates greater participation of civil society institutions in governance and this, if implemented, is likely to result in even greater allocations for promotion of civil society initiatives.

58. The administration of grants to civil society initiatives has, so far, been reported to be subjective and is said to be lacking in objectivity. The performance-appraisals are not professional.

59. The paper observes that an urgent need exists to streamline distribution and administration of grants so that independent and objective performance appraisal of work of organisations receiving public grants can be ensured and value of public money secured.

60. An independent Expert Group/ Groups to evaluate and report on legitimacy and entitlement of the claims for grants; to evaluate performance of the grantees and to certify the fund utilization is suggested in the paper. The release and renewal of grants will be based on evaluation of the performance by such independent experts, suggests the paper

10.2 Eliminate Hunger

61. Over 260 million people living below the poverty line in India suffer hunger. Hunger and poverty forces families to make trade offs. Trade offs between hunger and meeting other basic needs. Trade offs for who goes to school and who doesn't. And trade offs between who eats and who doesn't. In such trade offs women and children are often the worst sufferers. Poorly-fed and malnourished pregnant women give birth to stunted and unhealthy babies who are prone to diseases. The Scheduled Castes, the Scheduled Tribes and backward classes are an easy prey of poverty and hunger and women of these categories are its worst victims.

62. The country sadly faces a paradoxical situation of surplus unlifted stocks of good grains in godowns of the Food Corporation of India co-existing with hunger and malnutrition. The Public Distribution System essentially is the food subsidy programme (making up to about half of the total spending on Anti-poverty programmes by the Central Government) for elimination of hunger and is explicitly targeted towards poor. Even after fine-tuning of the Targeted Public Distribution System, the performance of the fair price shops in some of the States, as revealed by some studies, is dismal. The delivery system, according to widely held public perception, has been the substantial beneficiary. The Finance Minister while presenting the budget for the year 2001-2002 conceded that while subsidy grew to Rs.12,125 crores, the satisfaction level with PDS has gone down.

63. An efficient scheme to provide food security to the poor is essential if the right to life provided under Constitution is to have any meaning for poor. Introduction of scheme of food coupons (explained in section 10.2.1.1) or providing cash subsidy or further strengthening of targeted public distribution system itself are amongst some of the options suggested in the paper in this regard.

10.3 Provide Universal and Free Compulsory Elementary Education

64. Today in the year 2001, more than 350 million Indians are illiterate – unable to read or write despite the mandate of Article 45 that required the State to endeavour to provide by the year 1960, free and compulsory education to all children below the age of 14 years. Experience world over shows that investment in basic education yields high returns and even the Indian experience in Kerala supports it. The female education has a positive impact on the lowering the fertility rate. Illiteracy results in far reaching debilitating effects on individual freedom, initiative and skills and lowers the productivity of labour. The paper suggests that providing universal and free compulsory elementary education to all children should not be delayed any longer on any pretext.

65. The paper takes note of the financial requirements to operationalising the right to free and compulsory education upto the age of 14 years and argues that the task is not unachievable for want of funds. The paper notes that realising a fee from professionals, educated and trained in India but taking jobs abroad, is an untapped source of huge revenue that can be tapped to finance the Constitutional obligations of providing free and compulsory education upto the age of 14 years. The paper argues that not to provide universal elementary education on the pre-text of financial constraints is unwise for it is rightly said "if you find education expensive, try ignorance. It is far more expensive".

10.4 Achieve Excellence in Education

66. Universal and free elementary education would achieve little if its quality is poor. It would then only widen the chasm between the better-educated urban-rich and poorly educated rural-poor. Quality assurance in elementary education, which is the foundation for the empowerment of masses, the paper argues, is too serious a matter to be left alone to the educational administrators. Management of education through remote control by officialdom in these fifty one years has failed to deliver the desired results. The paper advocates evolving a frame work for active involvement of stakeholders (not acting, of course, in a manner seen to be intrusive in the administration or constituting a parallel administration) in the evaluation of quality in elementary education programme. It also suggests for enforcing accountability of schools for student performance.

10.5 Ensure Quality In Basic Health Services

10.5.1 Improve Reproductive Health Care And Nutritional Intake Of Children

67. Excess of males over females, high maternal mortality rate and high percentage of anaemia amongst pregnant women show the neglected state of women health in the country. High rates of mal-nutrition among children are a matter of serious concern. Under-nutrition, studies have shown, has a greater impact on poor children's cognitive development than on the development of children who are not poor. The paper suggests for urgent and targeted measures to improve nutritional intake of children especially of those belonging to poor and weaker sections of the society. Urgent measures are also called for to improve the reproductive health care in the country, suggests the paper.

10.6 Civil Society Participation in Healthcare

68. The paper discusses relative advantages and disadvantages of civil society participation in healthcare. It notes that the growing shift to holistic view of health has led to increased interest in self-help, preventive health practices and alternative forms of treatment and focus is shifting from professionals to people in many developed and developing countries of the world.

69. The paper notes that a number of countries have enacted statutory provisions to provide for public participation in healthcare and a number of international agencies have lent support to public participation in healthcare. Public participation of civil society in health care within the country such as Rogi Kalyan Samiti of Madhya Pradesh, paper notes, has reportedly resulted in improvement in the functioning of public hospitals in the Madhya Pradesh. The paper suggests that a mechanism needs to be evolved for effective participation of civil society in healthcare.

10.7 Make Effective use of Science and Technology for Socio-Economic Development

70. The paper notes that apart from global competitiveness, new technologies are necessary to handle many of the internal problems such as of education, health, hygiene, communication, information-handling and to make Indian products including produce of traditional producers globally competitive and marketable. This requires an integrated and co-ordinated approach in higher scientific and technological research in the country free from bureaucratic bottlenecks.

71. The paper suggests setting up of a high powered "National Science and Technology Commission" as an umbrella organisation for policy making, planning, promoting and funding of higher scientific and technological research endeavours and for securing greater co-ordination in financial, organizational, managerial and administrative aspects of it so that while various commissions and bodies engaged in specialized research have full autonomy and freedom in their respective areas of work, their work is not hindered by bureaucratic and administrative problems and the scientific and tehnological higher research is carried out in the country in a coordinated and integrated manner in consonance with the needs of the country.

10.8 Give Voice to the People

72. Sustainable human development requires that all sections of the society including disadvantaged and deprived ones have an effective voice that is heard and taken into considerations in the decision-making. The paper suggests a number of specific measures in respect of these sections of the society – some of them are discussed below.

10.8.1 Empowerment of Women

73. The paper notes that the full potential of women remains grossly underutilized even after more than 51 years of the working of the Constitution and suggests steps to enhance the representation of women at various levels of policy making and administration and for extending the process of empowerment of women that began with reservation of one-third seats in Panchayats and Municipalities to State Legislatures and Parliament.

10.8.2 Welfare of Scheduled Castes, Scheduled Tribes and Other backward classes

10.8.2.1 Establishment of Residential Talent Schools

74. In India, the prospects of talented children achieving their potential depend on the accident of their birth and in particular the social and economic background of the family of birth notes the paper. Those born in affluent families have opportunities of education and training in elite schools while the talents of those in poorer circumstances merely waste and wither away owing to lack of opportunity. It is necessary, therefore, to identify and groom talent amongst the boys and girls of the Scheduled Castes, Scheduled Tribes and other backward classes and train them in special talent schools to enable them to compete with the rest of the society in an equal manner.

75. The paper accordingly suggests establishment of talent schools for children of the Scheduled Castes, Scheduled Tribes and other backward classes. These schools would be residential, devoted to grooming the children for high competitive educational excellence to serve the country as Administrators, Scientists and in high professions without losing the common touch and retaining the sensitive awareness of the plight of the poor in the country.

76. The paper identifies the 40 Districts which together have over 50% of the Scheduled Tribes population of the country. Similarly, 100 districts which together have 50% of Scheduled Castes population in the country are also identified. These schools to begin with may be established either in the said 100 districts and 40 districts identified in the paper or in each State in such number of districts selected in decreasing order of the population of the Scheduled Castes

and Scheduled Tribes in that State as to separately cover 50% of population of both these categories.

10.8.2.2 Prohibition of Occupations That Are Degrading And Offend Human Dignity: Employment Of Manual Scavengers And Construction Of Dry Latrines (Prohibition) Act, 1993

77. An unfortunate blemish of India's urban sanitization system has been scavenging by members of certain communities of the Scheduled Castes under inhuman conditions. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 was enacted to put to an end to this practice. The Act is enacted under entry 6 i.e. "Public health and sanitation; hospital and dispensaries" in List II of the Seventh Schedule of the Constitution and the law, therefore, is applicable to the States (other than those at whose instance the Central law was made) only after such States adopt it. Many States have not yet adopted the law.

78. The paper suggests that as the pith and substance of the legislation falls within Entry 24, List III of the Constitution, and encroachment on the topic of entry 6 of List II is merely incidental, both the Preamble and the provision as to the extent of applicability of the statute, need to be amended so as to bring them in accord with the position that the legislation in pith and substance falls within concurrent powers of legislation. This would make the law uniformly applicable in the entire country without the need for the States to adopt it.

79. The paper also suggests amendment in the said Act to completely prohibit employing whether directly or indirectly any person as Safai Karmachari in Scavenging.

10.8.2.3 Eradicate Untouchability and Atrocities

80. The paper suggests a number of specific measures to prevent atrocities on the Scheduled Castes and Scheduled Tribes and eradicate untouchability completely. A number of measures to augment and strengthen Protection of Civil Rights (PCR) Act and Prevention of Atrocities Act (POA) are also suggested.

10.8.2.4 Monitor Nutritional Status

81. In any human group (in any social and economic sample), there will be people of high intellectual potential but none of them realizes his/her potential unless afforded an opportunity to do so. Their latent talent is quite often submerged under the burden of social neglect and denial of opportunity. Many of the poor, particularly from the Scheduled Castes and Scheduled Tribes and other backward classes, suffer from mal-nutrition. Maternal anaemia coupled with low birth weight related neurological deficiencies resulting from poverty and malnutrition, exact a great human price. Opportunities in life are denied to them. To remedy the situation, the paper suggests that the district administration should undertake the monitoring, either by itself or through voluntary organisations, of the nutritional status of at least 200 Scheduled Caste/Scheduled Tribe families in the District in the format at Appendix XVIII of the paper. The statistics so obtained should be professionally evaluated by experts, (such as NCAER) as sources for policy options and midcourse-corrections of the anti-poverty and health programmes.

10.8.2.5 Provide Adequate Budgetary Allocations

82. The paper suggests evolving of a mechanism to ensure that appropriate budgetary allocations for socio-economic empowerment of Scheduled Castes, Scheduled Tribes and backward classes are made very year and funds allocated for the welfare of these classes are used exclusively for their welfare.

83. Constitution of a National SC and ST Development Authority (both at the Union and State levels) for formulating and approving national Plans and State Plans - Annual, Five Year Plans and Perspective Plans – based on the priorities and the developmental needs of SCs and STs and to supervise monitor and direct the implementation of the developmental plans of SCP and TSP of the Central and State Plans, is also suggested.

10.8.2.6 Ensure Adequate Representation in Public Services

84. The paper takes note of inadequate representation of the Scheduled Castes, Scheduled Tribes and other backward classes in public services and serious apprehensions among the Scheduled Castes, Scheduled Tribes of denudation of their Constitutional rights of reservation following certain judicial pronouncements and amendments made by the Government in reservation orders since 1996 in purported implementation of those judicial decisions and suggests a number of measures to restore pre-1996 position of reservation and to ensure adequate representation of these classes in public services.

85. Another suggestion relates to enactment of a legislation to provide for all aspects of reservation pertaining to Scheduled Castes, Scheduled Tribes and backward classes including the establishment of Tribunals for ensuring justice in reservations.

10.8.2.7 Social obligations of the Private Sector

86. In the changed economic scenario, the private sector is likely to grow rapidly. The Private Sector Enterprises, by and large, draw substantial support from Government bodies and Banks which handle public-funds. Large investments in their enterprises come from the public funds. Private sector has, therefore, social responsibilities to perform, argues the paper. It needs to help actively in the improvement of socio-economic conditions of the people especially those belonging to the weaker sections of the society so as to build a conflict free and caring society without which no enterprise either public or private can hope to flourish. At present, Scheduled Castes and Scheduled Tribes employees in the private sector are believed to be numerically insignificant except at the shop-floor level. There is a increasing apprehension that the employment opportunities of the Scheduled Castes, Scheduled Tribes and the other weaker sections would shrink with the reduction in role of the Government.

87. The paper suggests identifying areas of social obligation of the private sector and for evolving a policy frame work for active involvement and participation of the private sector for securing the socio-economic development of the people.

10.8.2.8 Transfer of Tribal Land

88. The paper notes that the tribals are mostly dependent on land and are extremely emotional about it. It also notes that there have been cases where surreptitious means have been adopted to transfer tribal lands to non-tribals despite existence of laws prohibiting such transfer. In Samata's Case, the Supreme Court while construing the word 'land' in Andhra Pradesh Scheduled Area land Transfer Regulation Act held that the 'land ' included both transfer *inter vivos* between a tribal to a non-tribal as well as transfer of Government land in tribal areas in favour of anybody other than tribals. There is a demand to amend the existing laws to enable the transfer of land in Tribal Areas in favour of companies and multi-nationals for the purpose of securing more efficient agricultural practices or better exploitation of minerals and forest wealth.

89. The paper also notes problems caused by dislocation of people when development works or projects are undertaken.

90. The paper suggests evolving of a mechanism by which while tribal ownership and control over land in tribal areas is protected, optimum utilization of land and other resources in tribal areas becomes possible in the interests of tribals and in larger national interests.

91. Measures to ensure full returns on the minor forest produce collected by the tribals and steps to continuously replenish and re-generate the shrinking stock of minor forest produce, are also suggested.

92. It also suggests evolving of a mechanism whereby dislocation is minimized and resettlement plans and costs are built into the project plans and costs as first charge to be fulfilled before/ simultaneously with the project construction.

10.8.2.9 Transfer Of Areas Under Fifth Schedule To The Sixth Schedule

93. During the working of the Constitution in 51 years, anomalies have occurred in the administration and control of the Scheduled Areas and Scheduled Tribes governed by the Fifth Schedule. The Scheme under the Sixth Schedule, on the other hand, has worked reasonably well.

94. The paper suggests that tribal areas under the Fifth Schedule and tribal areas not covered under either of said two schedules be brought under the Sixth Schedule.

10.8.2.10 Protect Land Ownership/ Land Tenures

95. The paper notes that the majority of the Scheduled Castes and Scheduled Tribes continue to be agricultural labourers and marginal land holders despite various measures taken by the Government in last 51 years. There are many cases, the paper observes, where the Scheduled Castes and Scheduled Tribes have been forcibly evicted and persecuted from the lands allotted/ granted to them under various schemes. Lands granted to them are often un-developed. A number of land reform cases are held up in judicial process. Cultivable Government land and Bhoodan land is still available for distribution in some States.

96. The paper suggests ensuring true implementation and better enforcement of land reform legislation. It also suggests expeditious distribution of available Government land (not required for public purposes), Bhoodan land and ceiling surplus land amongst landless poor, the Scheduled Castes, the Scheduled Tribes and other weaker sections and for developing lands allotted/ granted to them. Steps to prevent forcible eviction of the scheduled Castes and the Scheduled Tribes and others from land allotted to them and restoration of land to them from which they have been dispossessed etc., are other measures suggested in the paper.

10.8.3 Secure Statutory Wages for Un-organised Labour

97. 250 million workers out of a total workforce of 286 million workers are in the unorganised sector. These workers are exploited in diverse ways and targeted measures are necessary to put to an end of their exploitation observes the paper.

98. It suggests evolving a mechanism to ensure payment of prescribed statutory wages to the un-organized labourers and to prevent their exploitation on the lines of the Central legislations drafted for agricultural workers in 1978-89

99. The paper also suggests evolving a frame work for securing civil society participation in preventing exploitation of the unorganized labour.

10.8.4 Provide Protection to Farmers

100. Marginal farmers and landless agricultural workers often fall in the grip of moneylenders and poverty due to failure of crops or other natural calamities. Farmers, like industrialists, need to be made entitled to the various benefits of government policy on industry so as to provide sufficient safeguards to them against losses due to natural calamities, etc.

101. The paper suggests for taking steps to give benefits to the agriculturists of Government policy on industry. It also suggests for taking measures to protect Indian peasantry and other traditionally producing classes from the adverse effects of the regimes of WTO, IPR etc. while at the same time helping them to secure the benefits of those regimes.

10.8.5 Civil Society Participation In Management of Water Resources

102. The paper notes need for management of water resources in the country so as to avoid situations of devastating floods in one area and paucity of water in other area of the country.

103. The paper also suggests for evolving a frame work for securing beneficial participation of civil society institutions in better management of water resources in the country.

10.8.6 Eradicate Bonded Labour and Child Labour

104. Despite prohibition of 'begar' and other forms of forced labour, the practice of bonded labour has not ended, Child labour too exists. The paper suggests measures for ensuring effective implementation of the provisions in this regard. It also suggests that effective rehabilitation schemes for bonded labours and child labours need to be evolved so as to prevent them from falling again in the same conditions. Amplification of definition of bonded labour to bring all forms of bonded labour within its ambit, is also suggested.

10.8.7 Prevent Immoral Trafficking in Women.

105. The paper notes that pursuant to directions of the Supreme Court in Gaurav Jain's case, a Committee of Secretaries was constituted to combat trafficking and commercial sexual exploitation of women and children. The paper suggests early implementation of recommendations made by the 'Secretaries Committee' in this regard.

Foreword

This Paper concentrates on the evaluation of fulfillment of social and economic rights of the citizens of India, recognizing, however, their close inter-dependence with the necessary and simultaneous fulfillment of civil and political rights. Secondly, a Paper such as this does not purport to be comprehensive. It identifies critical achievements as well as significant failings. It also points to some of the lessons learnt and highlights factors that have constrained the pace of India's progress. Thirdly, selectivity of only a few issues involves judgment and this itself signals a bias – one that is hopefully consistent with the aspirations of the majority and among them particularly the poorest and most vulnerable consisting mainly of the Scheduled Castes, Scheduled Tribes and backward classes. Finally, the paper raises some key issues and identifies critical areas for action that may help the country realize and fulfill its constitutional commitments.

1.2 An occasion to reviewing the working of the Constitution serves as one for the nation to recall with deep gratitude the services and sacrifices of all those who fought for independence and of those great persons who framed a noble Constitution for India with lofty ideals. In that sense it is an occasion to celebrate the Constitution.

1.3 Fifty years after the adoption of the Indian Constitution, how far has the State fulfilled the Constitutional obligation to assure every citizen – woman, man and child – a life of dignity? What has been the pace of social and economic progress in India? Has it been fair, fast and equitable? To what extent have the constitutional objectives and aspirations in respect of the Scheduled Castes, the Scheduled Tribes, other backward classes and the Women been realised and fulfilled? How has India fared *vis-à-vis* other developing countries? What has been India's development experience after Independence? The paper deals with these critical questions.

1.4 The Supreme Court indeed spoke of the 'fewer graces of human civilisation', right to dignity, to health and healthy environment, to clean water, to free education upto 14 years and to shelter as parts of the right to life under Article 21 of the Constitution (See: Nalla Thampi[1] 1985; Francis Coralie[2] 1981, Mehta[3] 1987, Wadhera[4] 1996, Unnikrishnan[5] 1993, Mahinder[6] 1997, etc.). Even the so called 'cost free' liberties and freedoms are more in the nature of restraints on the State as distinct from the 'costly' Rights which involve positive action work, as long as the community cherishes and is committed to those values. They are not self-executing rights and liberties. "I cannot believe", said Laski, "that constitutional expedients alone, however substantial, will prevent the invasion of liberty. They will work just so long as people are determined they shall work, and no longer. The fact is that any Bill of Rights for its efficacy depends on the determination of the people that it shall be maintained. It is just as strong, and no more, as the popular will to freedom."

1.5 The Overview of the World Development Report 2000 mentions that "The development landscape is being transformed, presenting policymakers with new challenges at the global and local levels". The Report recalls four critical lessons which 50 years of development experience have

FOUR CRITICAL LESSONS

- ***Macro economic stabity is a pre-requisite for achieving growth.***
- ***Growth does not necessarily trickle down- development does not address human needs directly.***
- ***No one policy triggers development – a comprehensive approach is needed.***
- ***Institutions do matter – sustained development should be routed in processes that are socially inclusive and responsive to changing circumstances.***

-World Development Report, 2000

[1] AIR 1985 SC 1133
[2] AIR 1981 SC 746
[3] AIR 1987 SC 1086
[4] AIR 1996 SC 2969
[5] AIR 1993 SC 2178
[6] AIR 1997 SC 1225

yielded. "First, macro-economic stability is an essential prerequisite for achieving the growth needed for development. Second, growth does not trickle down; development must address human needs directly. Third, no one policy will trigger development, a comprehensive approach is needed. Fourth, institutions matter; sustained development should be rooted in processes that are socially inclusive and responsive to changing circumstances.".

1.6 Central to the process of development is the realization of rights. What does a rights based approach mean? It means that consideration of human rights, equity, equality, equal justice and the accommodation of diversity must be central to the conceptualization, design, implementation, delivery, monitoring and evaluation of all developmental process. The problems of social exclusion more virulent in India on account of caste system and caste-based oppression and discrimination and scourge of untouchability need systemic solutions. Law should address itself in action in non-governmental spheres as well.

1.7 Performance of Governments in the working of the Constitution over the fifty years of our Independence is, on a balance of the good and bad; achievements and failures, promises and performances of the lost opportunities as the following pages of this document indicate. The impurity of the social and political climate and its deadening effect on the creativity of the people present a depressing thought. There are, it is true, some splendid achievements. Much has been done and achieved but in the area of social justice performance falls greatly short of expectations.

1.8 What needs to be done to accelerate the pace of socio-economic development? Universal and free education – indeed quality education – is the utmost national requirement meeting of which should not be delayed any longer on any pretext. High rates of infant mortality, child anaemia and maternal anaemia cause concern and immediate measures are needed to ameliorate the situation. No child should be left malnourished or illiterate as India marches ahead in the twenty first century. Omnipotent and all pervading role of the State as the supreme arbiter in social, economic, political fields, developments in arts, culture, media, research, education, health and as main provider of services has sapped the energy and vigour of the society and its role has to change into an enabler to enable the civil society to play a purposive and meaningful role. The social and economic justice guaranteed to all citizens by the Constitution still eludes majority of people comprising of the women, the Scheduled Castes, the Scheduled Tribes, backward classes, unorganized workers and the poor. Focussed and targeted measures (growth does not necessarily trickle down) need to be urgently taken to ensure full enjoyment of constitutional rights by them. The paper seeks to raise debate on various remedial measures suggested in these areas.

CHAPTER 2

Historical Background

India is an ancient civilisation with a bright history. It is world's largest and most heterogeneous country. H.V. Hodson[1] in his 'Dis-economics of Growth' says "We talk about "less developed' and 'more developed' countries regardless of what they have developed from and what they are developing into. Thus India, because its average income is low, is rated a 'less developed country' compared to Britain or America. What an extraordinary use of words that is! India is poorer, certainly, but her civilization is far older, and may well prove more durable. India was 'developed' when our northern countries were forests and bogs and the home of savages".

2.2. Paul Kennedy[2] indicates in the following Tables the share of various countries, including India, in the manufacturing output of the world and per capita level of industrialization during the century and a half between 1750 A.D. and 1900 A.D.

Table 2.1

Relative Shares Of World Manufacturing Output 1750-1900

(In percentage)

	1750	1800	1830	1860	1880	1900
(Europe as a whole)	23.2	28.1	34.2	53.2	61.3	62.0
United Kingdom	1.9	4.3	9.5	19.9	22.9	18.5
Habsburg Empire	2.9	3.2	3.2	4.2	4.4	4.7
France	4.0	4.2	5.2	7.9	7.8	6.8
German States/ Germany	2.9	3.5	3.5	4.9	8.5	13.2
Italian States/ Italy	2.4	2.5	2.3	2.5	2.5	2.5
Russia	5.0	5.6	5.6	7.0	7.6	8.8
United States	0.1	0.8	2.4	7.2	14.7	23.6
Japan	3.8	3.5	2.8	2.6	2.4	2.4
Third World	73.0	67.7	60.5	36.6	20.9	11.0
China	32.8	33.3	29.8	19.7	12.5	6.2
India/ Pakistan	24.5	19.7	17.6	8.6	2.8	1.7

Table 2.2

Per Capita Levels Of Industrialization, 1750-1900

(Relative To UK In 1900=100)

	1750	1800	1830	1860	1880	1900
(Europe as a whole)	8	8	11	16	24	35
United Kingdom	10	16	25	64	87	[100]
Habsburg Empire	7	7	8	11	15	23
France	9	9	12	20	28	39
German States/ Germany	8	8	9	15	25	52
Italian States/ Italy	8	8	8	10	12	17
Russia	6	6	7	8	10	15
United States	4	9	14	21	38	69
Japan	7	7	7	7	9	12
Third World	7	6	6	4	3	2
China	8	6	6	4	4	3
India	7	6	6	3	2	1

[1] H.V. Hodson – The Diseconomics of Growth, Ballantine Books, New York.

[2] Paul Kennedy – The Rise and Fall of the Great Powers – page 149.

But the following Tables which are in stark contrast to the 18th century prosperity of India indicate the decline. Amongst the causes for the decline are, prominently, the colonial exploitation and the inherent inability of India to cope with and manage the forces of change:

Table 2.3
India's Share in World Trade And Tariffs

Year	Merchandise exports (US $ billion)		Share in world	Average tariff (%)[a]	Refe[b] 1990=100
	India	World	Merchandise exports (%)		
1985	9.14	1872.00	0.488	-	60.27
1986	9.40	2046.40	0.459	-	70.90
1987	11.30	2401.40	0.470	-	75.82
1988	13.33	2742.00	0.486	-	83.88
1989	15.85	2981.50	0.531	-	92.09
1990	17.98	3395.30	0.529	127.7	102.33
1991	17.66	3489.10	0.506	127.6	124.30
1992	19.56	3730.20	0.524	94.0	139.85
1993	21.55	3877.30	0.556	71.0	139.09
1994	25.08	4260.00	0.589	55.0	135.65
1995	30.76	5122.90	0.601	40.8	142.13
1996	33.05	5352.30	0.618	38.6	138.39
1997	34.25	5534.90	0.619	34.4	130.54
1998	33.05	5450.00	0.606	40.2	138.13

[a] Data for fiscal year April-March
[b] Real effective exchange rate, based on the IMF's Information Notice System (INS) methodology.
Note:Tariffs before 1990 were in excess of 100 per cent. The mean tariff to 1999-2000 is 39.6 per cent.
Source: World Bank staff estimates; IMF, IFS Yearbook 1998 and IFS Bulletins, February 1999-April 1999.

Table 2.4
Share In World Exports: India And Selected Countries, 1998

	Value of exports (US $ billion)			Share in World exports (%)		
	1996	1997	1998	1996	1997	1998
World	5352.30	5534.90	5450.00	100.00	100.00	100.00
India	33.05	34.25	33.05	0.62	0.62	0.61
China, Mainland	151.20	182.88	183.59	2.82	3.30	3.37
China, Hong Kong	180.75	188.06	173.99	3.38	3.40	3.19
Brazil	47.75	52.99	51.12	0.89	0.96	0.94
Argentina	23.81	26.37	25.23	0.44	0.48	0.46
Korea	129.72	136.16	133.22	2.42	2.46	2.44
Malaysia	78.33	78.74	73.30	1.46	1.42	1.35
Pakistan	9.33	8.73	8.50	0.17	0.16	0.16
Tanzania	0.76	0.72	0.67	0.01	0.01	0.01
Turkey	23.22	26.25	25.94	0.43	0.47	0.48
Kenya	2.07	2.05	1.99			
US	625.07	688.70	682.50	11.68	12.44	12.52
Canada	201.63	214.42	214.33	3.77	3.87	3.93

Source: IMF, IFS, various issues.

2.3. Many Western powers built their great economic fortunes on the exploitation of the countries under their colonisation. "The fountain and origin of British foreign investments" and "the main foundations of England's foreign connections," John Maynard Keynes observed, "was the piracy of the Elizabethan plunderers – terrorists, in contemporary lingo". Countries under colonial rule were "de-industrialised," essentially by force. Bengal, the first part of India to be conquered by Britain, "was destabilized and impoverished by a disastrous experiment in sponsored government," observes John Keay in his history of the East India Company. Robert Clive, described the textile center of Dacca in 1757 "as extensive, populous, and rich as the city of London"; by 1840 its population had fallen from One lakh fifty thousand to thirty thousand. Sir Charles Trevelyan testified before the House of Lords, "and the jungle and malaria are fast encroaching .....Dacca, the Manchester of India, has fallen from a very flourishing town to a very poor and small town." At the time of the English takeover, India was comparable to England in industrial development. The conqueror industrialized while Indian industry was destroyed by British regulations and interference. Had they not been undertaken, Horace Wilson wrote in his History of British India in 1826, "the mills of Paisley and Manchester would have been stopped in their outset, and could scarcely have been again set in motion, even by the power of steam". They were created by the sacrifice of Indian manufacturers. Lord Bentinck, observed, "I should say that the 'Permanent Settlement,' though a failure in many other respects and in most important essentials, has this great advantage, at least, of having created a vast body of rich landed proprietors deeply interested in the continuance of the British Dominion and having complete command over the mass of the people,". Manufacturing industries which had been comparable to the British at the time of conquest not only failed[4] to develop but also were largely eliminated as "India sunk" into poverty and misery. India finally gained Independence : destitute, overwhelmingly agrarian with a population, which was abysmally poor suffering from mortality rates which were amongst highest in the world. Pandit Nehru described India's pathetic situation as under:

> "A servile state, with its splendid strength caged up, hardly daring to breathe freely, governed by strangers from afar; her people poor beyond compare; short - lived and incapable of resisting disease and epidemic; illiteracy rampant; vast areas devoid of all sanitary or medical provision; unemployment on a prodigious scale, both among the middle classes and the masses.".

Piracy and Plunder

- ***India was developed when some of the most industrialized countries of the day were forests and bogs and homes of savages.***
- ***India was far superior to United Kingdom in the share of World Trade between 1750 AD to 1830 AD but by 1900 its share in World Trade was less than one-tenth of the share of United Kingdom.***
- ***Dacca -Textile Center of India was in 1757 as extensive and rich as the city of London but by 1840, it was reduced to a very poor and small town.***
- ***At independence, overwhelming majority of Indians were illiterate and abysmally poor. Life expectancy was very low and the mortality rates were amongst the highest in the world.***

[4] **Noam Chomsky – World Orders, Old and New (Oxford) page-113**

CHAPTER 3

Aspirations of Free India for its Socio-Economic Transformation

3.1 The Dominant Divide

The abysmal socio-economic conditions to which India survived to and inherited at independence have been described in the previous chapter. Historically, India, it would seem, collaborated in its own defeat by the intrinsic weaknesses of its own divisive, hierarchical social institutions and its incapacity to manage the forces of change. Caste system had been one of India's greatest social vulnerabilities throttling initiative, instilling ritual and impairing its nation-hood. The sheer rigidity of Hindu religious taboos militated against modernization of the society. Indian society was a obscurantist, fractured, fragmented and heterogeneous assemblage of groups which were and had many provocations to be, in perpetual conflict with each other. This divided house could not stand against foreign invasion. Over the centuries, despite India's magnificent achievements in and contributions to Art, Literature, Architecture, Astronomy, Sculpture, Aesthetics, etc. and to the profound issues of man's spiritual quest towards which the whole world looked with wide eyed wonder, it remained a fractured society. The communal carnage of the partition days left it prostrate and demoralized.

3.1.2 An ancient society, emerging out of a long period of foreign domination and social conflicts, developed visible and patent faultlines which were deep and strewn across the social fabric. The dominant divide covered a whole range of ethnic, linguistic, religious, class and caste differences so pronounced that it provided a nearly intractable ground for formulating an agenda for visualizing a democratic society with its legal, social and economic benefits accruing to all the participants. Enveloping entire social spheres was a huge cultural haze manifesting in superstition, social mal-practices, dogmas and impenetrable curtain of segregation occurred in different segments of social strata.

3.1.3 The independence movement driven by an overwhelming desire to free India from foreign rule contained in it myriad hopes and aspirations for political, social and economic transformation. The biggest divides – religion-based and caste based - provided the sub-text for regional and other social divides. Increasingly, religion became an issue in the independence movement and the separate electorate more or less, sealed the issue in favour of communal divide resulting in the partition. The fight on this front was lost early. There were other divides fostered by the rulers; the classification of peoples into the traders and the peasantry each blown into a separate class. The other India overseen by the British, but ruled by the princes and their overlords was perpetuated as an independent autonomous chunk of political India. There were other social road blocks. Under the caste regime access to social facilities, social institutions and educational and economic opportunities were not freely available universally. Within the independence movement, strenuous efforts were made to address some of these issues by symbolism, action and dialogue. The result was a social compromise that lasted through to the time when independence was finally declared. The other fires lit within the freedom movement on swadeshi, self-reliance, rural re-construction, basic education were available as pointers to address the issues in future.

3.2 Framing The Constitution : Stupendous Task

The stupendous task of the framers of the Indian Constitution needs to be seen in this context. A people suffering oppression under a feudal system were grimly struggling to be reborn into a life of dignity and hope. The past was heavy on their shoulders, and the future uncertain.

3.2.2 Dr. Ambedkar said "We have prepared a democratic Constitution. But successful working of democratic institutions requires in those who have to work them willingness to respect the view points of others, capacity for compromise and accommodation. Many things which cannot be written in a Constitution are done by conventions. Let me hope that we shall show those capacities and develop those conventions".

Three Secrets of Successful Working of Democratic Institutions

- *Respect for view-points of others*
- *Capacity for compromise & accommodation*
- *Existence of healthy conventions*

- Dr.Ambedkar

3.2.3 Dr. Ambedkar took note of the democratic traditions in India's past and said that it was not that India did not know what democracy was and that "there was a time when India was studded with republics and even where there were monarchies, they were either elected or limited". Prof. Radhakrishnan echoed this when he said, "We cannot say that the republican tradition is foreign to the genius of this country. We have had it from the beginning of our history. When a few merchants from the north went down to the south, one of the Princes of Deccan asked the question, "Who is your King?" The answer was, "Some of us are governed by assemblies, some of us by kings".

3.2.4 Speaking of the imperatives of social democracy, Dr.Ambedkar said, "it was, indeed, a way of life, which recognizes liberty, equality and fraternity as the principles of life and which cannot be divorced from each other:, He said, liberty cannot be divorced from equality; equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things". He wanted all Indians to acknowledge that there was complete absence of two things in Indian society, which was itself based on the principle of graded inequality, which meant elevation for some and degradation for others. He rightly cautioned that there was a gap between the constitutional pledge of equality on the one hand and the stark reality of social inequalities on the other and that, therefore, India was entering into a life of contradictions. Dr. Ambedkar further indicated as to how social weaknesses inherent in a hierarchical society and the social injustices they produced had weakened the society and resulted in the loss of its precious institutions of liberty in the past.

Cherished Values of the Constitution

- ***Justice - social, economic & political***
- ***Liberty – of thought, expression, faith & worship***
- ***Equality – of status and of opportunity***
- ***Fraternity with dignity of the individual and the unity and integrity of the Nation.***

3.2.5 The framers of the Constitution sought to unite the vast country with its great diversity, many languages and creeds within a common-bond of Constitutional justice on the great ideals of liberty, equality, fraternity and justice. Framers showed an uncompromising respect for human dignity, unquestioning commitment to equality and non-discrimination, and an abiding concern for the poor and the weak. They made a bold attempt to base the constitutional foundations on the firm faith that all classes of people, followers of all faiths, and particularly the traditionally under-privileged should all join to work for their united constitutional salvation on the shared faith that peoples of the several faiths must sink or swim together, and that in the long run prosperity and salvation are in union and not in division. Union of India was intended to be an indestructible union. The units had no power of secession. The framers endeavoured to ensure that Constitution should never degenerate into 'a suicide pact. The cherished values of the Constitution are enshrined in the great words of its Preamble. Constitution promised Justice, social, economic and political; Liberty of thought, expression, belief, freedom of faith and worship; Equality of status and opportunity and to promote fraternity, assuring the dignity of the individual and the unity and integrity of the Nation. Despite Sir Ivor Jennings' sarcasm that "the ghost of Sidney and Beatrice Webb stalk through the pages of the text", Part IV of the Constitution expresses Fabian Socialism without the Socialism. The Constitution seeks humanism, endurance and higher values.

The Constitution Seeks .....

- ***Unity amongst diverse people of India within a common bond of Constitutional Justice on the ideals of liberty, equality, fraternity and justice.***
- ***Respect for human dignity and an unquestioning commitment to equality and non-discrimination.***
- ***Abiding concern for poor and the weak.***
- ***Special focus on the Scheduled Castes, the Scheduled Tribes, the Backward Classes and the Women.***
- ***Humanism, endurance and higher values.***

CHAPTER 4

Constitutional Provisions For Socio-economic Change: Fundamental Rights and Directive Principles of State Policy

4.1 Why Fundamental Rights?

A Chapter on Fundamental Rights or a Bill of Rights as it is called is the political technique of placing certain basic civilisational values as limitations on the majoritarian impulse in a democracy. Democracy has wider moral implications than mere majoritarianism. A mere majoritarian democracy is likely, sooner or later, to degenerate into elective despotism. Pluralism is the soul of democracy. Without respect for pluralism, there will be no true democracy or a conflict-free society. The entrenched and justiciable Fundamental Rights are the expedient adopted by self-governing peoples to recognize certain basic human-rights as inalienable and place them beyond the reach of an amoral majority. Human Rights are not rewards of development; rather they are critical to achieving it. Values of life, liberty and dignity are not subject to political vicissitudes. They depend on the outcome of no elections. They are sacrosanct in themselves and are inalienable. They are put above the reach of the ordinary laws. In regard to the choice of the values, which need such consecration, there are certain basic contemplations as to what a Bill of Rights may legitimately hope to contain. The first, it is a code of relatively specific requirements and prohibitions. The second, it is a mean of correcting structural deficiencies in representative government. The third, it is a Charter on fundamental human rights. A Bill of Rights is a 'formal commitment to the protection of those Human Rights which are considered, at that moment in history, to be of particular importance'. In principle, they are binding upon the State; their violations attract specific sanctions and remedies. Part III of the Indian Constitution enshrines these great rights. Part IV contains directives which enable the realization and effectuation of the aspiration of Part III and give full meaning to them. Part IV is theoretically non-justiciable. But it permeates the whole ethos of Part III.

4.1.2 Sir B.N. Rao, Constitutional Adviser speaking of the scheme of Parts III and IV of the Constitution said:

> ".... There are certain rights which require positive action by the State and which can be guaranteed only so far as such action is practicable, while others merely require that the State shall abstain from prejudicial action ..... It is obvious that rights of the first type are not normally either capable of, or suitable for, enforcement by legal action, while those of the second type may be so enforced".

4.1.3 This debate, in some form or the other, permeates the discourse on the general issues commonly raised on civil and political rights on the one hand and economic, social and cultural rights on the other in the international Human Rights regime. Some, like Michael Zander, argue that economic, social and cultural rights do not admit of consensus on their selection as they, in their adjudication, raise issues of allocation of society's resources over which courts have no sway. This debate loses its edge once it is realized that when what is contemplated is a minimum standard of basic core of rights, such as 'access to life-sustaining water, adequate housing to enable life to go on, primary education, essential medical services and food sufficient to make the right to life meaningful are hardly so exotic or grandiose or too idealistic as to make such minimum guarantee unrealistic'.

4.1.4 But the all important question is how the spirit of Constitution is nurtured by men. 'I often wonder' said Learned Hand "if we do not rest our hopes too much upon Constitutions, upon laws and upon courts. Believe me, there are false hopes. Liberty lies in the hearts of men; when it dies there, no court can do much to help it"

4.2 Constitutional Mechanism For Realization Of Socio-Economic Goals

Indian Constitutional scheme for the realisation of the socio-economic agenda comprises of both the justiciable Fundamental Rights as well as the non-justiciable Directive Principles. The judicial contribution to the synthesis and the integration of the Fundamental Rights and the Directive Principles in the judicial process of "constitutionising" social and economic rights has been crucial to the realisation of the Directive Principles not only as a means to effectuate Fundamental Rights but also as sources of law for a welfare state. Indeed, the Constitution of the Republic of South Africa, 1996 contains certain specific mandates. Section 39 of that Constitution provides as under:-

> "39. Interpretation of Bill of Rights
>
> (1) When interpreting the Bill of Rights, a court, tribunal or forum –
>
> (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
> (b) must consider international law; and
> (c) may consider foreign law.
>
> (2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.
>
> (3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognized or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.".

4.2.2 Article 38 of the Indian Constitution enjoins upon the State to strive to promote the welfare of the people by securing a social order in which justice, social, economic and political shall inform all the institutions of national life and to minimize inequalities in income, status, facilities and opportunities not only amongst individuals but amongst groups of people. Article 39 directs the State *inter-alia* to secure to the citizens the right to adequate means of livelihood; that the ownership and control of material resources of the community are so distributed as best to subserve the common good; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; that the children are given the opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 39A provides that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Article 41 contemplates effective provision for securing the right to work; Article 42 for securing just and humane conditions of work and for maternity relief. Article 45 enjoins upon the State to endeavour to provide within a period of 10 years, for free and compulsory education for all children until they complete the age of 14 years. Article 46 provides for the promotion, with special care of, the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and the Scheduled Tribes. It also enjoins protection to them from social injustice and from all forms of exploitation. Article 47 calls for raising of the level of nutrition and standards of living of the people and to improve public health. These directives are fundamental in the governance of the country.

4.2.3 The Constitution of India, therefore, rests firmly on the principles of liberty, equality, fraternity and justice. It reflects an uncompromising respect for human dignity, an unquestioning commitment to equality and non-discrimination, and an over-riding concern for the poorest and the weakest in society. The Constitution makes it mandatory to protect and promote freedoms, and to assure every citizen a decent standard of living.

Constitutional Mechanism For Realization Of Socio-Economic Goals

- ***The basic constitutional scheme for realization of socio-economic goal is laid in Parts III and IV of the Constitution.***
- ***Entrenched and Justiciable Fundamental Rights enshrined in Part III provide Constitutional guarantee of these basic human rights as being inalienable and not subject to political vicissitudes.***
- ***Directives for realization and effectuation of the ideology of Part III are contained in Part IV - The Directives though non-justiciable theoretically permeate the whole ethos of Part III.***
- ***Synthesis and integration of Fundamental rights with Directive Principles in the judicial process of constitutionalising social and economic rights has been crucial in giving impetus to the pace of realization of the Directive Principles not only as a means to effectuate Fundamental Rights but also as a source of law for a Welfare State.***

4.2.4 After fifty years a grateful nation pays its homage to the founding fathers. Of the American Constitution, it was said in a noble tribute, "that the stream of time, which has washed away and dissolved the fabric of many other constitutions, has left almost untouched its time and strength". This is indeed true of the Indian Constitution as well.

4.2.5 Indian Constitution indeed makes a strong commitment to promoting the well being of citizens. But how it has actually been worked and how the great phrases of the Constitution are translated into action and how its pledge to the poor and the deprived redeemed is an altogether different story. How different indeed is the situation in India today than what Nehru described at the dawn of the Independence is the subject matter of the succeeding chapters.

CHAPTER 5

Rights and Freedoms

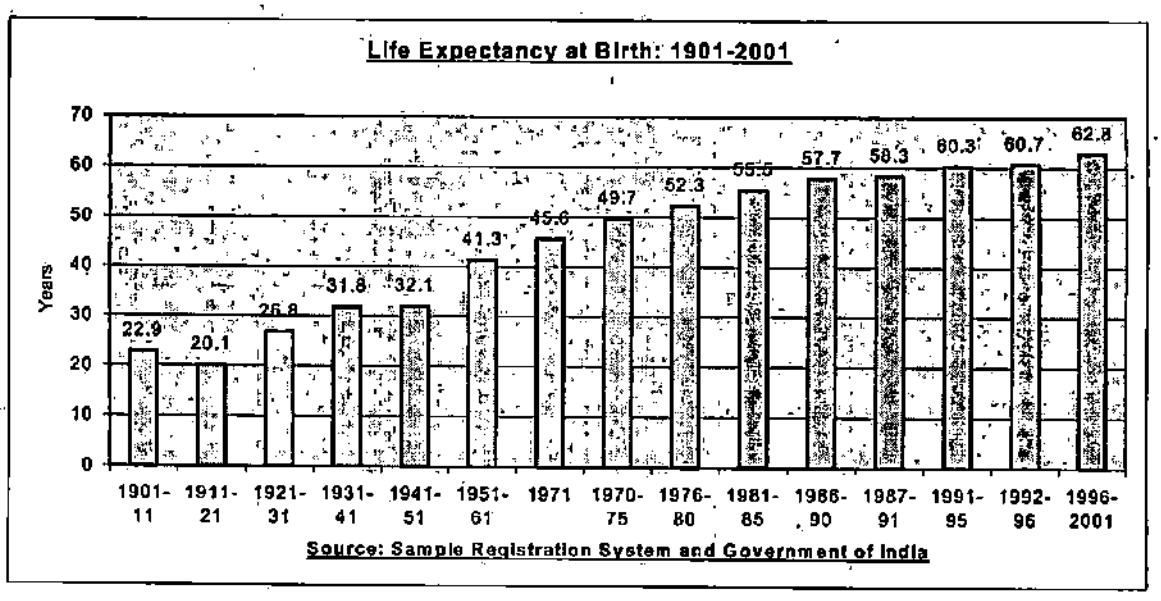
The persistence of human deprivations indeed reflects a serious denial of social and economic rights conferred upon citizens by the Constitution of India. Ill-health, malnutrition, illiteracy, insufficient earnings, social exclusion, lack of say in decision making – all these must be viewed as a set of unfreedoms constituting human poverty. The sections that follow discuss the extent to which the Indian State has fulfilled its Constitutional commitment to provide a decent standard of living to all citizens.

5.1 The Right To Survival

5.1.1 Life Expectancy At Birth

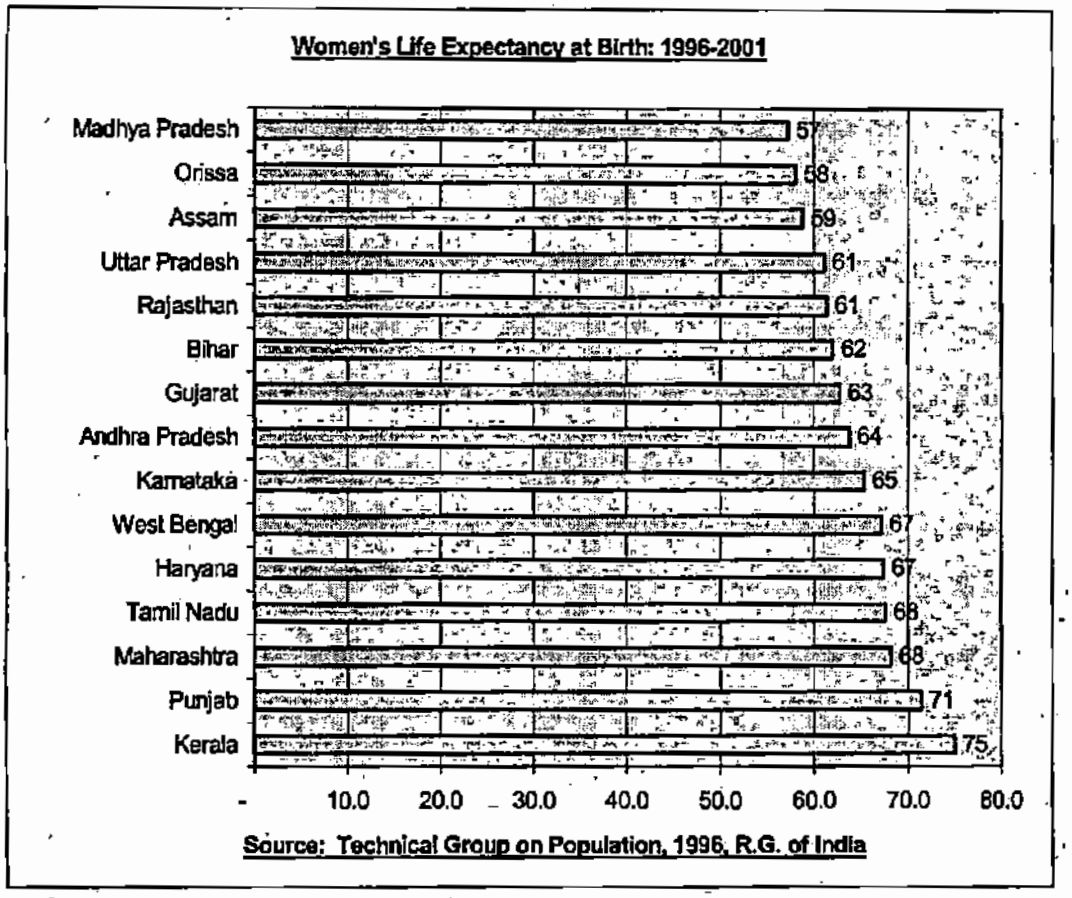
Living long indicates the capability to avoid both fatal illnesses and escape mortality. In every country, much of the gains in life expectancy have come from significant improvements in health and public health conditions, sanitation, levels of environmental cleanliness, and access to safe drinking water – all of which form essential constituents of a decent standard of living. To that extent, life expectancy at birth is not only a measure of the quantity but of the quality of life as well.

Figure 5.1



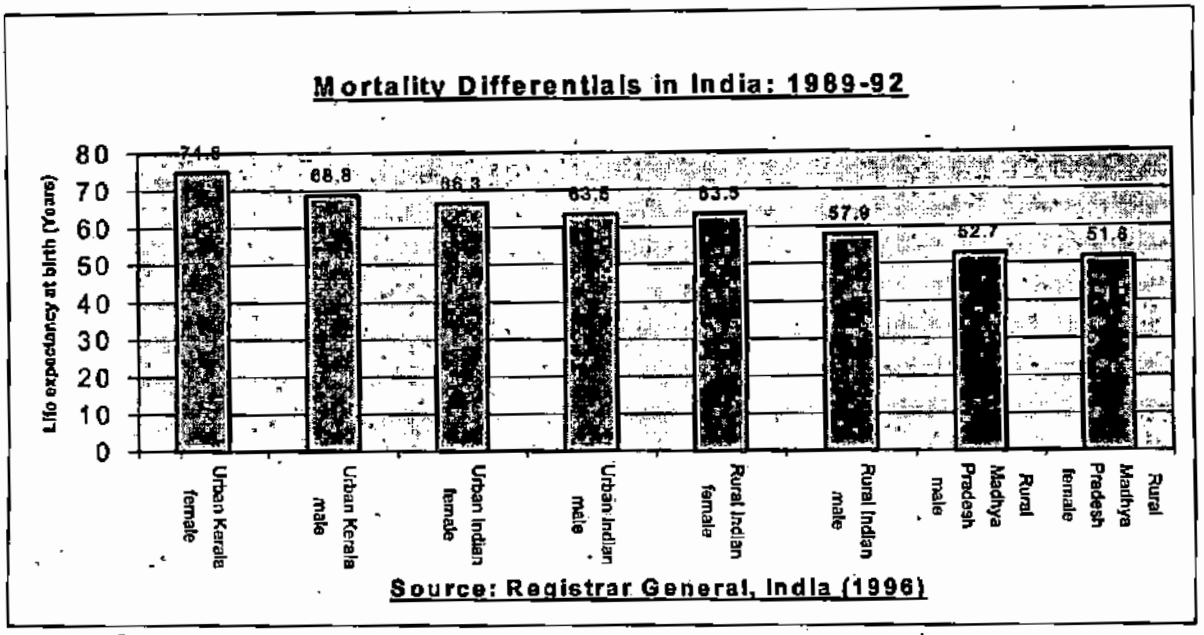
5.1.1.2 Life expectancy at birth has gone up from 32 years in 1950-51 to almost 63 years in 2000. Nevertheless, India's life expectancy today is 17 years less than Japan's life expectancy (of 80 years), 10 years less than life expectancy at birth in Sri Lanka (73 years), and 7 years less than life expectancy in China (70 years). Life expectancy at birth among Indian women is around 63 years. It varies from 57 years in Madhya Pradesh to 75 years in Kerala – a shocking difference of 18 years. The record of Kerala in this regard is so impressive that it is said that a child born in Kerala today can expect to live longer than the one born in Washington D.C.

Figure 5.2



5.1.1.3 In most countries and regions of the world, life expectancy among women exceeds that of men by about 5 years. In 1998, among OECD countries, for example, female life expectancy was 79.6 years; it was 73.2 years among men. In India, however, women outlive men by just one year. Sadly, in Bihar, Uttar Pradesh and Orissa, men outlive women – pointing to the persistence of strong anti-female biases.

Figure 5.3

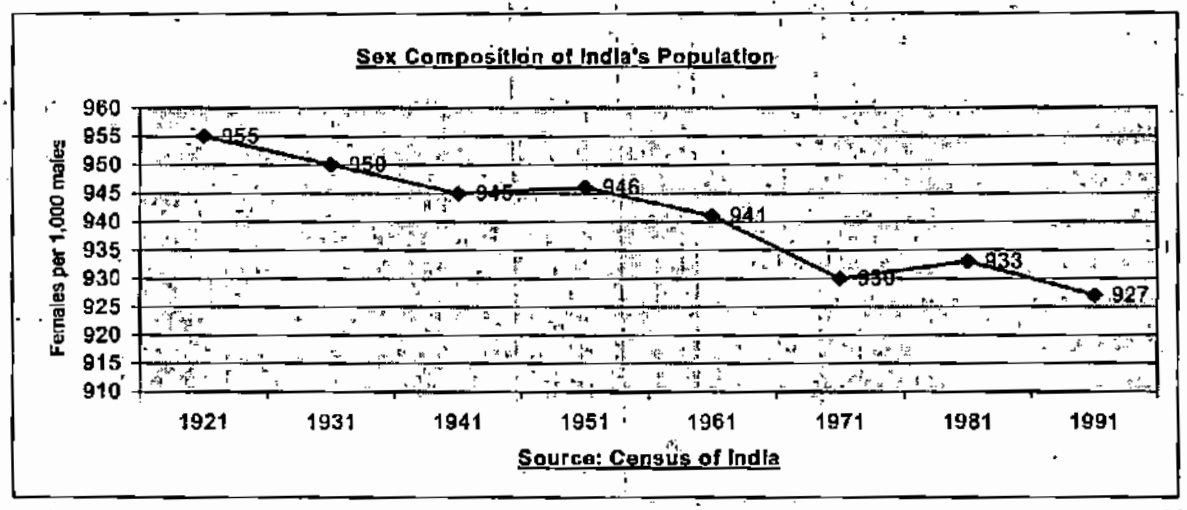


5.1.1.4 Life expectancy at birth also depends on where a child is born within a State. Life expectancy in rural areas tends to be lower than in urban areas – pointing to the unequal opportunities for survival in the two areas. Between 1989-92, life expectancy at birth among women born in rural Madhya Pradesh was 51.8 years – almost 23 years less than the life expectancy among urban women born in Kerala.

5.1.2 Sex Ratio

In all but a few countries of the world, there are typically 1005 women for every 1000 men. Even though boys outnumber girls at birth by about the same proportion, studies have shown that where women and men have equal access to care, nutrition, health and medical attention, women due to their

Figure 5.4



biologically determined stronger constitution, live longer than men, and therefore outnumber them. Men

outnumber women only in societies where women are specifically and systematically discriminated against. India is one such country where there are only 933 women for every 1000 men. A glaring

How Low Is The Female Life Expectancy In Madhya Pradesh?

The female life expectancy at birth in Madhya Pradesh is 57 years.

- ***It is the lowest amongst all the States in India.***
- ***It is 23 years less than the life expectancy of urban women in Kerala.***
- ***It is 26 years lower than the female life expectancy in Japan where it is 83 years.***
- ***Bangladesh and Nepal two extremely poor neighbours of India report a higher female life expectancy of 58.7 years and 57.6 years respectively.***
- ***Only 41 countries in the world report a lower female life expectancy than female life expectancy in Madhya Pradesh. Thirty six of them being in Sub-Saharan Africa – the region devastated by war and AIDS.***
- ***Outside Sub-Saharan Africa only five countries - Sudan (56.8 years), Haiti (56.4 years), Cambodia (55.2 years), Lao P.D.R. (55 years), and Djibouti (52.4 years) – report a lower female life expectancy than of Madhya Pradesh.***

feature of India's development is the strong anti-female bias that characterizes much of society. There is perhaps no more shameful statistics than the fact that, as Amartya Sen points out, some 40-50 million girls and women are 'missing' from the Indian population.

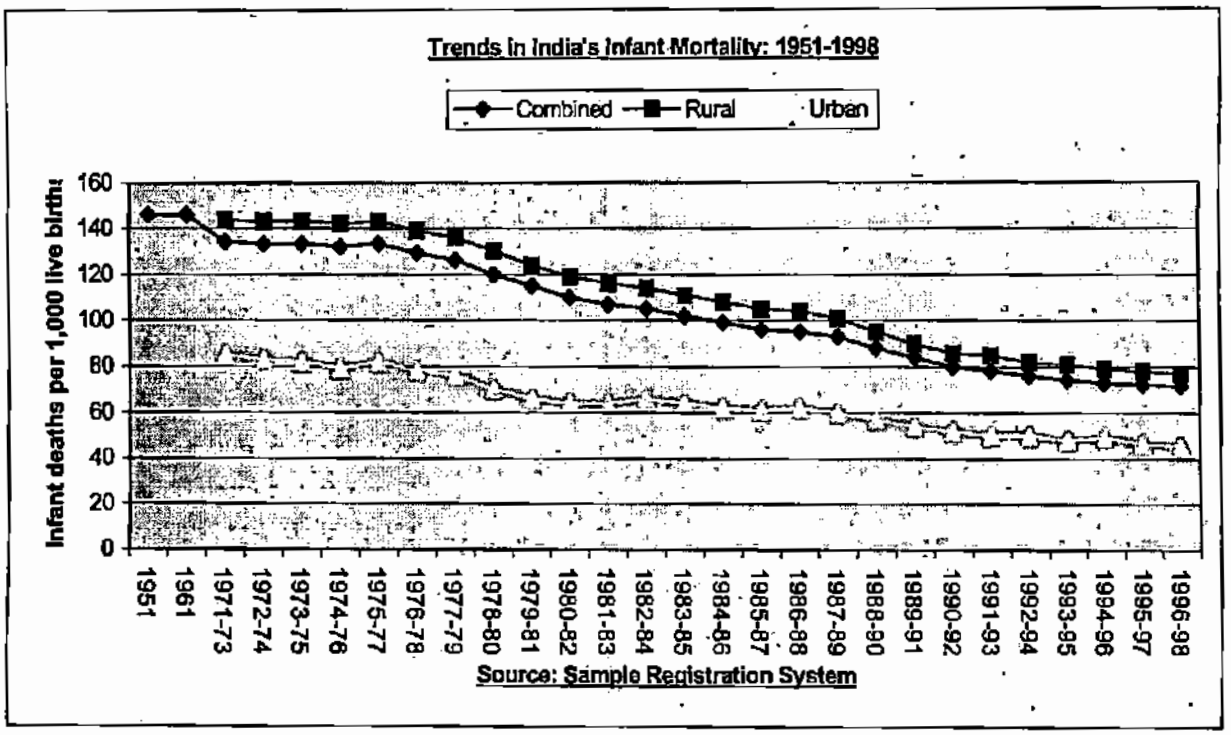
5.1.3 Infant Mortality

Life expectancy at birth is strongly influenced by the rate of child survival. Between 1950-98, infant mortality rates have almost halved to 72 births per 1000 live births – down from 146 in 1951. Close to 2 million infants, however, die every year - and most of these deaths are avoidable.

5.1.3.2 The Infant Mortality Rate (IMR) is more than just a mortality indicator. It is a comprehensive development indicator that reflects the quality of people's lives. Infant and child survival are directly affected by, for example, the earnings and education of parents, the prevalence of malnutrition and disease, the availability of clean drinking water and safe sanitation, the efficacy of health services, and above all by the health and position of women in society. Levels and reductions in IMR therefore reflect achievements and progress in many of the constituents of decent living.

5.1.3.3 There are many countries that do better than India on infant survival. Nepal and India report the same levels of infant mortality (72 infant deaths per 1,000 live births) even though India's per capita income is some 80% higher than Nepal's.

Figure 5.5



5.1.3.4 In South Asia, India reports the slowest rates of improvements in child survival. Between 1970-98, Sri Lanka managed to achieve an annual rate of reduction in IMR of 4.7%. In contrast, India recorded an annual rate of reduction of only 2.1% - less than Bangladesh and Nepal.

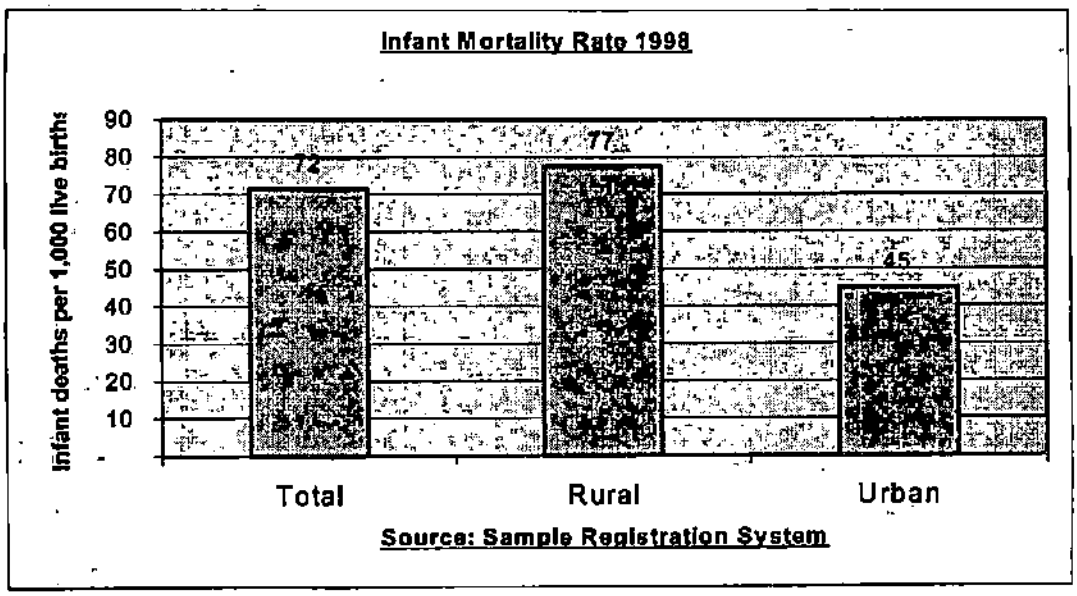
Table 5.1
Reduction in Mortality (1970-98)

Countries	Deaths Per 1,000 Live Births		Average Annual Rate Of Reduction (%)
	1970	1998	
Sri Lanka	65	17	4.68
Nepal	156	72	2.72
Bangladesh	148	79	2.22
India	130	72	2.09
Pakistan	118	95	0.77
South Asia	130	72	2.09

Source: Human Development Report 2000

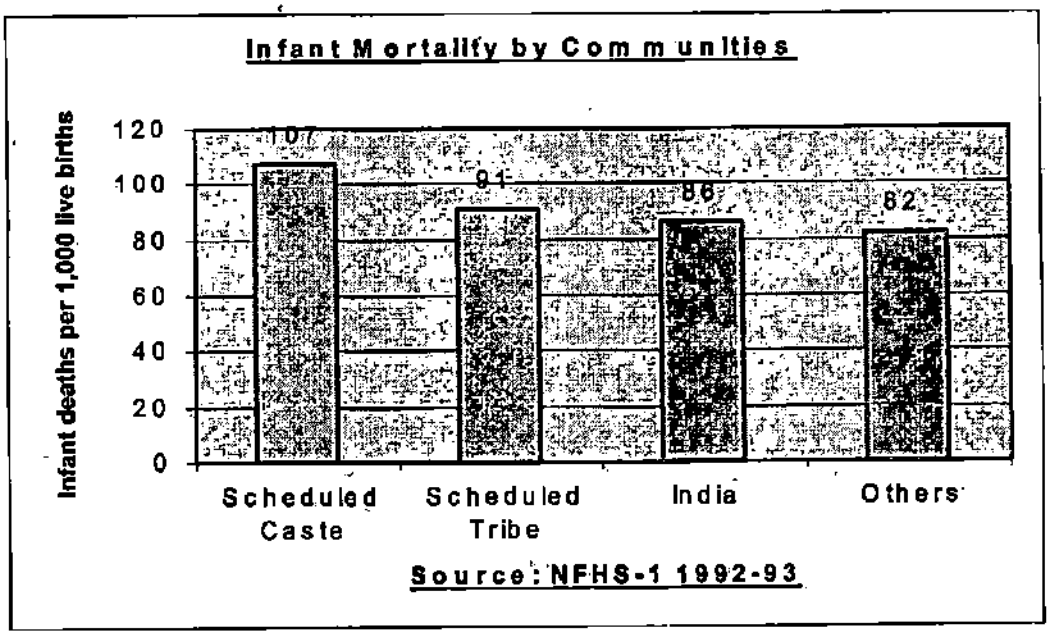
5.1.3.5 Children born in India face unequal opportunities for survival. Much depends once again on the State in which they are born, on the community in which they are born, and whether they are born in rural or in urban areas. In 1998, for instance, the infant mortality rate in rural areas was one-and-half-times higher than in urban areas.

Figure 5.6



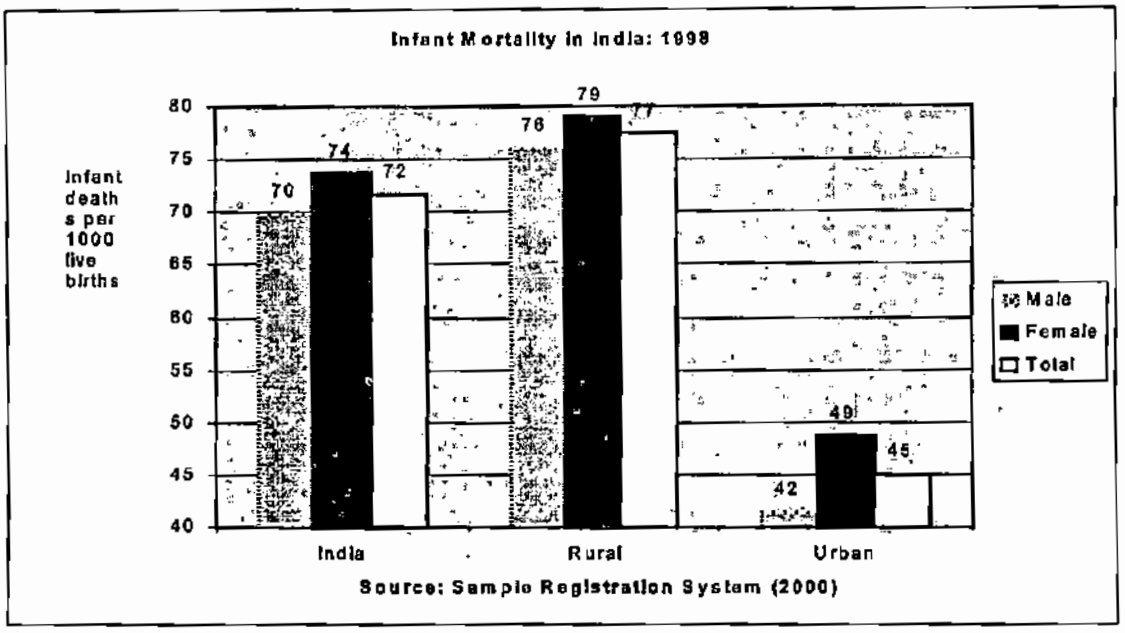
5.1.3.6 Similarly, in 1992-93, the IMR among Scheduled Caste communities was more than 30% higher than among the non-Scheduled Caste and non-Scheduled Tribe communities.

Figure 5.7



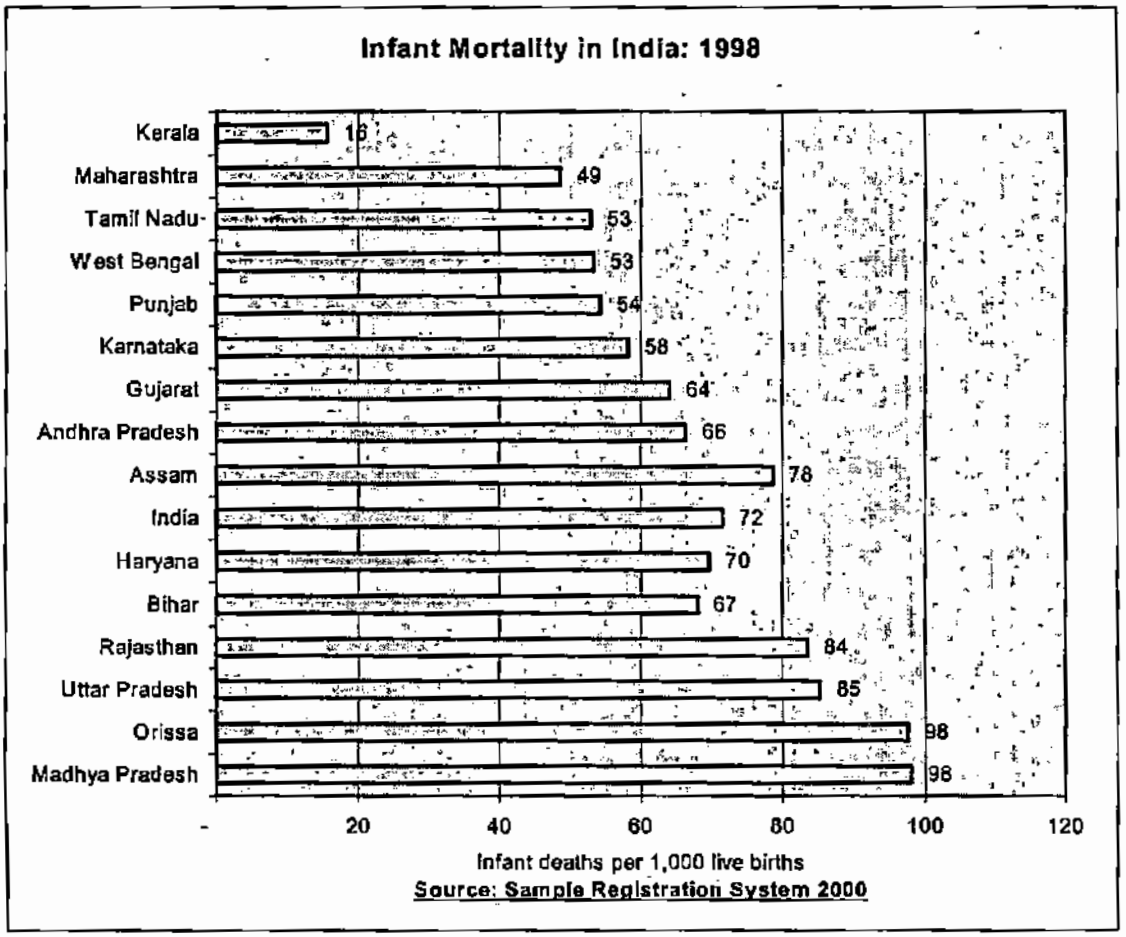
5.1.3.7 IMR also varies by gender. It is typically higher among girls than among boys – though the gap has been narrowing over the years.

Figure 5.8



5.1.3.8 In 1998, levels of IMR varied from 16 in Kerala to more than six times higher - 98 in Madhya Pradesh and Orissa.

Figure 5.9



5.1.3.9 Progress in terms of reducing infant mortality has also not been even across the Indian States. Kerala has been the best performer over the 20 year period – doing three times better than Madhya Pradesh, Karnataka, Orissa and Rajasthan.

Table 5.2
Progress In Reducing Infant Mortality: 1976-96

Sl. No.	Name of the State	Infant mortality rate (3-year moving average)		Annual average rate of reduction Percentage
		1975-77	1995-97	
1	Kerala	52	14	6.4
2	Gujarat	146	62	4.2
3	Uttar Pradesh	181	85	3.7
4	Tamil Nadu	108	53	3.5
5	Punjab	104	52	3.4
6	Andhra Pradesh	123	65	3.1
7	Maharashtra	94	50	3.1
8	West Bengal*	87	56	3.1
9	Bihar*	110	72	3.0
10	Haryana	113	68	2.5
11	Madhya Pradesh	146	97	2.0
12	Karnataka	84	56	2.0
13	Orissa	141	98	1.8
14	Rajasthan	108	85	1.2
15	**India**	**133**	**72**	**3.0**
*** Figures correspond to 1981-83 instead of 1975-77**				

Source: Sample Registration System

5.1.4 Maternal mortality

According to the Sample Registration System, India's maternal mortality rate in 1998was 407 per 100,000 live births. The National Family Health Survey-2 for 1998-99 places the estimate at 540 – 619 in rural areas and 267 in urban areas. These levels are more than 100 times the levels found in the West. High maternal mortality is the outcome of several factors including poor access to safe reproductive health care, absence of emergency obstetric assistance, inadequate attention to women's health and nutrition especially during pregnancy, and the overall lack of freedoms that women need to have to exercise choices and take decisions.

How high is the Maternal mortality in India?

Estimates of maternal mortality rates in India vary from 400 to 540 deaths per 100,000 live births.

- ***Maternal Mortality levels in India are more than 100 times than levels found in the West. Maternal Mortality rates of Singapore, Cuba, Malaysia, Thailand, Russian Federation, China, Sri Lanka and Viet Nam respectively are 6, 27, 39, 44, 50, 65, 130 and 160. All of them are significantly lower than the rate in India.***
- ***Only five countries in the world - Chad (830), Burundi (910), Eritrea (1000), Mozambique and Central African Republic (1100) - report a higher level of maternal mortality than Uttar Pradesh – the most populous State in India .***

Source: Human Development Report 2000

5.1.4.2 Maternal mortality rates are the highest in Uttar Pradesh – 707 deaths per 100,000 live births. What does this imply? With close to several million babies born every year, several thousand mothers die every year due to complications arising out of pregnancy and during child-birth.

5.2 The right to good health

How healthy are Indians? To a large extent, however, the low levels of life expectancy, high rates of infant mortality and maternal deaths reflect the poor health status of Indians. Also, quite apart from the problems of defining what good health is, systematic, reliable and comprehensive data on many of the dimensions of health are not available in India. There are however surrogate indicators that confirm the persistence of poor health among a majority of the Indian population.

5.2.1 Child Malnutrition

Some 53% children (almost 60 million) under five remain malnourished - nearly twice the levels reported in many parts of sub-Saharan Africa. This is despite the fact that the country has achieved remarkable expansion in food production, it has built up a good safety stock of foodgrains, and famine deaths have been virtually eliminated.

Table 5.3
Child malnutrition in South Asia 1990-98

Sl.No.	Countries	Percentage of under-Weight Children below 5
1	Bangladesh	56
2	India	53
3	Nepal	47
4	Maldives	43
5	Bhutan	38
6	Pakistan	38
7	Sri Lanka	34
8	**All developing countries**	**31**
9	**Least developed countries**	**40**
10	**Sub-Saharan Africa**	**31**
11	**South Asia**	**49**

Source: Human Development Report 2000

5.2.1.2 Bangladesh and India report the highest levels of child malnutrition in the world.

5.2.1.3 Progress in reducing child malnutrition has also been slow. Over a six year period, for instance, between 1992-3 and 1998-9, the proportion of under-weight children below the age of 3 years fell by less than 5 percentage points to 46.7%. The reduction in the proportion of 'wasted' children was even smaller – less than 4 percentage points. The prevalence of such high levels of child malnutrition point to the urgent need for improvements in the provisioning of child-health care, better education, increased knowledge on child care practices, and better care of the mother.

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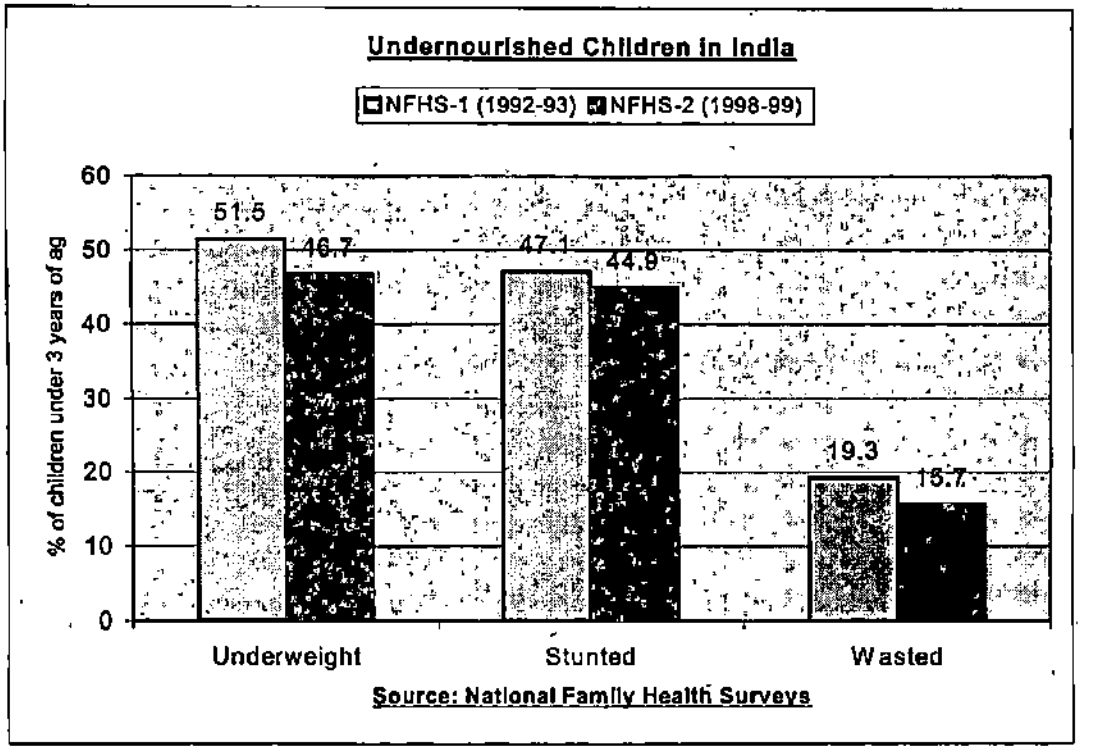
Figure 5.10



5.2.2 Low Birth Weight And Underweight

Another indicator of poor health and nutritional status is the proportion of low birth weight babies born in the country. Low birth weight is particularly high in India. The proportion is only 9% in China and South Korea, 6% in Thailand and 8% in Indonesia. In India, the proportion of low birth weight babies is 33%.

Table 5.4
Infants born with low birth
Weight in South Asia (1990-97)

Sl. No.	Countries	Percentage of Infants with low birth weight
1	Maldives	13
2	Pakistan	25
3	Sri Lanka	25
4	India	33
5	Bangladesh	50
6	Thailand	6
7	Indonesia	8
8	China	9
9	South Korea	9

Source: Human Development Report 2000

5.2.2.2 Few people realize that levels of child malnutrition in India are almost twice the levels reported in sub-Saharan Africa. Indeed the reasons for the prevalence of such high levels of child malnutrition do not lie in the obvious: low levels of income, unequal income distribution, lack of food

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availability, high rates of child deaths, vegetarianism, or even government neglect. Where then do we need to look for explanations? The first clue comes from examining birth weights. Low birth weight is the best predictor of malnutrition. Whereas almost one-third of all babies in India are born low birth weight, in Sub-Saharan Africa, the proportion is just one-sixth. Indian babies begin life by getting malnourished in the womb. Pregnant mothers simply do not get adequate attention and care, diet and rest. This is not surprising at all – given the heavy burden of work on most women. Another closely related factor is care of the child. Solid food supplements are seldom introduced at the end of six months of exclusive breast-feeding. Given the poor nutritional status of the mother, the breast milk itself is often inadequate and may be deficient in nutritious content even when the baby is being exclusively breast-fed. Introducing food supplements at the end of six months is therefore critical for the infant. Even where such food is introduced, responsibility for feeding in poor households is often left to older siblings who just may not have the patience to feed an infant. After all, infants at that age do not eat – they need to be fed. And this takes time – a luxury that many poor women can hardly afford. The clue to child malnutrition therefore lies not in examining income levels or food availability, but in how society cares for its children, and how society treats its women.

5.2.2.3 Several factors account for such a high proportion of low birth weight babies being born in India. Important among them are the inadequate nutrition of mothers during pregnancy, the limited access to good quality health care, and more generally, the lack of appropriate knowledge within the family on caring practices of both women and children.

5.2.3 Anaemia

Whereas data on health status is poor for both women and men, there is sufficient evidence to suggest that women's health remains much more neglected. Recent data on the prevalence of anaemia among women points to the shocking neglect of women's health. According to the National Family Health Survey 1998-99, some 52% of married women between the ages of 15-49 years suffered from anaemia -) in urban areas and 54% in rural areas. The proportion varies from 23% in Kerala to 86% in unachal Pradesh. Prevalence of anaemia among children below the age of three was even higher. Close to 74% of children below the age of three suffered from anaemia – 71% in urban areas and 75% in ural areas.

5.2.4 Inadequate Provisioning Of Quality Health Services

The poor health and nutritional status of Indians reflects, to a large extent, the lack of adequate access to quality health care. India has put in place an extensive system of public health services. The improvements in health have been made possible due to the expansion of a large public health and medical network throughout India. In 1951, the country had only 725 primary health care centres. This increased to more than 150,000 primary health care centres and sub-centres by 1995. The Table below shows the expansion in health services between 1951-97.

Table 5.5

Expansion of Health Services

	1951	1961	1971	1981	1992	1996	1997
No. of Medical Colleges	28	60	98	111	146	165	165
No. of Hospitals	2,694	3,094	3,862	6,804	13,692	15,097	N.A.
No. of Dispensaries	6,515	9,406	12,180	16,751	27,403	28,225	N.A.
No. of Community Health centers	N.A.	N.A.	N.A.	217	2,186	2,572	2,628
No. of Primary health Centers	725	2,565	5,112	5,740	20,704	21,917	22,446

No. of Sub-centres	N.A.	N.A.	28,489	51,405	131,370	134,931	136,379
No. of Hospital beds (all types)	117,178	230,000	348,655	569,495	834,650	870,161	N.A.
No. of Doctors	61,840	83,756	151,129	268,712	395,851	375,291	484,401
No. of Dentists	3,290	3,582	5,512	8,648	11,300	23,953	N.A.
No. of Nurses	16,550	35,584	80,620	154,280	385,410	565,696	N.A.

Source: Ministry of Health and Family Welfare cited in Economic Survey 1998-99

5.2.4.2 Public health care through primary health care centers has spread to most parts of India, but serious issues of quality, access and efficiency plague the proper functioning of the system.

Table 5.6

Percentage Of Children 12-23 Months Fully Immunized (1998-99)

Region	Percentage of children immunized	Region	Percentage of children immunized
North		East	
		Bihar	11
Delhi	70	Orissa	44
Haryana	63	West Bengal	44
Himachal Pradesh	83	West	
Jammu and Kashmir	57	Goa	83
Punjab	72	Gujarat	53
Rajasthan	17	Maharashtra	78
		South	
Central		Andhra Pradesh	59
		Karnataka	60
Madhya Pradesh	22	Kerala	80
Uttar Pradesh	21	Tamil Nadu	89
India	42		

Source: NFHS-2: 1998-99

5.2.4.3 India was a signatory to the Alma Ata Declaration in 1978 that assured 'health for all' by the year 2000. More than two decades later, proper access to health care remains a distant dream for many millions. For example, despite the commitment to assure universal immunization coverage to all children by the year 2000, the National Family Health Survey 1998-99 reports that only 42% children between 12-23 months were fully immunized - 37% in rural areas and 61% in urban areas. The coverage is shockingly low in Bihar – 11% and in Rajasthan – 17%.

5.2.4.4 Again, according to the National Family Health Survey-2 (1998-99), only a third of deliveries in rural India were attended to by a health professional. The proportion was less than 25% in Bihar and Uttar Pradesh – two of the most populous States in India.

Table 5.7

Proportion Of Births Attended By A Health Professional 1997-98

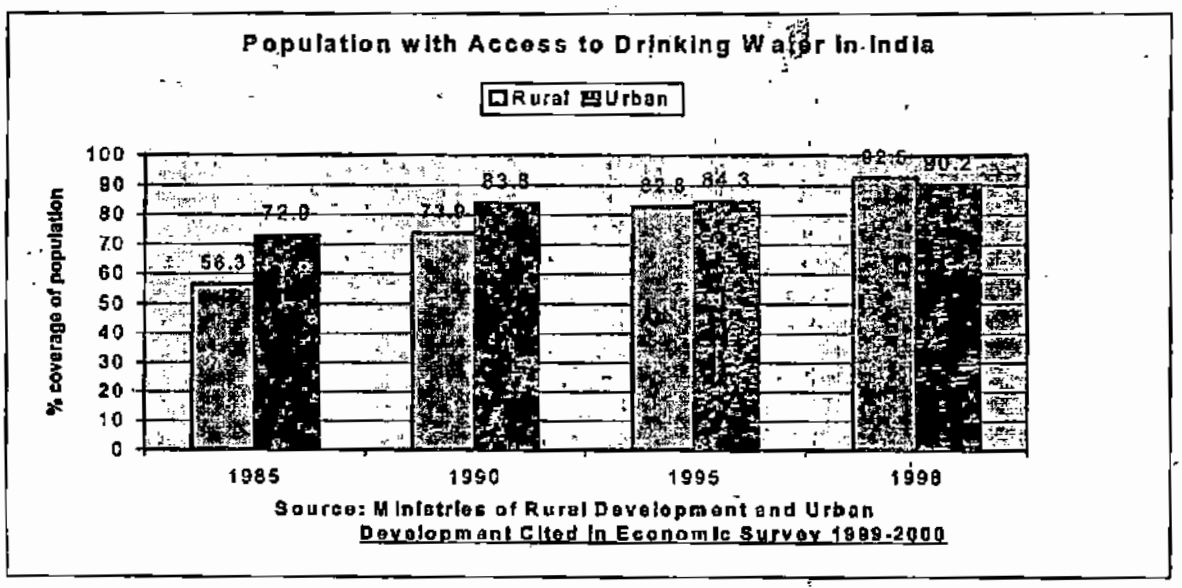
Region	Percentage	Region	Percentage
North		**East**	
		Bihar	24
Delhi	67	Orissa	34
Haryana	42	West Bengal	44
Himachal Pradesh	40	**West**	
Jammu and Kashmir	43	Goa	91
Punjab	63	Gujarat	54
Rajasthan	36	Maharashtra	59
		South	
		Andhra Pradesh	65
Central		Karnataka	59
Madhya Pradesh	30	Kerala	95
Uttar Pradesh	22	Tamil Nadu	84
India	43		

Source: NFHS-2

5.2.5 Access To Safe Drinking Water And Sanitation

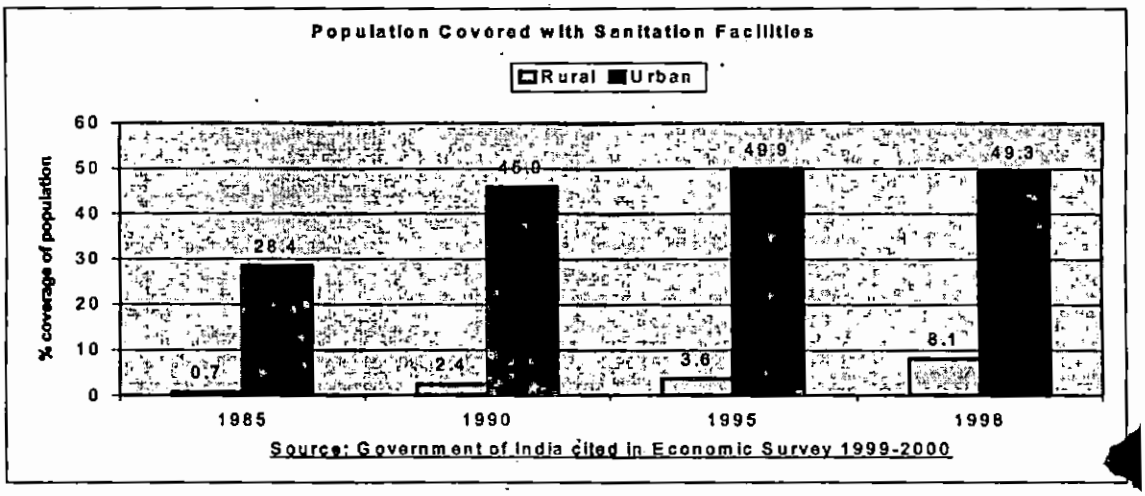
Affecting the health status of people -- and the overall quality of life – is also the limited access to safe drinking water and sanitation. According to recent estimates, over 90% of India's population has access to safe drinking water.

Figure 5.11



Such a high coverage rate for drinking water reflects perhaps the definitional mirage of India – and not t ground reality. Large segments of populations – in both rural and urban areas – remain without access adequate quantities of safe drinking water. The physical limitation of access to water gets compound in the case of the Scheduled Castes by diminished social access and in case of the Scheduled Tribes the remoteness and terrain factors. As a matter of fact, many water-borne diseases including diarrh continue to threaten the lives of millions of children. Water contamination by arsenic and other chemic pose a serious threat in many parts of the country. At the same time, indiscriminate drilling is leading rapid depletion of water levels throughout the country.

Figure 5.12

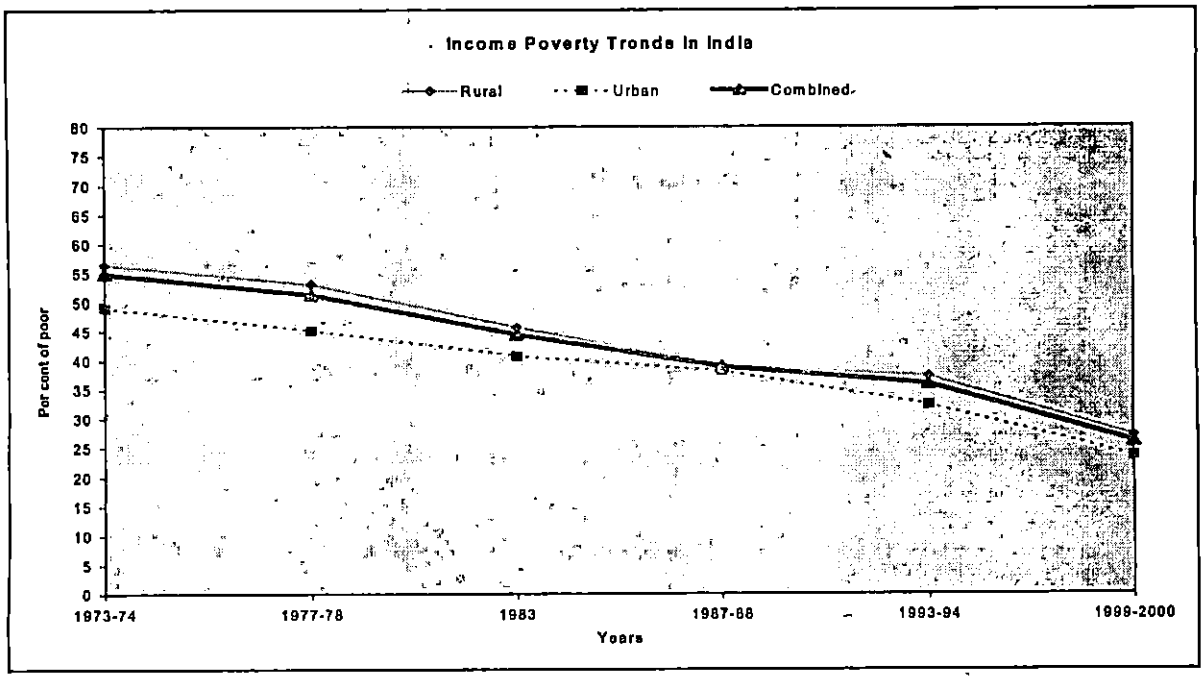


5.2.5.2 The coverage of population with proper sanitation facilities (principally safe disposal of huma excreta) is also very low. More than 90% of the rural population and some 50% of the urban populatic does not have proper sanitation facilities.

5.3 Freedom From Hunger

Poverty prevents the poor from taking advantage of opportunities that become available to the to improve their lot- be it education, health, work, micro credit etc. Poverty creates externalities th cannot be controlled by individual actors. It requires national and international collective action eradicate poverty. India's record in ending poverty unfortunately has not been very impressive. Betwee the year 1951 to 2000, the incidence of rural income poverty fell from 47% to around 27.09%. Too mar people – 260 million people live below the poverty line. These people have neither the energy nor th resources to benefit from the development. New schools might be built, new clinics opened and ne farming techniques developed but these would have little significance for those who cannot think beyon finding food for their family. Children of such parents do not go to schools. Existence of health car facilities is of little consolation to them.. The position of SC and ST communities remains worse than th rest of the population (see Appendices XI & XII). The same is believed to be the case with man backward communities though no official data in respect of them are available.

Figure 5.13



5.3.2 Despite the improved growth performance in the 1990s, income poverty was down only marginally from 38.9% in 1987-88 to 36% in 1993-94. The poverty, however, declined at a much faster rate after 1993-94 with percentage of population below poverty line in 1999-2000 becoming 26.1%. The trend in income poverty reduction has been far from uniform.

- Between 1951 to 1977-78, there was fluctuation. In 1951, 47"% of the population lived below the poverty line. This rose to 64% in 1954-55, fell to 45% in 1960-61 and then rose again to 51.3% in 1977-78.

- Between 1977-78 to 1987-88, significant steady improvement: Between 1977-78 and 1983 the proportion of rural population living below the poverty line fell from 53.1% to 45.71% and by 1987-88, it had fallen further to 39.1%. During the same period, income poverty fell in urban areas as well with the proportion of urban population living below the poverty line declining from 45.2% in 1977-78 to 40.8% in 1983 and to 38.2% in 1987-88. Overall percentage of people living below poverty line fell to 38.9% in 1987-88.

- Between 1987-88 to 1993-94 setbacks. Economic reforms were initiated in 1991, and in the years immediately following the reforms, India witnessed setback in its efforts to reduce income poverty. The proportion of population below the poverty line declined only marginally from 38.9% in 1987-88 and to 36.0% in 1993-94. Rural poverty declined between 1987-88 and 1993-94 from 39.1% to 37.3% and urban poverty declined from 38.2% to 32.4% in the same period.

- After 1993-94 the percentage of people below poverty line declined to 26.1% in 1999-2000. The percentage of rural and urban poverty during the period declined respectively to 27.09% and 23.62%.

5.3.3 Progress in reducing income poverty has also been uneven across the States as Table 5.8 shows.

Table 5.8
Income Poverty Reduction Across The States

States	1973-74	1999-2000	% Reduction In Poverty
Kerala	59.79	12.72	78.73
West Bengal	63.43	27.02	57.40
Tamil Nadu	54.94	21.12	61.56
Punjab	28.13	6.16	78.10
Gujarat	48.15	14.07	70.78
Orissa	66.18	47.15	28.75
Andhra Pradesh	48.86	15.77	67.72
Rajasthan	48.86	15.28	68.73
Maharashtra	53.24	25.02	53.01
Madhya Pradesh	61.78	37.43	39.41
Karnataka	54.47	20.04	63.21
Uttar Pradesh	57.07	31.15	45.42
Bihar	61.91	42.60	31.19
Haryana	35.36	8.74	75.28
India	54.88	26.10	52.44

Source: Planning Commission

5.3.4 Between 1973-74 and 1999-2000, Kerala, Punjab and Haryana achieved maximum reduction in income poverty of over 75%. Orissa and Bihar on the other hand were the States where the lowest reduction of less than 32% in income poverty took place during the period.

5.3.5 The percentage of population below the poverty line has declined as per official estimates, though these estimates are not strictly comparable due to adoption of different methodology etc. in estimation of poverty. The quality and reliability of official data on poverty has however been a matter of debate. There is wide divergence in estimates of poverty in India arrived at by various economists as the following table reveals.

Table 5.9
Percentage of People Living Below the Poverty Line in Rural India in the 1990s

	a SDT/KS	b GD	c S.P.	d P.C.
1989-90	36.69	34.30	34.60	39.1 (87-88)
1990-91	37.48	36.43	35.38	N.A.
1992	40.07 46.12	37.42 43.47	43.92	N.A.
1993/94	44.19 39.65	36.66	37.27 N.A.	37.3
1994/95	43.64	40.02	41.18	N.A.
1995/96	40.08	37.15	37.63	N.A.
1997	38.29	35.78	35.92	N.A.
1998 (6 months)	44.89	N.A.	42.58	27.09 (99-2000)

Source: (a) Suresh D. Tendulkar (1998): "Indian Economic Reforms and Poverty: An Assessment in I.J. Ahluwalia and I.M.D. Little ed: 'India's Economic Reforms and Development, OUP, N. Delhi.

(b) G. Datt (1999) "Has Poverty declined since Economic Reforms? Statistical Data Analysis", Economic and Political Weekly, December.

(c) S.P. Gupta, Member, Planning Commission, 'Trickle Down Theory Revisited', Yojana Bhavan, New Delhi.
(d) Planning Commission, Perspective Planning Division, 1997.

5.4 The Right To Education

India has recorded impressive achievements in higher education. But its record in terms of ensuring universal elementary education remains extremely poor. Today 350 million people in India cannot even read or write, notwithstanding the constitutional promise of providing free and compulsory education for all children by the year 1960.

How Is India Faring on Elementary Education?

- **Elementary education is far from universal despite the Constitutional promise of providing free and compulsory education for all children – by the year 1960. Current literacy rate is estimated to be 65.38%.**
- **India's adult literacy rate in 1991 of 52% was lower than literacy rates in sub-Saharan Africa (57%) and in East Asia (84%).**
- **India's female literacy rate in 1991 was 38% - lower than the rate in sub-Saharan Africa (47%), and in East Asia (76%).**
- **In Sri Lanka, average years of schooling for men are 8 years; it is 2.9 years for Indian men - average years of schooling are 6.4 years for women in Sri Lanka; in India, it is just 1.8 years for women.**
- **62% of primary school entrants reach Grade V in India. The proportion is 90% in Indonesia, 94% in China and Malawi and 98% in Sri Lanka.**

5.4.2 The number of primary schools increased significantly between 1951-95 – from 210,000 to 590,000. Close to 95% of the villages have a primary school within a walking distance of one kilometer. As a result, literacy rates tripled between 1951-91. Yet, adult illiteracy in 1991 was only about 52%, and close to two-thirds of Indian women could not read and write.

5.4.3 Literacy estimates by NSSO suggest that even in 1997 nearly half of Indian women and a third of Indian men could not read and write. Provisional census 2001 figures released recently indicate that in all 65.38% population is literate – percentage of literacy rate being 75.96 amongst males and 54.28 amongst females.

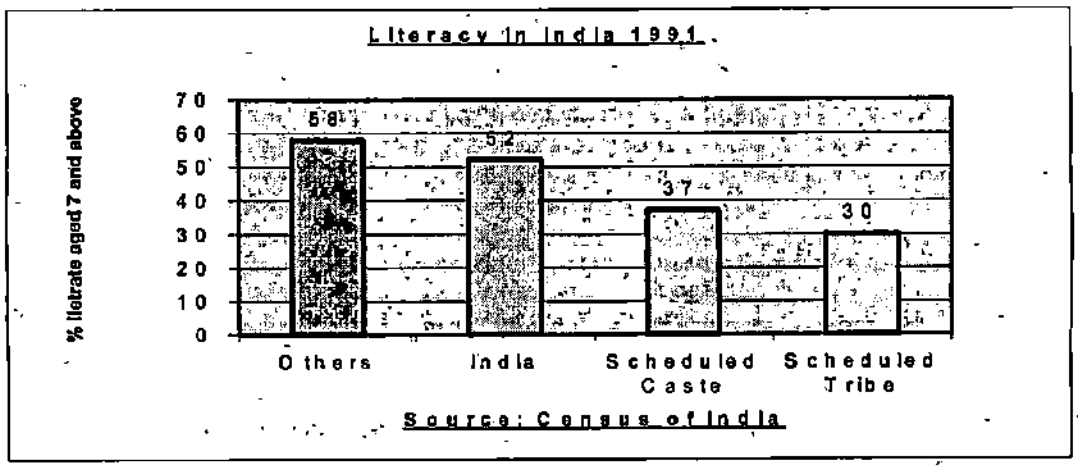
5.4.4 Just about 62% of children reach Grade V of primary schooling, and it is well known that of those completing Grade V, many cannot even read and write a simple sentence.

How Bihar Fares In Women's Literacy ?

- ***In 1981, 13% of Bihar's adult women - (defined as those 15 years and above) – could read and write. This proportion increased to 18% in 1991 and is estimated at present to be 33.57% (latest Census figures).***
- ***Only 50% of girls 6-17 years (NFHS-2, 1998-99) attend school in Bihar.***
- ***Only 15 countries in the world – Niger (7.4%), Burkina Faso (12.6%), Guinea-Bissau (17.3%), Nepal (21.7%), Benin (22.6%), Yemen (22.7%), Senegal (25.8%), Gambia (27.5%), Bangladesh (28.6%), Pakistan (28.9%), Lao P.D.R. (30.2%), Ethiopia (30.5%), Mauritania (31.0%), Mali (31.1%), Central African Republic (31.7%) - report a lower adult literacy rate than the rate among women in Bihar.***

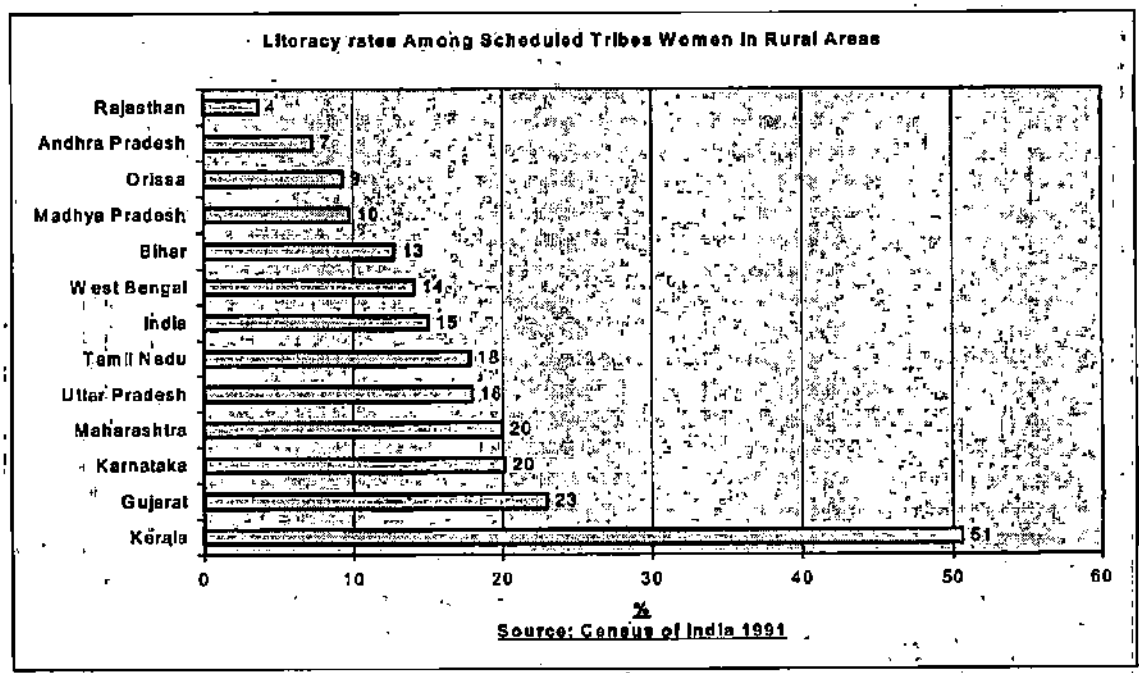
5.4.5 The literacy rates among Indian women is particularly low. Several African countries report higher rates of adult female literacy than India. For instance, the female literacy rate in Sudan is 54%, in Rwanda it is 57% and in Zambia it is 69%. Literacy rates within India also vary significantly across States, among communities, and between rural and urban areas.

Figure 5.14



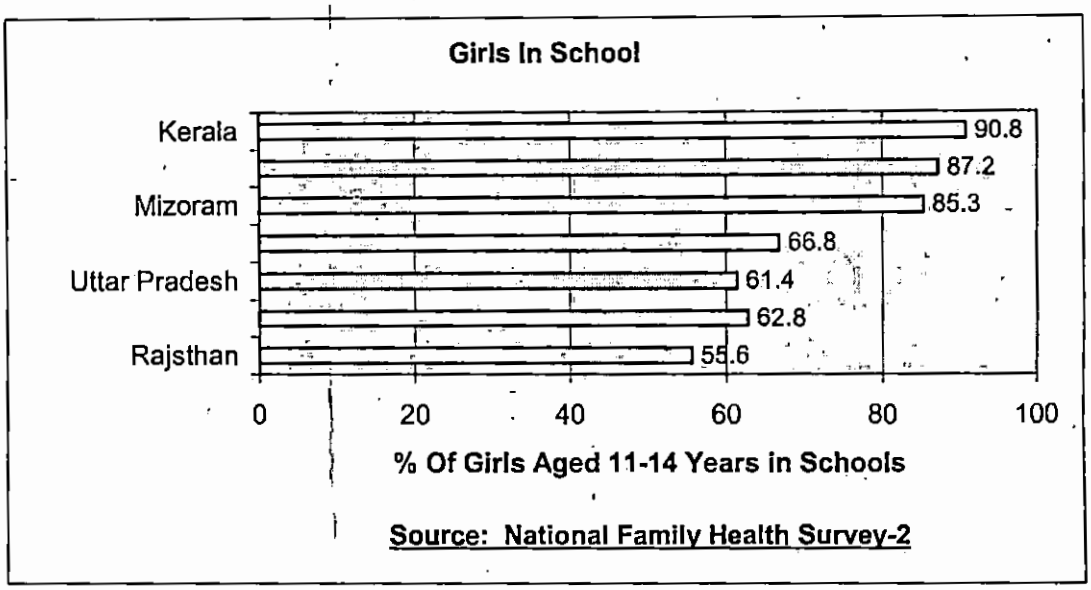
5.4.6 Among the worst off are typically women in rural areas. For example, in 1991, the litera among Rajasthan's Scheduled Tribe women – over 2.5 million of them – was as low as 4%.

Figure 5.15



5.4.7 There has been an improvement in the attendance of girls in schools, but not sufficient enoug for India to realize the goal of universal schooling.

Figure 5.16



5.5 Freedom From Gender-Based Discrimination

Political, economic and social participation and leadership of women, according to Dr.Amartya Sen, is a crucial aspect of "development with freedom". He further argues that adequate recognition of it is of the utmost importance in the political economy of development. In India, unfortunately several forms of gender-based discrimination are prevalent.

5.5.1 Female-Male Gaps In Basic Education

The female-male gaps are most striking in basic education. Consider the following facts:

- In 1991, the male literacy rate was 64%. It was only 39% among women.
- In 1995-96, some 41% of girls dropped out before completing primary school. The proportion was 38% among boys.

5.5.1.2 Most recent estimates for 1997 by NSSO suggest that almost half of Indian women are unable to read and write; the proportion is a quarter for Indian men. Gender differentials in literacy are also very large in most of the States. The position is worst in the States of Rajasthan, Madhya Pradesh, Bihar, Uttar Pradesh and Orissa where difference is over 25%.

Table 5.10
Gender Differentials In Literacy

States/UTs	Literacy Percentage		
	Women	Men	Difference
Rajasthan	35	73	38
Madhya Pradesh	41	70	29
Bihar	34	62	28
Uttar Pradesh	41	69	28
Orissa	38	64	26

Haryana	52	76	24
Gujarat	57	80	23
Jammu & Kashmir	48	71	23
Andhra Pradesh	43	64	21
Arunachal Pradesh	48	69	21
Maharashtra	63	84	21
Manipur	66	86	20
Tamil Nadu	60	80	20
West Bengal	63	81	18
Himachal Pradesh	70	87	17
Assam	66	82	16
Karnataka	50	66	16
Goa	79	93	14
Nagaland	77	91	14
Sikkim	72	86	14
Tripura	67	79	12
Punjab	62	72	10
Kerala	90	96	6
Meghalaya	74	79	5
Mizoram	95	96	1
India	**50**	**73**	**23**

Source: 53rd Round of NSSO

5.5.1.3 Only 2 countries in the world – Guinea-Bissau and Yemen report a larger male-female differential in literacy rates than Rajasthan (38 percentage points).

5.5.2 Anti-Female Bias In Mortality

The anti-female bias is so strong that instances of female infanticide and foeticide are reported even today in parts of India. It is a manifestation of gross injustice against girls and women. Table 5.11 shows both – the States,where female infant mortality rates are higher than those of males and the States where it is other way round.

Table 5.11

A Comparative Picture Of Statewise Mortality Rates

States Where female IMR exceeds male IMR	Male	Female	Excess of female IMR over male IMR	States Where male IMR exceeds female IMR	Male	Female	Excess of female IMR over male IMR
Haryana	61	81	21	Assam	68	67	-1
Uttar Pradesh	79	93	14	Orissa	98	97	-1
Maharashtra	43	56	13	Madhya Pradesh	100	97	-3
Tamil Nadu	48	58	10	Kerala	18	13	-5
Punjab	53	56	4	Karnataka	61	56	-5
Gujarat	63	66	3	West Bengal	59	48	-11
Andhra Pradesh	65	68	3	Bihar	85	67	-18
Rajasthan	83	84	1	India	70	74	-4

Source: Sample Registration System 2000

5.5.3 Freedom To Make Personal Choices

Unequal opportunities in education are in itself a major impediment to young girls and women who are denied the opportunity to realize their full potential. Apart from this, there are several socio-cultural factors that curb women's freedoms.

A Question Of Gender

- *While growing up in South Asia is a perpetual struggle, to be a woman in this region is to be a non-person. Women bear the greatest burden of human deprivation in South Asia.*
- *Discrimination against South Asian women begins at, or even before, birth. Female foeticide and infanticide, neglect of health, and gender-biased feeding practices combined with heavy work burdens, all are manifestations of son preference and the patriarchal structures which prevail across the region. South Asia has one of the most distorted sex ratios in the world – there are only 940 females for every 1000 males.*
- *Invisibility of women in the economy is a worldwide phenomenon, but in South Asia its impact on women is pernicious.*

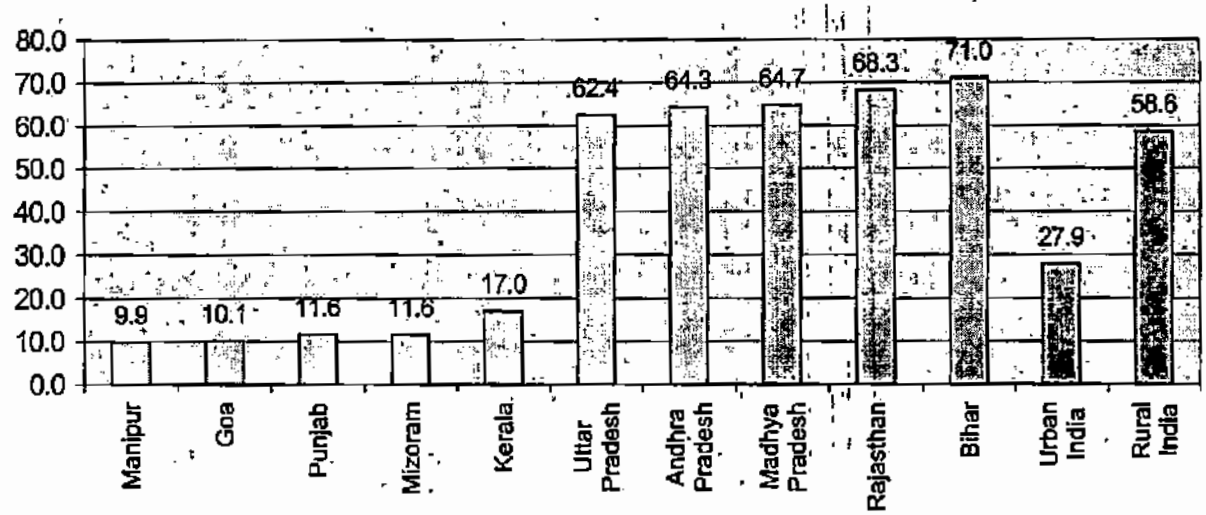
- Human Development in South Asia, 2000

5.5.3.2 Women continue to be denied the freedom to work and equal opportunities in the workplace. For instance, female wage rates in unorganized sector are lower than male rates. A smaller proportion of women has access to higher education; and a large part of women's work goes unnoticed and unrecognized.

5.5.3.3 Most young girls do not even have the freedom to choose whom to marry – let alone when to marry. As a result, most of them are 'forced' to marry young. Even today, some 50% of women get married before the legal minimum age of 18 years.

Figure 5.17

Percentage Of Women Currently Aged 20-24 Married Before The Age of 18 Years



Source: National Family Health Survey-2, 1998-99

5.5.4 Freedom To Participate In Decision Making

Women are making significant gains in the political sphere where increased participation is rapidly empowering women, boosting their confidence, changing perceptions regarding their contribution, and improving their status and position in society. For instance, political participation and grassroot democracy have been strengthened considerably by the 73rd and 74th Constitutional Amendments that have created new democratic institutions for local governance. By 1999, under the provisions of said Amendments 227,698 *gram* Panchayats at the village level, 5,906 Panchayat Samitis at the Block level, and 474 Zilla Parishads at the district level had been created. In addition, some 3,586 urban local bodies had been created. So far, 2.5 million members have been elected to Gram Panchayats, 129,871 members have been elected at the Block level to Panchayat Samitis, and another 12,671 members have been elected at the District level as Zilla Parishad members. Reservation of one-third of all seats for women has been constitutionally ensured in local bodies. The impact of this has been phenomenal. By 1999, as many as 768,582 women had been elected to Gram Panchayats, and 38,582 women to Panchayat Samitis. Another 4,030 women were elected as Zilla Parishad representatives.

Table 5.12
Women's Presence In The Lok Sabha

Year	Seats	Women MPs	% Women MPs
1952	499	22	4.41
1957	500	27	5.40
1962	503	34	6.76
1967	523	31	5.93
1971	521	22	4.22
1977	544	19	3.29
1980	544	28	5.15
1984	544	44	8.09
1989	517	27	5.22
1991	544	39	7.17
1996	543	39	7.18
1998	543	43	7.92
1999	543	49	9.02
Average	**528**	**33**	**6.13**

5.5.4.2 Women have, however, not found adequate representation in the Lok Sabha. The percentage of elected women Lok Sabha members has never exceeded 10. Table 5.12 shows representation of women in Lok Sabhas since 1952. Average representation of women in Lok Sabha works out to only 6.13.

5.5.4.3 The representation of women in Parliaments of various countries of the world is shown in Table 5.13. The representation of women in Indian Parliament is lower to the world's average and is even lower than of Sub-Saharan Africa and Bangladesh.

Table 5.13

Representation Of Women In Parliament Of Various Countries

Countries	Single or Lower House	Upper House or Senate	Total (Both Houses)
Bangladesh	12.4	n.a.	12.4
India	8.8	8.5	8.7
Nepal	5.4	15	7.5
Maldives	6.3	n.a.	6.3
Sri Lanka	4.9	N.a.	4.9

Pakistan	2.8	2.3	2.6[a]
Bhutan	2.0	n.a.	2.0
South Asia (unweighted)	**7.4**	**7.5**	**7.3**
World	13.3	10.6	12.8
Nordic Countries	38.3	n.a.	38.3
Sub-Saharan Africa	11.6	13.2	11.8
East Asia[b]	9.5	13.0	10.1

[a] : Data represents status of Parliaments prior to October 12, 1999.
[b] : East Asian data does not include Indonesia and Republic of Korea.
Source : De Silva 1995; GOB 1991 & 1996a; GOI 1998b; GOI 1999b; Gooneratne & Karuneratne 1996; GOP 1998a; HMG Nepal 1999c; and IPU 1999.

5.4.4 The representation of women in the Central Council of Ministers between 1985 & 2001 is own in the Table 5.14. The data show that women have remained poorly represented in Council of nisters.

Table 5.14

Representation Of Women In The Central Council Of Ministers (1985-2001)

Year	Number of Ministers			Number of Women Ministers		
	Cabinet Minister	Minister of State	Deputy Minister	Cabinet Minister	Minister of State	Deputy Ministers
1985	15	25	0	1	3	0
1990	17	17	5	0	1	1
1995	12	37	3	1	4	1
1996	18	21	0	0	1	0
1997	20	24	0	0	5	0
1998	21	21	0	1	3	0
2001	30	7	35	3	2	4

urce: Central Stastical Organisation And Records of Ministry of Parliamentary Affairs

5.4.5 The representation of women in Council of Ministers in the countries of South Asia is given in Table 5.15. Sri Lanka has more women in Cabinet than India.

Table 5.15

Women In Cabinets (1999)

Country	Women	Men	Women As % Of Men
India	8	76	10.5
Sri Lanka	4	29	13.8
Bangladesh	4	41	9.8
Pakistan	3	26	11.5
Nepal	1	31	3.2

Note : Data for Pakistan refers to situation prior to October 1999.
Source : Chowdhry 1994; GOB 1996a; GOI 2000a; Gooneratne & Karuneratne 1996; and GOP 1998a; HMG Nepal 1999.

.4.6 In 1996, there was only one woman amongst 25 judges in Supreme Court and 15 women in 1 judges of the High Courts. The representation of women in High Courts of countries in South Asia is own in the Table 5.16. Sri Lanka has higher representation of women in High Courts than India.

Table 5.16

Representation Of Women In High Courts In South Asia (1995-2000)

Name of the Country	Men	Women	Women (as a % of men)
Sri Lanka	26	2	7.69
India	488	15	3.07
Bangladesh	45	1	2.22
Pakistan	94	2	2.13
Nepal	101	2	1.98

5.5.4.7 In Indian Administrative Service out of 5047 Officers (1996) only 501 constituting 9.92 were women. The percentage of women officers serving in Government of India as on 1st April, 1997 Under Secretary, Deputy Secretary, Director, Joint Secretary, Additional Secretary and Secretary leve respectively was 6.33, 11.89, 17.2, 13, 7.1 and 3.8. In 1995, 15.36% women were employed in organis sector. In 1996, percentage of female employees in Central Government, State Governments and loc bodies was 7.1, 16.6 and 25.6% respectively.

5.5.4.8 The representation of women at various levels in services, representative bodies a judiciary as revealed by data given in this section remains grossly inadequate even after fifty years working of the Constitution. Lack of adequate participation of women is not only depriving them of th due share in income but also of the social benefits that come from women's enhanced status a independence (including the reduction of mortality and fertility rates).

5.5.5 Freedom from fear

Many women cannot even leave their houses without the permission of men – fathe husbands or brothers. Recent data from NFHS-2 for 1998-99 reveal, for instance, that 80-85% of wom in Uttar Pradesh, Bihar, Madhya Pradesh and Haryana need permission to even visit friends, relatives even go to the market.

TABLE 5.17

Extent Of Women's Autonomy In Various States

States	Per Cent Not Involved In Any Decision Making	Per Cent Of Women Involved In Decision Making About				Per Cent Of Women Who Do Not Need Permission To		Per Ce Of Wome With Acces To Mone
		Cooking	Own Health Care	Purchase of jewellery etc	Staying with parents, siblings	Go to the market	Visit friends and relatives	
Uttar Pradesh	16	78	45	41	36	17	12	52
Bihar	14	82	48	43	44	22	21	67
Rajasthan	13	82	41	43	39	19	17	41
Madhya Pradesh	13	82	37	44	38	21	20	49
Jammu & Kashmir	12	80	56	58	49	12	8	58
Karnataka	8	88	49	47	45	43	34	67
West Bengal	8	87	45	48	47	18	14	51
Andhra Pradesh	7	86	56	61	58	20	15	58
Kerala	7	81	73	63	60	48	38	66

Delhi	5	83	69	59	47	52	34	82
Assam	5	88	65	54	45	13	14	35
Gujarat	4	90	71	74	65	55	51	74
Goa	4	90	62	63	72	67	59	82
Haryana	3	94	67	78	65	37	21	71
Sikkim	3	92	60	58	57	38	42	79
Tamil Nadu	2	92	61	67	62	79	56	79
Punjab	1	97	79	75	68	50	28	78
Himachal Pradesh	1	95	81	93	91	33	31	80

Source: NFHS 1998-99

5.5.5.2 According to the National Crime Records Bureau, nearly 7,000 complaints of domestic violence are reported every year to the Delhi Police. Of these, FIRs are filed in just 10% of the cases. Again, of the 284 cases of rape reported in Delhi in 1992, there were only 3 convictions by 1995. The status of women in India though have shown some improvement in last fifty years but the objective of achieving equality between men and women is still a distant dream. The focus recently has decisively shifted from welfare of women to empowerment of women which has been recognized as being of crucial importance in achieving equality between men and women. A long journey is still ahead to achieve that goal for the women continue to remain grossly under-represented in places where crucial decisions are made.

Gender Justice

Judicial activism in recent years has led to ensuring greater equality for women before the law. Review of legislation from a gender perspective has begun to bring greater equality for women. Greater awareness among women, a stronger recognition of women's rights, sustained public advocacy and effective judicial activism are beginning show some results. The Supreme Court's landmark judgement in 1997 on a writ petition by some women's groups seeking the enforcement of the fundamental rights of working women has paved the way for their greater protection from sexual harassment. The Supreme Court, in 1997, also announced a set of guidelines for sexual harassment for the first time. Court judgements have also started invoking international conventions like CEDAW to make a stronger case for women's justice. Institutions like the National Commission for Women and the National Human Rights Commission are carrying out detailed investigations of injustices against women.

1207 LJ&CA/2002—9A.

CHAPTER 6

Economic Performance

6.1 Significant Economic Growth

India has recorded significant achievements along many dimensions of human development since Independence. Important changes, for example, are visible in the social sphere where affirmative action, political organization and collective mobilization are gradually transforming the status and position of many socially backward communities, particularly among those classified as belonging to Scheduled Castes and Scheduled Tribes. Equally impressive has been the way democracy has taken roots in the country. The 73rd and 74th amendments to the Indian Constitution ensuring reservation of one-third of seats for women in elections to village level *panchayats* and *nagar palikas* have provided a further impetus to democracy, decentralization and local governance. Several positive changes are beginning to be felt at the grassroot level with women enjoying far greater freedoms than before, with the induction of more and more women into public decision making, and with several thousands of self-help groups, voluntary organisations and civil society initiatives engaged in critical development action.

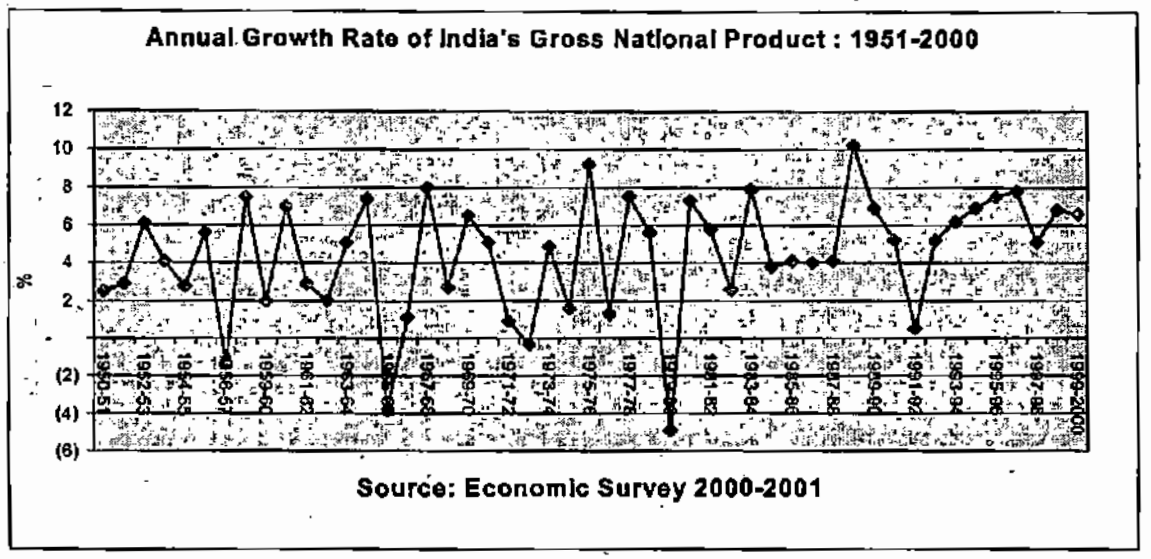
Impressive Economic Performance

- ***Expansion and diversification of production***
- ***New Technologies, modern management***
- ***Advances in Science, Technology, Medicine, Engineering and Information Technology***
- ***Between 1950-2000, the index of agricultural production increased from 46.2 to 176.8***
- ***Between 1960-2000 Wheat Production went up from 11 m. tones to 75.6 million tonnes***
- ***Between 1960-2000 Rice Production went up from 35 m. tones to 89.5 million tonnes***
- ***Impressive expansion of industrial and service sectors***
- ***Index of industrial production went up from 7.9 in 1950-51 to 154.7 in 1999-2000***
- ***Electricity generation increased from 5.1 billion KWH in 1950-51 to 480.7 billion KWH in 1999-2000***
- ***6 to 8% annual growth of GNP between 1994-2000 except in 1997-98***

6.1.2 Most noticeable, however, are the expansion and diversification of production. New technologies, modern management, and the advances in science, medicine, engineering and information technology have increased domestic production of a wide range of goods and services. Particularly significant has been the increase in agricultural production. Between 1950-2000, the index of agricultural production increased more than four fold. Between 1960-2000, wheat production went up from 11 million tonnes to 75.6 million tonnes, and the production of rice increased from 35 million to 89.5 million tonnes. This is no mean achievement for a country that relied on food aid until the early 1960s. Similarly, there has been a rapid expansion in both the industrial and service sectors. The index of industrial production went up from 7.9 in 1950-51 to 154.7 in 1999-2000. Electricity generation went up from 5.1 billion KWH to 480.7 billion KWH.

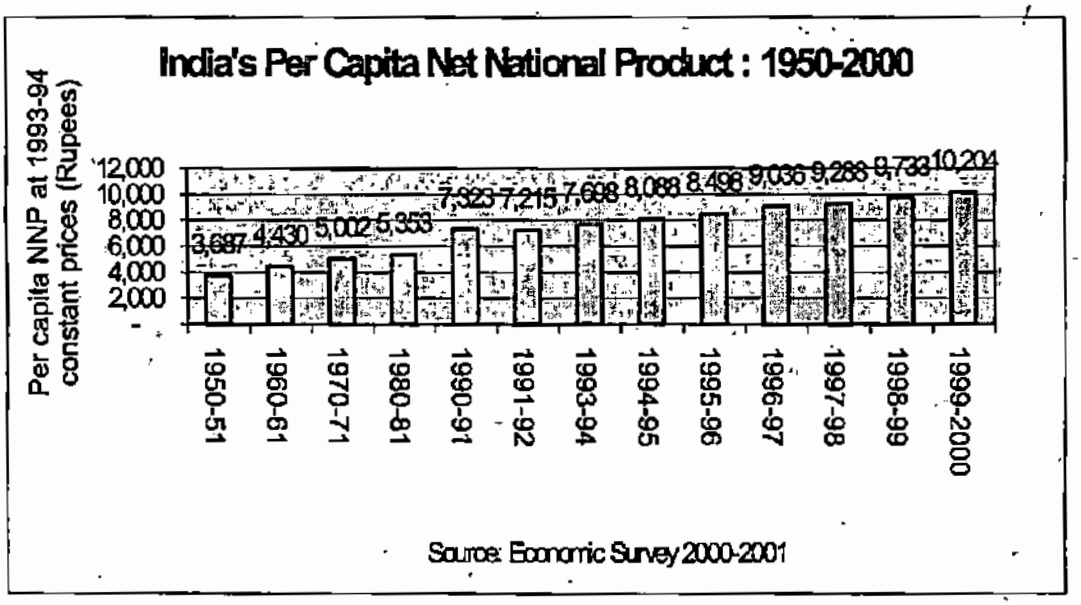
6.1.3 This economic expansion has contributed to a steady and impressive growth in India's GNP. With the exception of 4 years, India has enjoyed a positive growth rate in its GNP every year since 1950. Particularly striking are the higher rates of growth after the mid-1980s, and even more so after the initiation of economic reforms in 1991. Prudent fiscal and economic management enabled India to avert the fiscal crisis that many East Asian experienced in the mid-1990s. On the contrary, India's GDP grew annually by 6-8% per annum between 1994-2000 except in the year 1997-98 when it grew by 4.8%.

Figure 6.1



6.1.4 As a result, India's per capita Net National Product (NNP) in 1999-2000 was more than 2. times higher than what it was in 1951. Before 1980, the annual average rate of increase of per cap income was around 1.2%. Since then, there has been a significant change. In the first half of the 198 per capita NNP grew by 2.4%, and between 1985-90, by 3.2% on average every year. The financ crisis of the early 1990s saw a slowing down in the growth of per capita income, but there has beer quick recovery. Per capita NNP has grown on average by 4.8% every year between 1993-94 and 19 99.

Figure 6.2



6.2 Record Of Human Development

Where we talk of development – it is really human development, which means much more th just an expansion of per capita incomes. Human development has come to be widely accepted as process of enlarging choices, expanding freedoms and assuring human rights. It consists of enhanci

apabilities – for instance, the capability to live a long healthy and productive life, the capability to acquire nowledge, and the capability to lead a decent life. Human development consists of promoting freedoms- eedom from ignorance, freedom from hunger, and the freedom to participate in decision-making. It ntails assuring every citizen freedom from fear and repression, freedom from discrimination and xploitation, and the freedom to lead a life of dignity and freedom to be free of traditional social restraints nd to achieve full potential so as to lead a life of dignity. Ultimately, enhancing capabilities and xpanding freedoms are what matter to people – both women and men – much more than command over come and material goods. And freedoms are assured when rights are fulfilled – social and economic as ell as civil and political.

2.2 Judging development from such a perspective of freedoms and rights differs from the traditional ay of assessing progress in terms of higher incomes, or more and better consumer goods, or more chools and bigger schemes. All these may be necessary, but what ultimately matters is, as Dr. Amartya en writes, how free women and men are to "do what they want to do and to be what they want to be".

2.3 The evaluative question to ask, therefore, is how far India's development over the past 50 years as enriched or impoverished human lives. The concept of human development has been familiar to conomists. But the adequacy of the standards for tools of its measurement is much debated. The GDP GNP was accepted as a measure of the wealth of nations, and its economic performance. But well eing was not necessarily concomitant of wealth. GNP or GDP does not capture the multi-dimensional haracter of well being and its evaluation. GNP merely collects goods as services that can be exchanged r money and not the 'good and bad' of the goods and services. Till recently its concept did not include rtain types of work, particularly of women. GNP does not set-out the ethical and moral issues or the nvironmental issues in development. The negative effects of growth is not its concern. *"The real uestions should thus be: Growth of what, and for whom? Growth of pollution that calls for more anti- llution devices? Growth in crime that employs armies of lawyers? Growth in car crashes requiring ore repair workers? Growth of incomes only for the richest? Growth of military weapons? This is not hat most people want, yet all of these can result in a rise in GNP. Clearly, something is wrong with this m of measurement. Growth in terms of national incomes alone is far too general and abstract a ncept to be a sensible policy objective".*[8]

6.3 Increasing Disparities Of Income

Market economy has its own negative impact on equality of distribution. The share of income d consumption of the poorest 20 per cent in India is 9.2% while that of the richest quintiles is 39.5%. is is perhaps the pattern in the modern market economics. In USA (1994) poorest 20% of the pulation had 1.5% share of income and consumption while the richest 20% had 45.2%. In China 995), the poorest 20% had 5.5% share and the richest 20% 47.5%. This reflects, in a non-trivial sense, anomalies and inequities of the international economic order. Over the 30 years from 1960 to 1990 affluent 20% of the world have enhanced their share of Incomes and consumption to 86% while the orest 20% have had their share reduced to 1%.

.2 The Human Development Report (1999) noted of increasing inequalities between the countries. ays :

> "Inequality between countries has also increased. The income gap between the fifth of the world's people living in the richest countries and the fifth in the poorest was 74 to 1 in 1997, up from 60 to 1 in 1990 and 30 to 1 in 1960."
>
> "By the late 1990s the fifth of the world's people living in the highest-income countries had:

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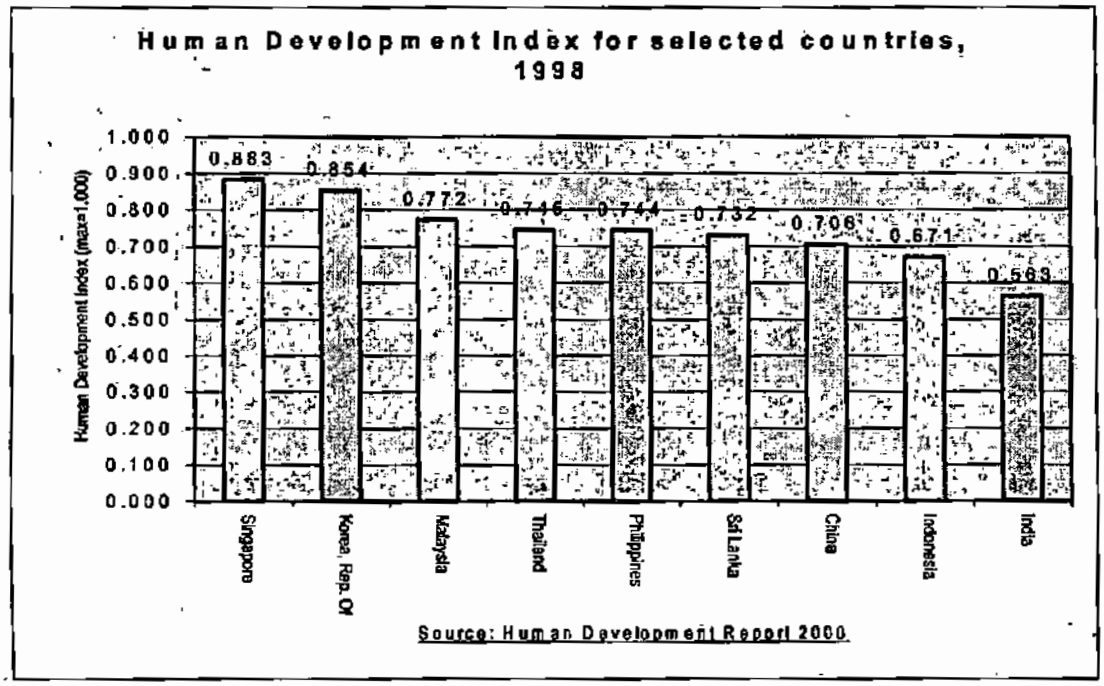
uman Development Report, 1996 page 56

- 86% of world GDP – the bottom fifth just 1%
- 82% of world export markets – the bottom fifth just 1%
- 68% of foreign direct investment – the bottom fifth just 1%
- 74% of world telephone lines, today's basic means of communication – the bottom fifth just 1.5%.

6.4 Social Outcomes Of Economic Performance

Despite enjoying sustained growth, levels of human development in India remain low. The latest Human Development Report 2000 ranks India at 128 on the Human Development Index[1] (HDI) – implying that there are only 45 countries in the world that fare worse than India. Of the countries that fare better than India on the HDI, many are our close neighbours. Sri Lanka, for instance, reports a HDI value of 0.732 whereas the HDI value for India is only 0.563.[2]

Figure 6.3



6.4.2 India's low level of human development reflects the persistence of extensive huma deprivations. Despite the growth record, India's backlog of human poverty is indeed enormous. At th end of 50 years, *human poverty* still persists in substantial number and the backlog of human deprivation are enormous.

[1] The Human Development Index (HDI) is a composite index based on three indicators: longevity as measured by life expectan at birth; educational attainment as measured by a combination of adult literacy (two-thirds weight) and the combined prima secondary and tertiary enrolment ratio (one-third weight); and command over resources needed for a decent standard of living measured by an adjusted value of GDP (expressed in purchasing power parity dollars).

[2] Some countries with lower levels of per capita GDP than India report higher values of HDI. These include, for instan Mongolia, Tajikistan, Viet Nam and Armenia – countries that have witnessed far greater turmoil and conflict in recent years th India has.

Extent of Human Deprivation in India

- *India ranks 128 on the Human Development index – only 45 countries in the world have a lower human development index than India.*
- *Life expectancy at birth is estimated to be 63 years up by 32 years from the life expectancy in 1950-51. But it is 17 years less than of Japan, 10 years less than of Sri Lanka and 7 years less than of China.*
- *Wide variations exist in life expectancy between male and female between the States and between the rural and urban areas*
    - *Life expectancy at birth among Indian women is 63 years – it varies from 57 years in Madhya Pradesh to 75 years in Kerala.*
    - *The record of Kerala pertaining to life expectancy at birth is impressive. A child borne in Kerala can expect to live longer than a child borne in Washington.*
- *260 million people in India live below the income poverty line.*
- *Close to 380 million people are illiterate and nearly 2/3rd of them are women.*
- *52% married women in the reproduction age group suffer from anaemia – the proportion varies from 23% in Kerala to 86% in Arunachal Pradesh.*
- *Nearly 1,10,000 women die during child birth or due to pregnancy related causes - most of them can be avoided.*
- *Infant mortality rate have almost halved to 72 births per 1000 births down from 146 in 1951 but in South Asia, India had the slowest rate of improvement in child survival.*
- *Wide variations in infant mortality rate extist across the states – it varies from 16 in Kerala to 98 (more than 6 times higher) in Madhya Pradesh and Orissa.*
- *One third of all babies in India have low birth-weight; in Sub-Saharan Africa, the proportion is just one-sixth.*
- *53% children under 5 years remain malnourished. Percentage of malnourished children is nearly twice the percentage reported in many parts of Sub-Saharan Africa.*

CHAPTER 7

Learning From Experience

A variety of factors have collectively contributed to the persistence of human poverty – and to the failure to fulfillment of the constitutional commitments in terms of assuring people of their social and economic rights. Economic policy matters, but so does the nature of governance, the degree of people's participation especially of people of deprived and disadvantaged categories, the capacity of civil society organizations, the political priorities of the State, the quality of decision-making, public provisioning of basic social services, the effectiveness of legislation, the empowerment of women, the Scheduled Castes the Scheduled Tribes and backward classes and the care of the environment,. All these factors are closely inter-woven, and many have their roots in entrenched beliefs, social customs, historical happenings, cultural traditions and perceptions of equality and social injustice. A few lessons, however, can be gleaned from the Indian experience of the last fifty years.

7.2 Getting priorities right

How well a nation does economically depend amongst others upon how educated and healthy its people are. There are several such examples. Every nation in the South East Asia that has achieved rapid economic growth and prosperity has its people educated and reasonably healthy. If India remains a poor country, it is largely because of the failure to invest in health and to universalize elementary education.

7.2.2 Within India, Kerala, the only State that has achieved levels of social development comparable to any industrial country, has recorded the maximum reductions in income poverty in the last decade.

7.2.3 What matters ultimately is how secure people are. This is what Mahbub ul Haq described as 'human security'

> "Human security is not a concern with weapons. It is a concern with human dignity. In the last analysis, it is a child who did not die, a disease that did not spread, an ethnic tension that did not explode, a human spirit that was not crushed."

Karnataka and Korea : Similarities and Dissimilarities

Both Karnataka and Republic of Korea have a similar population size. But that is where the similarity ends. Per capita income is more than 20 times higher in Korea than in Karnataka. With Karnataka leading the information technology boom, prospects do exist for a dramatic economic expansion. But the key questions are: Will this be possible? Will it be sustained? If Korea has done well, it is because the country has ensured almost universal literacy and good health to its people. Today, life expectancy at birth among women in Korea is 11 years higher than in Karnataka and the infant mortality rate 10 times lower. The female literacy rate in Korea is 95%, whereas it is only 44% in Karnataka. If Karnataka aspires to become an economic power like Korea, the State must assign top priority to investing in its people – in their health, nutrition and education.

7.2.4 Human security is to be interpreted as security of people, not just territory. It has to do with the security of individuals, not just nations. It is concerned with the security of all people everywhere – in their homes, in their jobs, in their streets, in their communities, in their environment. It calls for security through development, not through arms.

7.3 Not By Growth Alone

Generally speaking, larger incomes are associated with higher levels of social development. But the linkages are not always obvious. Kerala, for instance, has achieved relatively high levels of social development even at a low level of income. Life expectancy among women in Kerala is 11 years higher than in Haryana – much richer State in terms of per capita income. Similarly, there is no easily predictable relationship between income levels and the percentage of literate women in different States. In 1997-98, for example, West Bengal reported a per capita State Domestic Product of Rs. 8,491 – similar to Himachal Pradesh (Rs. 8,747). However, whereas 27% of married women in the age group of 15-49 years were illiterate in Himachal Pradesh, the proportion was 43% in West Bengal.

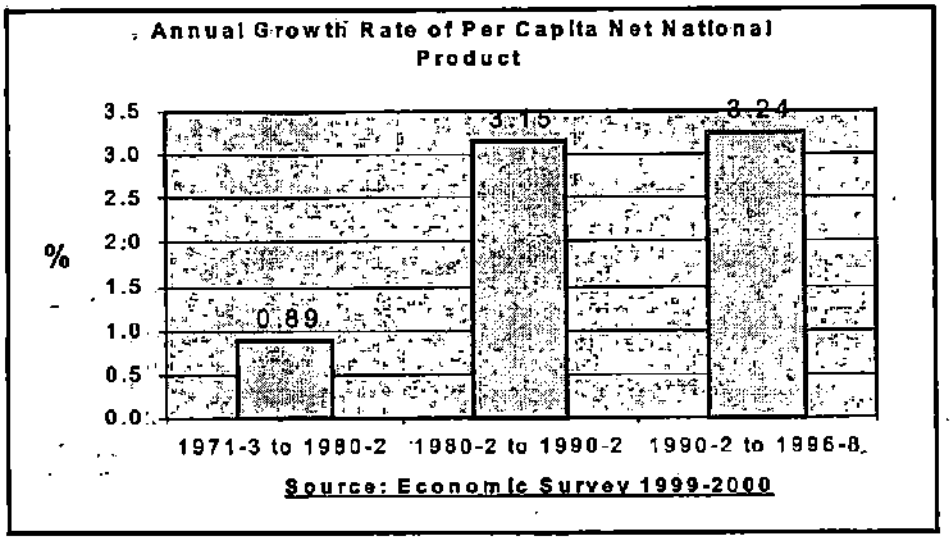
7.3.2 Again, women in both rich and poor States face similar unfreedoms. The female-to-male ratio is the lowest in Punjab and Haryana – two of India's most prosperous States. Millions of girls, in both rich and poor families, are denied the opportunity to pursue education or seek employment or even step out of their homes without permission. Many are denied the freedom to voice their opinions, take decisions relating to their marriage, or even decide how many children they should have. The position in respect of the Scheduled Castes, the Scheduled Tribes and other backward classes which constitute the bulk of India's population has been dealt in Chapter 9. Even, urban and metropolitan cities that seem by far more affluent than the rural villages suffer from much higher levels of air pollution and congestion.

Table 7.1
Average Rate Of Growth Of Per Capita Income

	Percentage Of Growth Of Per Capita Income	
	1980-81 to 1990-91	1991-92 to 1997-98
States Where Growth Is Accelerating		
Gujarat	3.08	7.57
Maharashtra	3.58	6.13
West Bengal	2.39	5.04
Tamil Nadu	3.87	4.95
Kerala	2.19	4.52
Combined SDP of 14 states	3.03	4.02
Rajasthan	3.96	3.96
Madhya Pradesh	2.08	3.87
Andhra Pradesh	3.34	3.45
Karnataka	3.28	3.45
States Where Growth Is Decelerating		
Punjab	3.33	2.80
Haryana	3.86	2.66
Orissa	2.38	1.64
Uttar Pradesh	2.60	1.24
Bihar	2.45	1.12

7.3.3 India is among the few developing countries that has since 1951, with the exception of four years, recorded a positive growth in its GNP (see Figure 6.1). In fact, after the initiation of economic reforms in 1991, growth has accelerated - nationally and in most of the States.

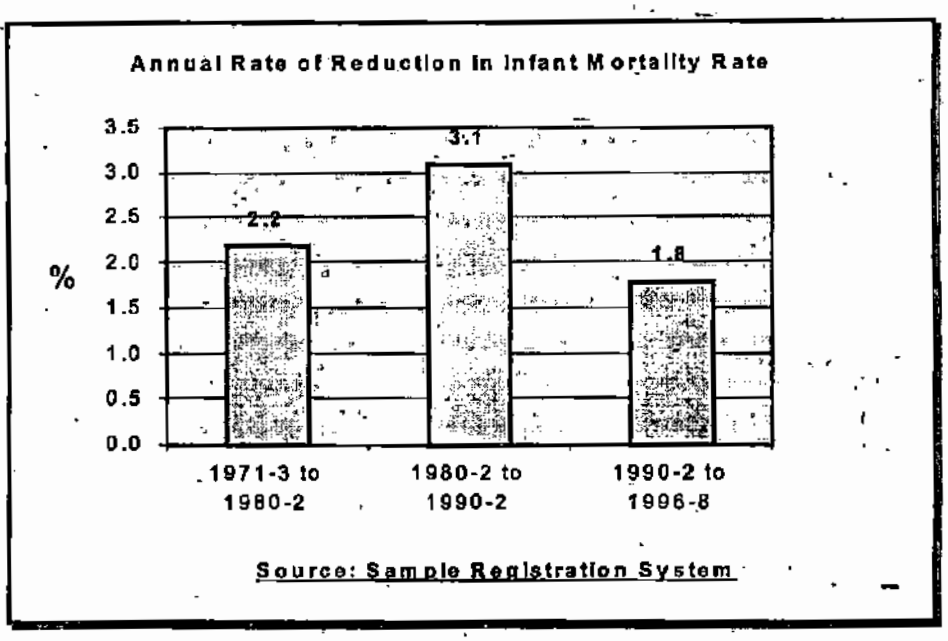
Figure 7.1



Source: Economic Survey 1999-2000

7.3.4 But despite the positive growth record, there has not been a perceptible and significant improvement in the quality of people's lives. For instance, there has been a marked slowing down in the rate of reductions in infant mortality in recent years.

Figure 7.2



7.3.5 Again, despite the better growth record in recent years, progress in bridging gender gaps has been slow. Between 1991 and 1997, literacy gaps between women and men has hardly been bridged.

Table 7.2
Excess Of Male Over Female Literacy Rates (1991-97)

States	Excess Of Male Literacy Percentage Over Female Literacy Percentage		Increase or Decrease
	1991	1997	
Tripura	21	12	9
Karnataka	23	16	7
Himachal Pradesh	23	17	6
Mizoram	7	1	6
Haryana	29	24	5
Punjab	15	10	5
Sikkim	19	14	5
Manipur	24	20	4
Assam	19	16	3
Goa	17	14	3
Maharashtra	24	21	3
Meghalaya	8	5	3
Tamil Nadu	23	20	3
West Bengal	21	18	3
Bihar	30	28	2
Jammu and Kashmir	25	23	2
Orissa	28	26	2
Uttar Pradesh	30	28	2
Andhra Pradesh	22	21	1
Arunachal Pradesh	22	21	1
Gujarat	24	23	1
Kerala	7	6	1
Madhya Pradesh	30	29	1
Nagaland	13	14	-1
Rajasthan	35	38	-3
India	**25**	**23**	**2**

Source: Census of India and NSSO (53rd Round)

7.3.6 Dr. Amartya Sen in his book "Development as Freedom" has pointed out that negative linkage between female literacy and fertility appears to be, on the whole empirically well founded. Such connections have been widely observed in other countries also, and it is not suprising that they should emerge in India.

7.3.7 Similarly, there has been only a marginal improvement in access to basic health care between 1992-93 and 1998-99.

Table 7.3
Improvements In Child Immunization Coverage Between The Year 1992-93 And 1998-99

States	Increase in percentage of fully immunized children (12-23 of age) between 1992-93 & 1998-99
Kerala	25
Tamil Nadu	24
Himachal Pradesh	21
Maharashtra	14
Andhra Pradesh	14
Delhi	12
Punjab	10
West Bengal	10
Haryana	9
Orissa	8
Goa	8
Karnataka	8
Gujarat	3
Uttar Pradesh	1
Bihar	0
Rajasthan	-4
Madhya Pradesh	-7
Jammu and Kashmir	-9
India	**7**

Source: NFHS-1 and NFHS-2

The Table reveals that between 1992-93 and 1998-99:

- Immunization coverage has worsened in Madhya Pradesh and Rajasthan despite the fact that there has been acceleration in growth of per-capita income in both States.
- Bihar and Uttar Pradesh, two of the most populous but poor health States, have recorded practically no improvement in immunization coverage.
- Kerala, Tamil Nadu and Himachal Pradesh have done the best in terms of expanding immunization coverage.

7.3.8 What matters is not the quantum and pace of growth, but its quality. First and foremost, priority must be given to how growth is generated. Economic growth should not impoverish the poor, should not continue or worsen social inequality, adversely affect the environment, and lead to a further deterioration in the quality of daily life. Policies are needed that will ensure a more equitable distribution of the benefits of growth – across States, between different communities and between social categories. Similarly, priority must also be given to ensure adequate provisioning of basic social services and infrastructure for ensuring greater connectivity to people in remote areas.

Snapping Of Vital Link Between Growth And Human Development

Situations in which growth may not result in human development are –

- ***Jobless growth - overall economy grows but does not expand the opportunities for employment.***
- ***Ruthless growth - where the fruits of economic growth mostly benefit the rich, leaving millions of people struggling in poverty.***
- ***Voiceless growth - where growth in the economy is not accompanied by an extension of democracy or people's empowerment.***
- ***Rootless growth – where growth causes people's cultural identity to wither.***
- ***Futureless growth - where the present generation squanders resources needed by future generations.***

Source: Human Development Report 1996

7.3.9 There are many ways in which economic growth can be harnessed to improve human development. One way is to make economic growth broad-based and employment-intensive. For human development to occur, people must become active agents of change, not merely passive beneficiaries. They must be allowed to actively participate in generating growth and shaping its direction. This involves providing to people basic economic and political freedoms. Economic growth must be sustainable if it is to advance human development. Mining nature and undermining natural support systems pit present human development against any future human development.

7.4 Ensuring Universal Access To Basic Social Services

At the centre of empowerment and of development efforts are investments in basic human capabilities - in primary education, primary health care, nutrition programmes, family planning and essential physical infrastructure, such as housing, electricity and roads. Lacking these essentials, people experience human poverty.

7.4.2 Ensuring universal access to basic social services lies at the root of assuring every citizen a decent standard of living. In India, much of the human poverty can be attributed to a failure to assign a high priority to it. There is serious under-provisioning and overall shortage of good quality and affordable social services. Millions of children are out of school largely because the State has failed to provide good quality basic education. Several thousands of women die during childbirth simply because reproductive health care services are just not adequate. Millions of households do not have access to safe drinking water despite the claim of extensive physical coverage. The situation with respect to sanitation is worse still.

7.4.3 A feature of India's development has been the over-emphasis on physical expansion. The consequence has been a serious neglect of quality issues – be it in health, education or access to drinking water. It is claimed that close to 95% population has access to a primary school within a walking distance of one kilometre. Several studies have, however, pointed out, of course, that many of the school buildings are crumbling, they lack basic teaching materials, classrooms are over-crowded, and very little teaching activity takes place there during the school hours. The quality of basic education remains poor.

7.4.4 Similarly, there has been a physical expansion in the provisioning of primary health care services. But the ability of the public health system to cater to the needs of the poor remains low. The primary health care centres typically lack even minimal facilities, the staff is poorly trained and the quality of health care delivered is poor. As a result, even the poor are forced to often seek health care from less-qualified and exploitative private practitioners.

7.4.5 The reach of India's public health care system is extremely limited. And despite the acceleration in growth after 1991, progress remains slow. For example, despite the pledge to ensure universal immunization coverage for all children, a recent survey in 1998-99 found that only 42% of children between the ages of 12-23 months were fully immunized – up from 35% in 1992-93. In Bihar, the proportion has remained unchanged at 11% between 1992-93 and 1998-99.

7.4.6 Special efforts are needed to pay attention to women's health needs. Even something as basic as ensuring women safe access to delivery has been poor. In 1992-93, only 34% of all deliveries were attended to by a health professional. The proportion varied from 19% in Bihar to 90% in Kerala. The improvement over the past 5 years has been insignificant. In 1998-99, only 43% of deliveries were attended to by a health professional.

Table 7.4
Per Cent Of Births Attended By A Health Professional

	1992-93	1998-99	Change
India	**34**	**43**	**8**
North			
Delhi	53	67	14
Haryana	30	42	12
Himachal Pradesh	26	40	15
Jammu and Kashmir	31	43	12
Punjab	48	63	14
Rajasthan	22	36	14
Central			
Madhya Pradesh	30	30	0
Uttar Pradesh	17	22	5
East			
Bihar	19	24	5
Orissa	21	34	13
West Bengal	33	44	11
West			
Goa	88	91	3
Gujarat	43	54	11
Maharashtra	53	59	6
South			
Andhra Pradesh	49	65	16
Karnataka	51	59	8
Kerala	90	95	5
Tamil Nadu	71	84	13

Source: NFHS-1 and NFHS-2

7.5 Rationalize Public Spending

Public spending has played an important role in India's poverty reduction. The marked decline in income poverty from the mid 1970s to the end of the 1980s was a period when public expenditures rose sharply. Between 1976 and early eighties, real per capita development expenditure increased at an annual rate of 6%. It was also a period that coincided with declaration of an increased political commitment to poverty eradication, and the introduction of several new anti-poverty programmes. Nationalised banks were required to assign 40% of their lending to priority sectors – small farmers, small businesses and artisans. New employment-creation and asset generation programmes were introduced. The period also witnessed a substantial increase in rural non-agricultural employment, and real wages went up sharply.

7.5.2 Government expenditures on poverty alleviation appear to have strong "trickle down" characteristics, much more distinctly than income growth. Practically all States that have succeeded in reducing income poverty have made sizeable investments in poverty alleviation programmes. The size of government spending matters, and so does the efficiency of spending. It cannot be denied that leakage, wastage, corruption and inefficiency greatly reduce the impact on poverty reduction. The enormous scope that exists for improving the efficiency of public spending shows the potential that exists for rapidly reducing human poverty with significant improvements in the implementation and management of development programmes.

7.5.3 Some recent trends in public spending on poverty alleviation are however disturbing. Between 1990-91 and 1996-97, the Central Government expenditure as a percentage of GDP at current market prices went down from 18.1% to 14.3%. During this period, however, Central Government expenditure on social sectors (comprising education, health and family welfare, water supply, sanitation, housing, social welfare, nutrition, rural employment and minimum basic services) as a ratio to total expenditure increased from 7.7% to 10.5%. Real development expenditure per capita by the States went up from Rs.207 in 1980-81 to Rs.367 in 1995-96. However, what is worrisome is that during this period, development expenditure as a multiple of non-development expenditures fell from 3.2 in 1980-81 to 2.1 in 1995-96.

7.5.4 Reliable information on the total level of investments in India is published, but similar data across Indian States is not available. In the absence of State level data on investment, attention is paid to the size of the State plans. The Table below presents the average ratio of plan expenditure to State Domestic Product in the 1980s and during the 1990s.

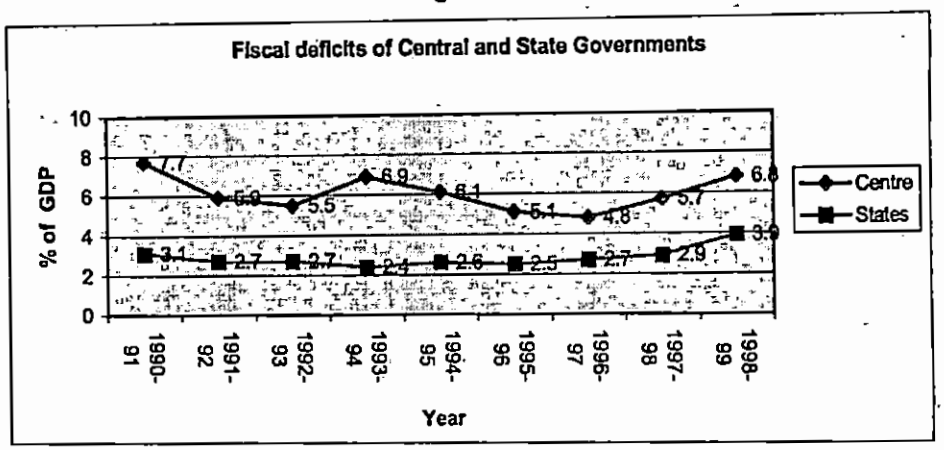
Table 7.5
Ratio Of Plan Expenditure To SDP

States	Average 1980-81 to 1990-91	Average 1987-88 to 1997-98	Difference
Bihar	6.2	2.9	-3.3
Rajasthan	5.9	6.5	+0.7
Uttar Pradesh	6.3	4.6	-1.8
Orissa	7.4	7.1	-0.3
Madhya Pradesh	7.4	5.0	-2.4
Andhra Pradesh	5.7	4.3	-1.4
Tamil Nadu	6.2	4.6	-1.6
Kerala	5.2	5.0	-0.2
Karnataka	5.6	6.5	-0.9
West Bengal	3.6	2.7	-0.9
Gujarat	6.5	4.5	-2.0
Haryana	6.4	3.9	-2.5
Maharashtra	5.7	4.0	-1.7
Punjab	5.6	3.9	-1.7
All 14 states	**5.7**	**4.5**	**-1.2**

Source: Planning Commission

7.5.5 Taking all 14 States together, there has been a decline in State plan expenditures. And this perhaps conceals an even greater decline in investment for new capacity as much of the increase is in the revenue component of the plan. With the exception of Rajasthan where there has been a marginal increase, there has been a decline in the levels of plan expenditure in every other State. The drop is the largest in Bihar.

Figure 7.3



7.5.6 The state of public finance in India, despite the accelerating growth, low inflation and reasonable foreign exchange reserves situation, remains a source of concern. India's fiscal deficit is among the highest in the world - between 5-6% of GDP. The combined deficit of the Central and State Governments, after declining from 9.2% in 1990-91 to 6.8% in 1993-94, rose to 8.5% in 1998-99.

7.5.7 Bulk of social sector spending comes from State Government revenues. However, the fiscal situation of most States is not good. Many face severe deficits. The pressure from the Central Government to reduce these deficits is even greater. This typically translates into State Governments cutting down their spending on social sectors - at a most inappropriate time. Indeed, it is only when the State invests in the social sectors - in health and education - that there is any possibility of sustaining a more equitable and higher economic growth rate in the years to come.

7.5.8 The preoccupation with managing the fiscal deficit as a goal in itself is resulting in many instances of lower allocations to the social sector. Unfortunately, the State Governments do not realize the impact of such cutbacks on human development. Many policy makers in fact see this as an opportunity for government to abdicate its responsibility towards assuring citizens of their basic human rights.

7.5.9 There has also been a corresponding weakening of state fiscal performance in the 1990s. The States adjusted only marginally to the crisis of 1991, almost exclusively by cutting capital expenditures and human development spending between 1991-92 and 1993-94. For instance, total expenditure of the Central and State Governments on social services and rural development declined from 9.1 percent of GDP in 1989-90 to 8.7 percent in 1994-95. The poor and other socially disadvantaged groups are worst affected by such cuts. The combined deficit of the States has also gone up from 3.2% to 3.6% between 1991-99. In 1998-99, the States' budget deficit worsened below the level of 1990-91, and is likely to continue unless a serious effort is made to check it. Between 1993-94 and 1997-98, the fiscal deficit rose in Uttar Pradesh from 4.5% of state GDP to 8.6%; in Bihar from 4% to 6.2%; in Orissa from 5.7% to 6.3%.

Table 7.6

Financial Situation of the States (1980-81 Base)

S. No	States	Fiscal deficit as % of State GDP			Debt as % of State GDP		
		1991	1998	Difference	1991	1998	Difference
1	Gujarat	6.4	3.3	-3.1	22.3	17.9	-4.4
2	Punjab	6.6	4.3	-2.3	36.3	32.5	-3.8
3	Maharashtra	2.5	2.4	-0.1	15.5	13.3	-2.2
4	Haryana	2.8	2.7	-0.1	20.7	19.8	-0.9
5	Karnataka	2.4	2.4	0.0	19.9	20.1	0.2
6	Tamil Nadu	3.6	3.3	-0.3	17.6	18.8	1.2
7	Madhya Pradesh	3.3	3.2	-0.1	21.4	22.6	1.2
8	Orissa	5.7	6.3	0.6	41.6	43.0	1.4
9	Andhra Pradesh	2.8	3.0	0.2	19.5	21.5	2.0
10	West Bengal	4.7	5.6	0.9	22.6	25.1	2.5
11	Kerala	5.7	7.3	1.6	31.5	34.8	3.3
12	Rajasthan	2.6	4.9	2.3	27.7	31.9	4.2
13	Uttar Pradesh	4.5	8.6	4.1	25.6	30.9	5.3
14	Bihar	4.0	6.2	2.2	34.9	42.0	7.1

7.5.10 The large and growing fiscal deficit is imposing several pressures on the patterns of public spending.

- The stock of debt has been growing and with it the interest burden. Total interest payments in 1991-92 were Rs. 26,596 crores – 53% of net tax revenue. Growing interest payments are crowding out development expenditures both at the Centre and in the States.

- As a result of the deficits, poorer States have become highly indebted. Between 1991 and 1998, the debt-to-state GDP ratio went up in Uttar Pradesh from 26% to 31%, in Bihar from 35% to 42%, and in Orissa from 41% to 43%. The debt-to-SDP ratio between 1991 – 1997 improved only for 4 States: Maharashtra, Punjab, Haryana and Gujarat. Per capita debt between 1991-98, however has gone up in all 14 States: from a low of 6% in Punjab to over 40% in West Bengal, Tamil Nadu and Kerala.

- Traditionally, the Centre's deficit has been much more than that of the States. In 1994-95, for instance, the Centre's deficit was 6% of GDP whereas it was only 2.8% for the States. However there are signs that the States are catching up with the Centre particularly with the implementation of the Fifth Pay Commission's awards.

7.5.11 Equally worrisome is the increasing debt situation of the States as the Table 9.7 shows.

Table 7.7
Debt Situation Of The States

State	Interest Payments As % Of Total Revenue		
	1980-81	1990-91	1996-97
Bihar	10.84	17.44	17.62
Rajasthan	10.59	13.66	20.54
Uttar Pradesh	8.29	15.38	25.33
Orissa	8.10	16.79	25.17
Madhya Pradesh	6.82	11.28	13.74
Andhra Pradesh	6.45	11.02	16.42
Tamil Nadu	7.11	8.95	12.33
Kerala	7.11	14.17	17.95
Karnataka	6.54	11.19	12.55
West Bengal	9.97	15.25	23.58
Gujarat	6.68	15.72	16.65
Haryana	8.04	12.64	11.83
Maharashtra	5.41	10.12	12.70
Punjab	10.93	16.81	29.35
All 14 states	7.34	13.12	17.56

Source: Planning Commission

7.5.12 Interest payments constituted 7.3% in 1980-81 of the combined states' revenue. This increased to 17.5% in 1996-97. More than 25% of state revenue is now allocated for interest payments in Punjab, Rajasthan, Uttar Pradesh and Orissa.

7.5.13 The fiscal squeeze almost immediately threatens capital spending and social sector expenditures. Public expenditure on education, for instance, came down from 3.7% of GNP in 1986-87 to 3.2% in 1995-96.

7.5.14 All this is going hand-in-hand with a decline in public expenditure on social sectors.

Table 7.8
Index Of Per Capita Public Expenditure On Social Services (1981-82 Prices)

Group of States	1990-91	1991-92	1992-93	1993-94	1994-95
Health*					
Poor States	100	96	95	102	97
Middle income states	100	94	93	99	98
Rich States	100	96	97	97	96
All States	100	95	94	100	97
Education					
Poor States	100	90	92	87	91
Middle income States	100	95	94	99	99
Rich States	100	101	100	104	104
All States	100	95	95	95	97
All social services**					
Poor States	100	94	93	92	93
Middle income States	100	96	93	97	97

Rich States	100	99	98	100	101
All States	100	96	95	96	97

Notes: Poor States include Bihar, Madhya Pradesh, Orissa, Rajasthan and Uttar Pradesh. Middle income States include Andhra Pradesh, Assam, Karnataka, Kerala, Tamil Nadu and West Bengal. Rich States include Gujarat, Haryana, Maharashtra and Punjab.

* includes medical and public health.
** includes, inter alia, education, health, housing and urban development and social welfare.

Source: Tulasidhar (1997) quoted in UNDP (1997).

7.5.15 The conversion of growth into human development is mediated to a large extent by the levels and patterns of public expenditures. How secure people of a nation feel depends upon the levels of public investments in social sector – and also on the efficiency and effectiveness of spending. Some may argue that it is not the additional financial resources that are needed, but greater efficiency for securing necessary social services for all citizens. No doubt, there is an urgent need to plug all leakage, and to ensure the value of the money spent. The reality however, is that both are needed – more resources and better returns on spending. It is difficult, for instance, to see how laws can be better enforced unless more is spent on law enforcement and streamlining the legal system. It is difficult to see how all children can go to school and acquire good quality education unless, in addition to improving the efficiency of spending, the State also allocates more financial resources to education.

7.5.16 One could argue that the low investments are actually a reflection of the lack of financial resources in these countries. But several studies have repeatedly pointed out that it is not a question of resources. It is a matter of priorities. Kerala, for instance, has ensured high levels of social development without necessarily having a high per capita income. There are always difficult trade-offs in any situation – but the guiding concern should be the well-being of the poorest.

7.6 Greater Inclusion And Participation

Why do people in India enjoy unequal access to opportunities – or for that matter, even to basic education and health services? Part of the answer lies in the inadequate provisioning of basic social services. But much of the unequal access to basic social services is due to exclusion of many stakeholders from processes of decision making. There is urgent need for greater inclusion and participation of many groups – stakeholders, women, citizens belonging to the Scheduled Castes, the Scheduled Tribes and backward classes, minorities, etc. When there is representation of different interest groups in the process of collective decision making, democracy begins to function effectively.

7.6.2 Decentralization is typically justified on the grounds of efficiency – that it will improve the functioning of schools and primary health care centres, that the patterns of investment will correspond more closely to the needs of the people, and that it is easier to monitor progress and take corrective action at the local level. But an equally important reason for supporting decentralization is that it opens up many opportunities for increased participation by stakeholders.

Do Authoritarian Policies Help In To Economic Growth ?

"....there is little evidence that authoritarian politics actually helps in economic growth. Indeed, the empirical evidence very strongly suggests that economic growth is more a matter of a friendlier economic climate than of a harsher political system."

"It is sometimes argued that in a poor country, it would be a mistake to worry too much about the unaccessability of coercion – a luxury that only the rich countries can "afford" – and that poor people are not really bothered by coercion. It is not at all clear on what evidence this argument is based. The people who suffer most from these coercive measures – who are brutally forced to do things they do not want to do – are often among the poorest and least privileged in the society".

- Dr.Amartya Sen

7.6.3 It is important for policy makers to realize that the success in implementation of programmes can come only when people co-operate – not when they are forced to do something that they detest. Co-operation – and not coercion – in all important national endeavours is the golden key for ensuring results and achieving goals. This lesson has been learnt the difficult way in implementation of family planning programme to achieve population stabilization during Emergency in mid seventies. Coercive measures taken during Emergency so as to ensure success of family planning goals not only were utter failure but also proved to be counter-productive. The political and human wounds of those measures are yet to heal completely. How family planning statistics were falsified in those days to achieve chased targets, is now a matter of common knowledge.

From Alcoholism to Affluence: Case of the Ralegan Siddhi Village*

Local initiative and effective participation can change the destiny is revealed by the success story of Ralegan Siddhi – a village in a drought prone area where even raising a crop a year used to be a matter of chance. The village was in the grip of chronic poverty with each family hardly having one acre of land to itself. The yields from agriculture were poor and it could hardly meet 30% of its requirements. Around 15 to 20% of the families were undernourished. The villagers regularly availed of state – sponsored drought relief measures in the summer. The village was in the grip of money lenders and country-made liquor.

Initiative of a retired jeep driver of Indian Army led to participatory decision making in the village. A democratic institution - the Gram Sabha - was created to take community decisions. Fourteen other committees were also formed to ensure greater people's participation. Watershed decisions were undertaken only after those were discussed in the Gram Sabha. Equitable access to the resources generated was ensured and water distributed equitably. Initially, as water availability was low, only crops requiring little water were planted. All farmers got water in turn, and a second irrigation was possible only after the first round was over. As commons belonged to all, even the landless families, about five in all, got their share of water

Sense of ownership made people to contribute with their money and labour for the success of the projects. Villagers constructed storage ponds, reservoirs and gully plugs. Due to the steady percolation of water, ground water levels rose. Lands that were lying fallow became fit for cultivation due to the availability of irrigation water. Area under cultivation increased from 630 hectares to 950 hectares. The average yield of millets, sorghum and onion increased substantially. Simultaneously 300,000 – 400,000 trees were planted making use of social forestry scheme of the Government. As a result of these measures farmers now grow 2-3 crops per year, yielding fruits and vegetables, which are exported to as far as middle east. Incomes have increased substantially and not a single inhabitant of the village depends on drought relief. Over 25% household earn over of a million rupees a year. Village has become so rich that a branch of a major bank has been set up in it. The total savings in the village is rupees 13 million. Indeed a miracle has happened !

* Based on a case study cited in Globalization : The United Nations Development Dialogue (1998)

7.6.4 The suggestion that coercion and an authoritarian approach is what will get us the quickest results in terms of population stabilization and that India should emulate China that has enforced a one-child policy for almost two decades now is riddled with several problems and is, in fact, self-defeating. First, even in China, the coercive population policy went hand-in-hand with a broad and equitable expansion of social and economic opportunities for women – the proven way to reduce population growth. It is, therefore, not entirely clear as to how much of China's fertility decline can actually be attributed to the one-child policy. Second, enforcing such coercive measures may be possible in an authoritarian country like China, but such measures are likely to have disastrous political consequences in a democracy. Third, in countries of South Asia and even in China for that matter, where there is a strong preference for sons, such restrictions will inevitably promote further discrimination against girl children. Instances of female foeticide and even female infanticide are likely to increase. And finally, why should coercion be used when there exists a well-proven alternative route of investing in social development and people's capabilities? Bangladesh and Indonesia have been able to lower their fertility rates without use of coercion. Within India itself, we have Kerala's example – a State that has invested well in people's health and education. And the social development route yields very quick results. Kerala, in fact, had a higher fertility than China in 1979, but by 1991, its fertility rate of 1.9 was lower than China's 2.0. And now, Bangladesh has shown that it is possible to reduce fertility rates rapidly without use of any coercion – by empowering women, educating people and improving access to reproductive health care

7.6.5 Lessons learnt, the new population policy announced in 2000 rightly denounces use of coercion and instead argues for women's empowerment, decentralization, greater education, and better and more access to safe contraceptive choices, as the way to lower India's birth rates.

People participation and co-operation in provision of universal primary education, ensuring quality of education, health care and indeed in all important national endeavours is essential for their success..

Enable People : IT Works*

A mere assurance from the Forest Department to the villagers of Sukhomajri that they would have the right to the usufruct of the degraded forest land proved to be a boon for the villagers of Sukhomajri. In less than 10 years, village got transformed from a small hamlet with sparse vegetation, poor agriculture and high levels of soil erosion and run off to a village with the distinction of being the first village in India paying the income tax on the income from the ecological regeneration of its degraded watershed.

In 1979, in the face of a severe drought, a small tank was constructed by the villagers to capture rainfall. More tanks were built later on. A village level institution - Hill Resource Management Society consisting of one Member from every household in the village and with an agreed framework for the fair distribution of the resources thus generated – water, gross and wood-amongst all the household, undertook the job of the watershed protection. It also protected the heavily degraded forest around the catchments area of the tanks. Between 1977 and 1986, these measures led to :

- *Increase in wheat productivity from 0.61 tonnes per hectare to 1.22 tonnes per hectare;*
- *Increase in grass (used to make ropes for beds and as a pulping material for paper mills) production from 40 kg. per hectare to 11.43 tonnes per hectare;*
- *Increase in the number of buffaloes from 79 to 291 and decrease in the number of goats from 246 to 10; showing a shift in livestock pattern from the lowly goat to the more rewarding and environment friendly cattle;*
- *Rise in the tree density from 13 to 1,292 per hectare (the worth of wood in trees is estimated to have increased to Rs. 900 millions. If the forest is harvested on a sustainable basis, its yields are estimated at Rs. 30 millions annually. The trees also produce valuable condiment used with betel leaves and if this is commercially sold, villagers can earn an estimated Rs. 36 million from its sale).*
- *Substantially higher household incomes and villagers instead of thatched mud house now live in a birch and cement dwellings and possess items like bicycles, radio sets, electric fans, sewing machines and TV sets;*
- *The return on investment from this project has been estimated to be of the order of 19% annually;*
- *Impressive savings amounting to Rs. 7.56 million annually have been achieved on public expenditure on desilting operations as the flow of sediment came down by 90%.*

* Based on a case study cited in Globalization : The United Nations Development Dialogue (1998)

CHAPTER 8

Good Governance And Management Of Social Conflicts

8.1 Governance

In a generic sense 'governance' refers to the task of running a Government or any other entity. 'Governance' in the sense it has been widely used in the development literature of 1990s, is, however, a broader concept than Government. An important distinction between government and governance is the notion of the civil society. Governance transcends the state to include civil society organisations and the private sector.

8.1.2 At the apex of governance lies the role of the State as a sovereign functionary, all activities of the Government relatable to the sovereign functions of the Government represent the heart of its domain. The role of the State in maintaining law and order, as a prime regulator and the supreme instrument of enforcement of law, has an omniscient impact on the life of the citizens. The State should be capable of enabling, enhancing and deploying the power from other societal actors for sustainable human development. The State should network and dialogue with non-State actors including the public, the media, voluntary organizations, self-help groups, the private for profit sector, community organisations etc. and create conditions for the latter to contribute in achieving developmental goals. The State according to Osborne and Gaebler[1] should do 'steering' and not 'rowing'.

8.1.3 Governance defies a common definition. A number of common indicators have however emerged for assessing good governance. It is essentially a reform package to strengthen the institutions of government and civil society with the objective of making government more accountable, more open and transparent, and more democratic and participatory. Good governance is also about effective and equitable government that promotes rule of law.

Strands of Good Governance*

- ***Participatory***
- ***Sustainable***
- ***Legitimate and acceptable to the people***
- ***Transparent***
- ***Promotes equity and equality***
- ***Able to develop the resources and methods of governance***
- ***Promote gender balance***
- ***Tolerates and accepts diverse perspectives***
- ***Able to mobilise the resources for social purposes***
- ***Strengthens indigenous mechanisms***
- ***Operates by rule of law***
- ***Efficient and effective in the use of resources***
- ***Engenders and commands respect and trust***
- ***Accountable***
- ***Able to define and take ownership of national solutions***
- ***Enabling and facilitative***
- ***Regulatory rather than controlling***
- ***Able to deal with temporal issues***
- ***Service oriented***

***as identified in UNDP's 1996 workshop**

[1] Osborne, D and Gaebler T (1962) Reinventing Government: how the entrepreneurial spirit is transforming the public sector

8.1.2. Why Governance and not Government

The principal phenomenon of the governance in the last fifty years in this country is the emergence of Government as the main font generating, moulding, directing nearly all the institutions of the society. The colonial legacy of the mindset of the Rulers found a robust expression in the new role of the State as the main dispenser of social and economic development with social justice. The State loomed large as an apparently benign patriarch extending its reach and hold extensively on the society. In its assumed role, the State appropriated a large chunk of social space. The inevitable consequence was near obliteration of social space so essential for growth of the society as an organic whole. The State embraced all spheres of human activity; as the supreme arbiter in social, economic, political development in arts and culture, media, research, education, health and as the main provider of services. The biological appropriation of the growth process sapped the energy and vigour of the society. The State came to dominate all social processes and then tragically failed to deliver. Increasingly, the dynamics of processes bypassed the institutions of the State rendering them irrelevant. So, we are witnesses to an ineffective exhausted state apparatus and weak, marginalised, impoverished social institutions devoid of all energy occupying little or no social space.

8.1.2.2 In a healthy growth model of a free democratic society, the Government is just one of the participants. The Government exists as one of the servitors in the service of the society. Indeed the awareness that government alone can neither solve all the problems of the society nor it is the only crucial actor in addressing major societal issues has dictated the need to look beyond Government. Interdependence and need to find solutions to societal problems call for greater collaboration between the government and civil society.

8.1.2.3 This raises issues of fundamental importance. Does the role of the State require a redefinition to realign it with the needs of a free and a self-governing people? Does the Government need to withdraw from areas that can be effectively managed by the civil society so that State could better focus on its core functions?* Should the Government review its role of driving the non-governmental initiatives leaving these free to sustain and grow on the strength of inner impulse?

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* **Core functions include the responsibility of the State for the welfare and development of deprived and disadvantaged sections of the society.**

Rogi Kalyan Samitis Of Madhya Pradesh*

The Rogi Kalyan Samitis of Madhya Pradesh offer a fine example of people's participation in governance to totally revamp and greatly improve the Public Health delivery system. The project was started in a thousand bed medical college hospital in Indore in 1994-95. Decades of neglect and lack of proper upkeep had converted the hospital into a veritable hellhole. There were thousands of rats, hundreds of tons of garbage and the service was deplorable.

Around this time an epidemic of plague broke out in the neighbouring State of Gujarat and the city of Indore faced imminent danger of spread of plague. The District Magistrate, with the help of the city folk undertook a drive to totally evacuate this mammoth hospital, rid it of rats and carry out massive physical upgradation and refurbishment. All this was done with funds raised through donation – Rs.4800 lacs were collected in the first month. To impart permanency to the changes, the concept of a Rogi Kalyan Samiti was created and the management of the hospital was handed over to this body.

Rogi Kalyan Samiti consisting of donors, leading citizens, elected people's representatives social organisations like Rotary, Lions, Red Cross, officials of the District Administration and doctors have the mandate to manage the hospital. It can raise resources through user charges, donations, grants, loans, commercial exploitation of the hospital land and other assets, etc. The Samiti can use the funds to improve the working of the hospital to the best of its judgement.

The State Government has set up such samitis in all government hospitals across the State. In the last five years over Rs.40 crores have been raised by these samitis and spent on improvement of hospitals. Involvement of people has greatly improved the shape of the public health delivery system in hundreds of hospitals across Madhya Pradesh.

This noble experiment received international recognition with the Global Development Network Award, 2000 being conferred on the then District Magistrate of Indore. This Award, instituted by the World Bank, ADB and several other donors, is given for the most Innovative Development Project.

*Based On A Report From State Government Of Madhya Pradesh

8.2 Management Of Social Conflicts

No Government, in the developing world, has the human and economic resources to overcome the poverty and inequality that are their legacies. If democracy and conflict free society is to be lasting, it is of the utmost importance that India's civil society should remain a strong component of every day life. Governments need to build up partnerships with the private sector, NGOs, self-help groups, assistance agencies and the other organisations of civil society to define development needs and implement programmes.

8.2.2 Social conflicts result from poverty, inequality and inability to accept pluralism. Democracies need to be inclusive; not merely majoritarian. Stability and peace do not stem from authority but a broad sense of justice perceived as equal by all sectors. The factors that lead to social unrest are indeed quite foreseeable. The Report of the Carnegie Commission on 'Preventing Deadly Conflict' says:-

> "Early indicators include widespread human rights abuses, increasingly brutal political oppression, inflammatory use of the media, the accumulation of arms, and sometimes, a rash of organized killings. Such developments, especially when combined with chronic deprivation and increasing scarcity of basic necessities, can create an extremely volatile situation. Successful prevention of

mass violence will therefore depend on retarding and reversing the development of such circumstances.".

Learning To Live Together

During the twenty first century human survival may well depend on our ability to learn a new form of adaptation, one in which inter-group competition is largely replaced by mutual understanding and human cooperation. Curiously, a vital part of human experience – learning to live together – has been badly neglected.

- Global Public Goods

8.2.3 Indicators of danger of breakdown of the State-machinery, according to the aforesaid report are:-

- Demographic pressures: high infant mortality, rapid changes in population, including massive refugee movements, high population density, youth bulge, insufficient food or access to safe water, ethnic groups sharing land, territory (i.e., groups' attachments to land), environment (i.e., the relationship between ethnic groups and their physical settings).
- A lack of democratic practices: criminalization or delegitimization of the State, or human rights violations.
- Regimes of short duration.
- Ethnic composition of the ruling elite differing from the population at large.
- Deterioration or elimination of public services.
- Sharp and severe economic distress: uneven economic development along ethnic lines and a lack of trade openness.
- A legacy of vengeance-seeking group grievance.
- Massive, chronic, or sustained human flight.

8.2.4 Nearly every country might have at least one (if not more) of these characteristics. A critical mass of these symptoms could 'very well serve as a credible warning signal of developing problems'.

8.2.5 The Report further says, "Four essential elements provide a framework for maintaining a just regime for internal stability: a corpus of laws that is legitimately derived and widely promulgated and understood; a consistent, visible, fair, and active network of police authority to enforce the laws (especially important at the local level); an independent, equitable, and accessible grievance redress system, including above all an impartial judicial system; and a penal system that is fair and prudent in meting out punishment. These basic elements are vitally significant yet hard to achieve, and they require constant attention through democratic processes.".

8.2.6 It is said that "In our world of unprecedented levels of destructive weaponry and increased geographic and social proximity, competition between groups has become extremely dangerous.. In the twenty first century, human survival may well depend on our ability to learn a new form of adaptation,

Secret Of Post-war Reconstruction of Europe

Witness the steps after the Second World War to lay the groundwork for today's flourishing European Union. Leaders such as Jean Monnet and George Marshall looked beyond both the wartime devastation and the enmities that had caused it – and envisioned a Europe in which regional cooperation would transcend adversarial boundaries and traditional rivalries. Correctly, they foresaw that large-scale economic cooperation would facilitate not only the post-war recovery but also the long-term prosperity that has helped Europe achieve a degree of peace and security once thought unattainable. Post-war reconstruction is an excellent example of building structural prevention of creating conditions that favour social and economic development and peaceful interaction.

- Global Public Goods[1]

one in which inter-group competition is largely replaced by mutual understanding and human cooperation.[1] Curiously, a vital part of human experience – learning to live together – has been badly neglected throughout the world" and that "A strong emphasis must be placed on freedom of the press – or the media in the broadest sense – with fair access for all parties, particularly for minority groups, and full freedom of political and cultural expression. This freedom also includes the opportunity to investigate governmental activities and to criticize all parties, even though the harshness of such criticism is often unpleasant and sometimes quite unfair." (Carnegie Commission Report)

8.2.7 In the current processes of social change, unprecedented in India before, there ought to be democratic space for dissent and for resolution of conflicts at the interface between forces of change and forces of status quo. The Constitutional document contemplated a seamless wealth of continuity and change.

8.2.8 What merits a new dimension to the process of social-economic change within India are the global competition of market shares. It will become increasingly difficult for Governments in developing countries to protect job, wages and working conditions. Advances in technology in one area of the world can unintentionally contribute to the emergence of conflicts elsewhere. The effects of these are summed up in a statement in the Final Report on "Preventing Deadly Conflict" (December 1997) of Carnegie Commission on Preventing Deadly Conflict. It says:-

> "The world of next century will be markedly more crowded, interdependent economically, closely linked technologically, increasingly vulnerable ecologically, and progressively more interconnected culturally. Trends in this direction have long been apparent, but what has only recently come into sharper focus is the importance of managing the pace of change and its widespread repercussions. Contributing to this focus is the highly destructive power and universal availability of modern weaponry."

8.2.9 The importance of peaceful management of social conflicts is in the fact that in the degree of manifestations of such dissent and disaffection in violence wherever political space is denied for such dissent and disaffection. Disillusionment and frustration stem from disenchantment with the institutions of democracy. They shake the bond that unite people; and generate bitterness and alienation. Eruption of violence is the result if remedial steps are denied for long.

8.2.10 Chemical and biological weapons pose new dangers to poor and rich countries alike. Disaffected groups may seek inexpensive weapons of mass destruction, some of which can be produced from ingredients normally sold for commercial purposes.

8.2.11 An awesome dimension of this finds mention in the Carnegie Commission Report. It says,

> "An ounce of type-A botulinal toxin, properly dispersed, could kill every man, woman and child in North America.....Just eight ounces of the substance could kill every living creature on the planet." Many lethal gases are colourless and odourless and can lead to immediate or slow, agonizing death for thousands. These weapons can be delivered in missiles or dropped from planes , exploded in ground ordnance, set in time-delay devices, released *via* remote control, or put in water supplies. Large concentrations of unsuspecting civilians, especially in urban settings, are vulnerable.

8.2.12 What is needed is a combined effort of civil society initiatives, non-government organizations, ages leaders and the government and the readiness to recognize the significance and importance of ly warning symptoms.

Kaul Iqbal, Isabell Granberg and Marc. A. Stern, 'Global Public Goods' (1999) Oxford University Press, Oxford.

Ron Purver, "The Threat of Chemical and Biological Terrorism," The Monitor : Non-Proliferation, Demilitarization and Arms Control 3, No. 2 (Spring 1997), p.5

CHAPTER 9

Issues of Social Justice : Scheduled Castes and Scheduled Tribes and Other Backward Classes – An unfinished national Agenda

Scheduled Castes and Scheduled Tribes have been, for centuries, the most neglected, marginalized and exploited people. The scourge of untouchability was a blot on the Indian civilization. Despite the constitutional declaration of its abolition under Article 17 of the Constitution, it persists in many subtle and not so subtle ways. It has been an unmitigated tale of prejudice, discrimination and exploitation. At stake, in the ultimate analysis, is the very integrity and survival of Indian society. Without transforming vertical inequality in society into horizontal equality, democracy will have no meaning. If

Scheduled Tribe Populations in India

- **In 1991, close to 68 million people – 8% of India's population - were classified as belonging to Scheduled Tribes. This is more than the entire population of East Asia (excluding China), and roughly equivalent to the total populations of Canada, Australia, Sweden and Belgium.**
- **Four states – Madhya Pradesh (15.4 million), Maharashtra (7.32 million), Orissa (7.03 million) and Bihar (6.62 million) – account for almost 50% of India's Scheduled Tribe population.**
- **Forty districts in India (Appendix X) account for 50% or more of Scheduled Tribe population. 35 districts have no Scheduled Tribe population.**
- **Five States/Union Territories - Chandigarh, Delhi Haryana, Pondicherry and Punjab (Appendix VI) - report no Scheduled Tribe populations.**
- **Scheduled Tribe populations are not a 'minority' in all States and Union Territories. The States - Mizoram (95%), Lakshadweep (93%), Nagaland (88%), Meghalaya (86%), Dadra and Nagar Haveli (79%), Arunachal Pradesh (64%), Manipur (34%) and Tripura (31%) - have 30% or more of Scheduled Tribe population.**

the law is not in favour of disadvantaged, they will never achieve true equality of opportunity and freedom of choice. The nation's unity will be at risk. In some form or the other, overt or covert, in many subtle ways, the prejudice against these weaker sections persists. This is perhaps because of the mindset of certain sections of the society. Indeed to refer to the Scheduled Castes and Scheduled Tribes and other backward classes* as mere 'sections of society' is a grave misuse of words. They together constitute the vast and not merely a section. The recurring themes that, unfortunately, have been dominating the debate on reservation is – 'Could the rights of individual be put at risk in the interest of a disadvantaged group? Does it amount to reverse discrimination? Is it acceptable to require an individual to make the sacrifice? These questions which dominate the debate are greatly misplaced. The injustices heaped on the Scheduled Castes and the Scheduled Tribes for no reason other than the pure accident of birth have few parallels in the history of civilisation.

Scheduled Caste Populations in India

- **In 1991, close to 138 million people – over 16% of India's population - were classified as belonging to Scheduled Castes.**
- **Four States – Uttar Pradesh (29.3 million), West Bengal (16.08 million), Bihar (12.6 million) and Tamil Nadu (10.71 million) - account for 50% of India's Scheduled Caste population (Appendix I).**
- **One State and two Union Territories report no Scheduled Caste populations. They are Nagaland and Andaman and Nicober Islands and Lakshadweep.**
- **100 districts (Appendix-V) account for 51% or more of Scheduled Caste Population**

* As official statistics in respect of Other Backward Classes (OBCs) is not available, same has not been referred to. The 2001 Census has also not attempted to fill this void.

9.1 Constitutional Mechanism For Uplift Of Scheduled Castes, Scheduled Tribes And Other Backward Classes

The deep concern of the framers of the Constitution for the uplift of the Scheduled Castes and Scheduled Tribes and Other Backward Classes is reflected in the elaborate constitutional mechanism set-up for their uplift. Article 17 abolishes Untouchability. Article 46 requires the State 'to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. Article 335 provides that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. Article 15(4) refers to the special provisions for their advancement. Article 16(4A) speaks of "reservation in matters of promotion to any class or classes of posts in the services under the State in favour of SCs/STs, which are not adequately represented in the services under the State'. Article 338 provides for a National Commission for the Scheduled Castes and Scheduled Tribes with duties to investigate and monitor all matters relating to safeguards provided for them, to inquire into specific complaints and to participate and advise on the planning process of their socio-economic development etc. Article 330 and Article 332 of the Constitution respectively provide for reservation of seats in favour of the Scheduled Castes and the Scheduled Tribes in the House of the People and in the legislative assemblies of the States. Under Part IX relating to the Panchayats and Part IXA of the Constitution relating to the Municipalities, reservation for Scheduled Castes and Scheduled Tribes in local bodies has been envisaged and provided.

9.1.2 Part IX and Part IXA of the Constitution respectively permit the legislature of a State to make provision for reservation of seats in Panchayat and Municipalities in favour of backward classes of citizens. Article 340* of the Constitution provides for appointment of a Commission to investigate the conditions of Backward classes. Article 16(4) and 16(4A) respectively permit reservation of appointments or posts and in matters of promotion in favour of backward classes not adequately represented in the services under the State. Article 15(4) permits the State to make special provision for the advancement of any socially and educationally backward classes of citizen. In addition to these, there are also other Constitutional provisions for the welfare and socio-economic empowerment of the Scheduled Caste, the Scheduled Tribes and other backward classes.

9.2 Fulfilment Of Constitutional Mandate – How Far? How Fair?

In spite of this manifest, avowed and determined concern of the Constitution, the objectives have not been fully achieved and whatever has been done has been done hesitatingly, half-heartedly and as a measure of concession forgetting that in this area we are dealing with Constitutional rights and not concession to those classes.

9.2.1.2 It is instructive to examine how the socio-economic, legal and political factors inter-play to generate a particular matrix of social dynamics. The text of the Constitution created a lofty mix of Fundamental Rights and a set of Directives enjoining upon the State the obligation to promote and to secure to the citizens, the enjoyment of rights that provide the citizen an environment allowing his/her growth and development with social justice, equal opportunity, right to work and access to basic needs and opportunity without discrimination. While the text created a noble and a sanguine texture, the key players were the State, the legal system, the dynamics of social development and the social forces generated by the socio-political processes. The linkage between these players provides some explanations to the path that the nation has traversed in economic growth, social development and pursuit of equal justice. The processes of economic development do not necessarily lead to equitable income distribution. In fact, these often result in appropriation of national and social resources by a small percentage of the people. While over the years, the social services in the field of education, health, transportation and tertiary sectors have increased, there has been an inherent distortion in their universal access. Typically in this paradigm, the center has continuously appropriated access to every aspect of

* The Kaka Kalelkar Commission on the 29th January, 1953 and Mandal Commission on 1st January, 1979 were appointed under this Article.

development of services and resources at the cost of vast periphery. Policy instruments loaded with different objectives produce a paradoxical regime of results, which is fairly seen in the areas where the Constitution assigned the role of basic font of delivery to the State.

9.2.1.3 The legal regime also confronts us with paradoxes. While the legal text is explicit in seeking remedies, the implementation appears to evade performance. In implementation of laws and the working of the legal system several trends emerge. Laws and legal processes are not self executing; they depend on the players such as the administrative structure and its processes, the judiciary with the anticipation that the social attitudes are driven by enlightened notions : equity, social justice, fair play. However, the responses of the players in the implementation of laws protecting the weak, the oppressed, women and children and the socially disadvantaged have over the years become increasingly indifferent. The injustices have been allowed to persist and the system has failed to provide for self-correction. In implementation and in interpretation of the Constitution and law, distortion and denial of the rights have crept in.

9.2.1.4 A related issue of social dynamics is the opportunity and the access to the disadvantaged to take advantage of forums of the enforcement process and social mobilization. The polarization of castes and classes in the recent years across the society has shown disturbing trends, in as much as the administrative system, the judiciary, the legal processes reflect the social reality of a given area or region. Enforcement agencies have themselves responded to these urges for social protests and desire for enforcement using the legal and social processes with indifferences and indeed ostensibly with resistance. Increasingly it was shown that whereas processes were available to the disadvantaged, the weak, the oppressed, women and children, access was denied owing to its cost and remoteness. Even when the State created some shelters through various form of Legal Aid to Scheduled Castes, women and to the oppressed, they were reduced to tokenism owing to the quality and availability. Indeed, the higher levels in judiciary intervened with vigour against the injustice manifest in the system in the form of bonded labour, child labour, crime against the women and Scheduled Castes and tribals etc. It is pertinent to note that the legal and institutional processes of redressal where provided are available only formally and have made a little or no impact. The disadvantaged sections of the society have difficult access even to the shelters and sanctuaries created for them under the law. The manner and frequency with which social protests have, in some cases, been snuffed out by the very system created to protect it, is revealing. This is the major challenge for the system which incorporates in its formal text the creation and the sustenance of a civil society.

9.2.2 Untouchability and Atrocities

Article 17 of the Constitution abolished untouchability. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted to prevent atrocities against the Scheduled Castes and the Scheduled Tribes. A glance at the number of cases registered under the Protection of Civil Rights Act, 1955 and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Table 9.1) shows that though total number of cases under these Acts show a declining trend in recent years yet the high number of cases still registered under these Acts is a grim reminder of the unfortunate fact that atrocities against the Scheduled Castes and the Scheduled Tribes and untouchability continue unabated even today.

Table 9.1
Number of Cases Registered under The Protection Of Civil Rights Act, 1955 And SC/ST (Prevention Of Atrocities) Act, 1989

Year	Scheduled Castes			Scheduled Tribes			Total Cases Registered
	Cases registered under			Cases registered under			
	PCR Act	SC/ST POA Act	Total	PCR Act	SC/ST POA Act	Total	
1997	1216	8070	9286	88	643	731	10017
1998	724	7443	8167	50	709	759	8926
1999	678	7301	7979	45	574	619	8598

Source: As compiled by National Human Rights Commission from monthly crime statistics

9.2.3 Inadequate Representations In The Public Services

Adequate representations in the public services of Scheduled Castes and Scheduled Tribes is as yet another unredeemed constitutional pledge. The following tables show the representation of the members of Scheduled Castes/Scheduled Tribes in the services of the Central Government in the years 1961 and 1998:

Table 9.2
Percentage Of Representation Of
SCs/STs In Central Government Services

Group (Excluding Sweepers)	Percentage of Scheduled Castes		Percentage of Scheduled Tribes	
	1961	1998	1961	1998
A	1.44	10.38	0.21	3.21
B	2.45	11.73	0.67	2.68
C	7.49	15.99	0.92	5.95
D	17.19	21.45	3.13	6.85

Source: Records of Ministry of Personnel, Public Grievances & Pensions, Govt. of India, New Delhi.

9.2.3.2 From the Table, it is clear that the adequate representation to Scheduled Caste and Scheduled Tribe in Group 'B' & Group 'A' posts in Central Govt. itself remains inadequate. Scheduled Tribes are not adequately represented in Group C and Group D services as well. Moreover, within Group 'A' at top echelons where decisions are taken, representation of the Scheduled Castes and the Scheduled Tribes is meagre and therefore, to that extent, representation shown by data for Group 'A' posts presents a distorted view of actual state of affairs.

9.2.3.3 The efforts to ensure adequate representation for Scheduled Caste and Scheduled Tribe in higher levels of public services are perceived by the disadvantaged groups as having received a set back following certain judgements of the Supreme Court. In Preeti Srivastava's case[1], a five Judge Bench of the Supreme Court held that there should be no reservation in admission in Ph.D., etc. The Medical Council of India was directed to consider the percentage of relaxation of marks for admission in post-graduation. In Vir Pal Singh Chauhan's case[2] and Ajit Singh's case[3], the Supreme Court by two-Judge Bench and five-Judge Bench respectively held that reserved candidates promoted on applying the rule of reservation should not gain seniority until the general candidates catch them up. The elbow right given is only in cases where the reserved candidate had already been promoted to the next higher post. Article 16(4A), was interpreted as not creating a right for reservation in favour of either the Scheduled Castes or the Scheduled Tribes. It was further held that the reverse discrimination begins when protective discrimination ends. In Post Graduate Institute of Medical Institution & Research Center, Chandigarh Vs. Faculty Association case[4], it was held that single post should not be reserved.

9.2.3.4 Pursuant to judgements in Sabarwal's case[5] and Ajit Singh's case[6], etc. Government has from time to time since 1996 amended the departmental orders providing for reservation in services. These amendments have caused widespread dissatisfaction amongst Scheduled Castes/Scheduled Tribes. A feeling persists amongst them that in interpreting the words "consistently with maintenance of efficiency of administration" occurring in Article 335 of the Constitution, the main purpose and thrust of the provision has not been given due consideration. It is also complained that Government has also gone beyond the mandate of the Supreme Court in certain respects while amending the reservation orders.

9.2.3.5 There have been demands for taking remedial steps by amendment to the Constitution so as to allay widespread dissatisfaction and apprehension amongst the Scheduled Castes and the Schedule

[1] AIR 1999 SC 2894
[2] AIR 1996 SC 448
[3] AIR 1996 SC 1189
[4] AIR 1998 SC 1767
[5] AIR 1995 SC 1371
[6] AIR 1996 SC 1169

Tribes. Restoration of pre-1996 position has been suggested to be necessary for ensuring adequate representation of Scheduled Castes and Scheduled Tribes in public services as mandated by the Constitution.

9.2.3.6 The Constitution (81st Amendment) Act, 2000 has by introducing Article 16(4B) removed the obstacles in the way of treating previously unfilled vacancies as a separate class of vacancies. Further amendments to the Constitution may be necessary in case the position of reservation as it existed prior to 1996 is to be fully restored.

9.2.3.7 Reservation for other backward communities in Central services was provided only in 1990 and became operational from 1993 onwards. Sufficient statistical data are not yet available to draw any definite conclusions to the extent, their reservation has improved in the central services. The adequate representation of backward classes is, however, still a far cry and special efforts need to be made for effectively enforcing reservation of backward classes to achieve their adequate representation in central services.

9.2.4 Declining Land Holdings and Increasing Landless Labourers

An overwhelming majority of Scheduled Castes and Scheduled Tribes live in rural areas and a substantial percentage of rural population live on cultivation. It is observed from Tables 9.3(A) & (B) that a large percentage of Scheduled Castes have marginal land holdings and average size of their land holding is the minimum amongst all social groups. It was 0.98 hectare in 1990-91 as against 1.05 hectares in 1985-86 and 1.15 hectares in 1980-81. It is further observed from table 9.4 that the

Table 9.3(A)
Percentage Distribution By Land Holdings Of Various Social Groups In Various Years

(Area in Hectare)

S.No.	Size of Holding	Scheduled Castes			Scheduled Tribes			Others		
		1980-81	1985-86	1990-91	1980-81	1985-86	1990-91	1980-81	1985-86	1990-91
1	Marginal	68.9	70.7	72.2	39.8	41.3	43.4	56.2	57.5	59.1
2	Small	16.3	16.0	15.9	22.6	23.5	24.1	11.9	18.3	18.8
3	Semi-medium	9.5	8.8	8.1	20.5	20.2	19.5	14.0	13.7	13.1
4	Medium	4.4	3.8	3.2	13.7	12.2	10.9	9.3	8.4	7.3
5	Large	0.9	0.7	0.6	3.4	2.8	2.1	2.6	2.1	1.6
6	All size classes	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00

Source: Agricultural Census, 1980-81, 1985-86 and 1990-91, Government of India, New Delhi.

proportion of cultivators is going down and the decline is quite sharp among the group of Scheduled Caste Cultivators as against the cultivators pertaining to non-scheduled caste sections of the society. In other words the landlessness is increasing at a faster rate among the

Table 9.3(B)
Average Size Of Land Holdings In India Held By Various Social Groups In Various Years

(Area in Hectare)

S.No.	Major size classes	Scheduled Castes			Scheduled Tribes			Others		
		1980-81	1985-86	1990-91	1980-81	1985-86	1990-91	1980-81	1985-86	1990-91
1	Marginal	0.36	0.35	0.35	0.48	0.48	0.49	0.39	0.39	0.39
2	Small	1.41	1.41	1.41	1.43	1.43	1.44	1.45	1.44	1.44
3	Semi-medium	2.71	2.70	2.70	2.74	2.73	2.74	2.79	2.77	2.77

1207 LJ&CA/2002—11A.

4	Medium	5.84	5.78	5.77	5.98	5.95	5.89	6.03	5.97	5.92
5	Large	16.44	16.24	16.70	15.88	15.87	15.78	15.65	17.43	17.57
6	All size classes	1.15	1.05	0.98	2.44	2.25	2.07	1.88	1.74	1.59

Source: Agricultural Census, 1980-81, 1985-86 and 1990-91, Government of India, New Delhi.

Scheduled Castes. At the same time the proportion of all Scheduled Caste workers a agricultural labourer is increasing at a faster rate as compared with the Non- Scheduled Caste agricultural labourers implying that after losing their land holdings Scheduled Caste cultivators ar becoming agriculture labourers. The situation is not very different for Scheduled Tribes also. This goes contrary to the constitutional pledges in respect of the Scheduled Castes and the Scheduled Tribes. Loss of land, on the one hand, is caused by atrocities and, on the other hand, by making the Scheduled Castes and the Scheduled Tribes more vulnerable, fuels and promotes continuance of atrocities and untouchability. This sad situation needs to be remedied.

Table 9.4
Percentage Of Workers Employed As Cultivators And Agricultural Labourers In Various Years

Category Of Agricultural Workers	General				SCs			
	1961	1971	1981	1991	1961	1971	1981	1991
Cultivators	52.78	43.38	41.53	39.72	37.76	27.87	28.17	25.44
Agri. Labour	16.71	26.32	25.16	19.66	34.48	51.74	48.22	49.06

Source: Report of the National Commission for Scheduled Castes/Scheduled Tribes for the ye 1996-97

9.2.5 Declining allocations of funds for welfare of Scheduled Castes/ Scheduled Tribes

The allocation of funds as worked out in some studies[1] for the development and welfare of the Scheduled Castes and the Scheduled Tribes has shown a steadily declining trend since late eighties. Allocations do not match the developmental needs and priorities of the Scheduled Castes and the Scheduled Tribes. Implementation of schemes makes matter worse. There has, in general, been an inherent lack of interest and seriousness on the part of planning and implementing machinery to achieve the objectives of the Constitution and benefit secured by the Scheduled Castes and the Scheduled Tribes do not appear commensurate with the funds spent so far.

9.2.6 Backward Classes – Loss of Traditional Occupations and Inadequate Allocations for their Development and Welfare

Absence of official statistical data in respect of backward classes is a serious handicap in fully visualizing the extent of deprivations suffered by these classes. The conditions of these classes seems to have deteriorated in recent years with decline in employment opportunities in traditional occupations like weaving, fishing etc. in which a large number of people of these classes have been traditionally engaged Central plan allocations for development and welfare of backward classes have been started only from the Ninth Plan and allocations made, so far, are grossly inadequate. Targeted measures and greater allocations are needed to improve their skills and to ensure their welfare and development.

[1] See Kamble BN (1995), Effectiveness of the Developmental Programmes for SC&ST in Maharashtra, Ph.D., Thesis submitted to Pune University (pages 120-122).

1207 LJ&CA/2002—11B.

9.3 Pledge Remains Unredeemed

In the years since independence and particularly after the adoption of the Constitution, efforts made to promote and protect the rights of Scheduled Castes, Scheduled Tribes and backward classes and to secure their development and welfare have yielded only limited results. Improvements, no doubt, have been achieved in a number of areas but wide gaps between Scheduled Castes, Scheduled Tribes and backward classes on the one hand and the Others on the other hand continue to prevail in almost all areas even to this day. The representation of the Scheduled Castes, the Scheduled Tribes and the Backward Classes in top scientific and bureaucratic echelons is believed to be meagre though the precise statistical data in this regard are not available. Depleting land and forest resources of Tribals and vanishing of traditional employment opportunities for backward classes is leading to worsening of conditions of these people.

9.3.2 The social inequalities and injustices, the cruelties of the social order have weakened the Indian society. The fight against untouchability spearheaded by Mahatma Gandhi and Dr.Ambedkar in the face of entrenched obscurantism, was historic. Strong support for removal of untouchability, alleviation of poverty, ending of disgraceful occupations which offended human dignity, the spreading of literacy and awareness were the result of social reform movements which were commenced long before the Independence. The social reform movements by Swami Vivekananda, Shri Narayana Guru, Mahatma Phule, Dr. Ambedkar, Shri Ramaswami Naicker, Swami Sampurnanand and others provided great impetus to the restoration of human dignity of these classes and of their determination to assert their place under the Sun.

The Scheduled Caste and the Scheduled Tribe : Some Facts

- ***Atrocities against the Scheduled Castes and the Scheduled Tribes and untouchability remain unabated even fifty years after untouchability was abolished by the Constitution.***
- ***Landlessness is increasing amongst the Scheduled Castes and the Scheduled Tribes. The proportion of cultivators amongst them is going down while that of agricultural labourers is increasing.***
- ***Allocation of funds for the development and welfare of the Scheduled Castes and Scheduled Tribes over the years has been inadequate and has declined in recent years.***
- ***Representation of the Scheduled Castes and the Scheduled Tribes in Group 'A' and Group 'B' posts in Central Government remains inadequate. In case of STs inadequacy exists even in Group 'C' & Group 'D' posts.***

9.3.3 Yet, despite these efforts, the unfortunate truth remains that atrocities against the Scheduled Castes and the Scheduled Tribes recur, (as sadly against other vulnerable sections of society as well), and serious gaps between policy declarations and ground reality persist. There are many reasons for this: historical and cultural, economic and social, political and administrative, to name but a few.

9.3.4 The following excepts from the Dalit Manifesto[1] are indicative of feelings of the Scheduled Castes, the Scheduled Tribes and the Backward Classes regarding the extent of the benefits of various measures taken by Government have percolated to them and the extent of their deprivations.

> "In the half century after India's Independence, the nation has registered progress in a number of directions, but it is the feeling of the Scheduled Castes (SCs), Scheduled Tribes (STs) and Backward Classes (BCs) and of those who are working with them and for them that the benefits of the nation's progress have, in some respects, not become available to them at all and, in other respects, have become available to them in a very inadequate measure or truncated manner. .....

[1] P.S. Krishnan (1996), Dalit Manifesto, National Action Forum for Social Justice, New Delhi.

For example, while agricultural production has multiplied, the bulk of the SC families remain agricultural wage-labourers, as in the past many centuries, depending on their very oppressors and exploiters for their bread. A large part of the country's agricultural land has been brought under irrigation but the limited extent of lands owned by the SCs remain almost wholly unirrigated, forcing even small farmers among the SCs to depend on agricultural wage-labour. Land ceiling and re-distribution Acts have been honoured more in the breach than in the observance. The Special Component Plan for SCs introduced in 1978, has been routinised and trivialized. The SCs continue to be forced to live in the most miserable rural bastis and urban slums. A large section of them continued to be forced to render "safai" (scavenging) service. The bonded labour system remains in all its vicious vigour and about two-thirds of bonded labourers in the country belong to the SCs. Untouchability continues to be rampant in many parts of the country. Atrocities continue to be perpetrated against them whenever they seek to secure even a small parts of their rights. Legislations to prevent and penalise Untouchability and Atrocities are drafted defectively and implemented half-heartedly. It is only a small proportion of SCs, about two per cent of SCs families, who have been able to secure employment in Government, PSUs and other such public organisations through the mechanism of scholarship, hostels and reservation in posts and appointments. It is only this small proportion who have been able to cross the "initial capital line of economic freedom" and the "initial capital line of self-respect" demarking lines most relevant to SCs, STs and BCs. Even the benefits of reservation have not reached the SCs in full because of poor implementation by the Central as well as State Governments.

STs, proud masters of their traditional territory, are being progressively deprived of their lands and have, in many cases, been reduced to minorities in their own home-lands. This is a historical process that has been going on for centuries and has acquired greater momentum in the decades of Independence. The lands that still remain with them are poorly developed, are rarely irrigated and are unintegrated or poorly integrated with the market, leaving the field open to exploiters and middlemen from outside. Irrigation projects that have been undertaken by Governments in the tribal areas are typically programmes for creating dams in tribal areas, submerging tribal lands, scattering their settlements and people to the winds and taking water to non-tribals outside the tribal areas; the plan expenditure incurred on such projects are gratuitously and unabashedly shown as a part of the Tribal sub-Plan, which has also been routinised and trivialized. No wonder an increasing number of STs are forced into agricultural wage labour and the proportion of STs among agricultural wage labourer has increased in recent decades. Traditional tribal rights in forests which they have been enjoying through traditional symbiotic relationship between tribes and forests, were unilaterally abrogated and abridged by the colonial government, an abrogation and abridgement continuing even after Independence, making the STs dependent on others for their elementary requirements and for their very survival. In the trading of Minor Forest Produce (MFP) in the collection of which tribals are specialised, they are being exploited both by private trade as well as by cooperatives/corporations set up by Governments. Availability of MFP, which is the main or a substantial source of livelihood for a large percentage of STs is fast shrinking.

Developmental assistance has been and is usually sporadic, patchy, truncated and inadequate. Even these are poorly implemented because of the presence of inegalitarians, in large numbers and in crucial positions, both in political as well as administrative governance and the persecution

and sidelining, in the decades after Independence to this day, of those in the administrative structure of the country, who are Egalitarians and who bear faith to the Constitutional principle of Socio-Economic Justice....

..... Opportunities and incomes in the traditional occupations, to which they (backward classes) are largely confined, are also being threatened and truncated by the organised market and through denial of access to Relevant Technology and to finance and credit. Many of them have consequently been pushed into agricultural wage-labour and even bonded labour. Almost all bonded labourers who are not SCs or STs belong to BCs. The problem faced by BCs engaged in traditional occupations is also the fate of those sections of SCs and STs who are dependent on similar traditional occupations. The presence of BCs in the organised modern establishments of government and quasi-governmental bodies is very limited on account of denial of their Constitutional right to be recognised and accorded reservation and other facilities until 1990-93 at the Centre and in a number of States. Even now their other entitlements like reservation in education have not been provided for in the Central Sector.

Thus, as illustrated above, in the life of all those three categories, who together constitute the vast majority of India's population, economic freedom is absent. Consequently, almost all of them dwell below the "Line of Economic Freedom" and the "Line of Self-Respect". An important instrument of progress emphasised by **Dr. Babasaheb Ambedkar,** viz; education, has not been made available to them either in full quantity or in quality. There is no educational equality for them with the dominant elite minority. In fact, the qualitative gap between the educational availability to this majority and the dominant elite minority has been alarmingly widening in the last one or two decades. Thus there is no true equality of opportunity for them. Indian governance at the Central as well as State level, has not till now addressed itself totally, comprehensively and consistently to measures which would bring economic freedom, educational equality and true equality of opportunities to SCs, STs and BCs in an integrated and comprehensive manner. Developmental assistance has been and is usually sporadic, patchy, truncated and inadequate".

9.4 Measures To Fulfil The Constitutional Mandate

The wrongs suffered by these classes can be remedied only by a combination of measures. Free and compulsory elementary education, indeed quality education, is the most important. Facilities need to be provided to ensure that talented children belonging to these communities, achieve their full potential and grow to become top professionals and administrators. Education alone, however, will not go very far. Much of the opportunities and prospects of employment of the educated members of the Scheduled Castes, the Scheduled Tribes and Backward Classes are in public- services. Private sector has not responded with the needed understanding. It needs to cooperate in the improvement of socio-economic condition of the people especially those belonging to the weaker sections of the society. It ought to contribute in the areas of advancement of education, health and in provision of employment opportunities for the weaker section of the people including the Scheduled Castes, Scheduled Tribes and the Other Backward Classes. Services in Government can provide for only a very small percentage of the Scheduled Castes, the Scheduled Tribes and the Backward Classes. But that will be symbolic of their empowerment and assures a sense of participation and share in governance. Sincere efforts need to be made to fulfil the constitutional mandate of adequate representation for Scheduled Castes, the Scheduled Tribes and Backward Classes in public services. Asset building, easy credit from banks, providing land for agriculture, augmentation of irrigational facilities are equally important.

9.4.2 Better enforcement of land reforms legislations has to be ensured. Forcible eviction of workers allocated land under various schemes and atrocities on weaker sections must stop. Safeguards have to

be built in to protect the interests of Scheduled Tribes in land and forest reserves of their region while ensuring optimum utilization of those resources for speedy development of tribal region and the country. The tribal areas covered by the Fifth Schedule and Areas not covered by any Schedule need to be brought under the Sixth Schedule for better administration of these Areas and for bringing greater benefits to the tribals in these Areas.

9.4.3 A rich wealth of Traditional Knowledge and Folklore exists in the country especially in tribal areas and areas inhabited by the economically and socially backward classes. There is a need to identify and comprehensively document all traditional knowledge available in the country so that effective steps for protecting the 'common heritage' of tribals and others are taken. This has acquired urgency and added significance in view of establishment of an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore by the WIPO General Assembly, at its twenty-sixth Session, held in Geneva from September 26 to October 3, 2000. The protection of traditional knowledge, innovations and creativity; and the protection of expressions of folklore, including handicrafts are amongst the agenda items for discussion in the first Session of the Committee being held from April 30, 2001*. India may also join hands with the nations of the Third World in getting protection in these areas. Appropriate domestic legislations would also be required to be enacted to provide protection in these areas. Proposed legislations may also ensure that the benefits of the new intellectual property regime get passed on collectively to the communities who have contributed in creating, enhancing and preserving that knowledge.

9.4.4 Measures are also needed to ensure availability of adequate public funds for the welfare of the Scheduled Castes and Scheduled Tribes and for ensuring the funds allocated for their welfare are exclusively used for their welfare. Allocations for Backward Classes are grossly inadequate and these need to be enhanced and spent exclusively for their welfare. Targeted schemes are also necessary to improve the skills and conditions of these classes.

* See WIPO Document No. WIPO/GRTKF/IC/1/3. P.3

CHAPTER 10

The Way Ahead; Fulfilling the Constitutional Mandates

Human deprivation is the outcome of several factors which include hunger, illiteracy, poor health, bad governance (that results in lack of participation of stake-holders in the decision making), lack of access to information, entrenched social customs, social structures and systems, ineffective use of science and technology, inappropriate expansion of economic opportunities and weak legislations. The true extent of human deprivation in India unfortunately has been a matter of debate and conjecture. Big gaps exist in the social statistics that makes it difficult to assess the full extent of human deprivation in India. There is an inherent tendency in Government reporting to 'block out' any embarrassing statistics. Denial in the absence of reliable data is the common way of avoiding the reality of the situation. Several forms of 'silent deprivations' indeed remain ignored – and their very existence often denied. These include, for instance, domestic violence against women, child abuse, child trafficking – all of which are reportedly prevalent in India but not taken serious notice of. Similarly, the plight of children in conflict situations – whose rights remain grossly violated – are seldom talked about. No mention is made of the situation of women and children – and families – who suffer during various agitations.

10.1.2 Conditions to end human poverty and to fulfill the Constitutional obligations are undoubtedly favourable in India today. Economic reforms are paving the pace for more rapid economic growth. There is much greater awareness about women's rights and children's rights. There has been acceleration in the efforts to reduce illiteracy and universalize basic education. The social sectors are beginning to receive attention for policy reforms. The most notable development is the new population policy announced in March 2000 just as the country was approaching the one billion-population mark. Public advocacy is beginning to take strong roots as several issues including HIV/AIDS, environmental degradation, neglect of basic education, child labour, and domestic violence are being raised. The civil society organizations are becoming vibrant and vigilant. Citizens groups are beginning to take a greater interest in public issues. Improved access to information backed by a pro-active role by the media are having a strong influence on public discourse and thinking. It is the time to seize the opportunity and to act so as to fulfil the unfulfilled Constitutional commitments made to the people of India more than 50 years ago and to give them choices and a life of dignity.

10.2 Eliminate Hunger

Over 260 million people living below poverty line in India are chronically hungry. Hunger and poverty forces families to make trade offs. Trade offs between hunger and meeting other basic needs. Trade offs for who goes to school and who doesn't. And trade offs between who eats and who doesn't. In such trade offs women and children are often the worst sufferers. Poorly-fed and malnourished pregnant women give birth to stunted and unhealthy babies who are prone to diseases.

Measures to Alleviate Income Poverty

- ***Enable the poor to accumulate the assets***
  - ***Enforce land reform laws effectively***
  - ***Ensure easy availability of bank credits to poor***
  - ***Ensure minimum wages to every worker***
  - ***Provide food security to poor***
- ***Enhance the productivity of the assets that the poor possess***
  - ***Improve the quality of their labour / skills***
  - ***Improve the productivity of their farms and enterprises***
- ***Adopt policies that lead to the higher economic growth***
  - ***Promote employment intensive development policies***
- ***Ensure equitable distribution of income and wealth***
  - ***Radical re-distribution policies often prove counter-productive***

Poverty indeed has a woman face. The Scheduled Castes, the Scheduled Tribes and backward classes are an easy prey of poverty and hunger and women of these categories are its worst victims.

10.2.1 Provide Food Security To Poor

The country sadly faces a paradoxical situation of surplus unlifted stocks of food grains in godowns of the Food Corporation of India co-existing with hunger and malnutrition. Public Distribution System essentially is the food subsidy programme (making up to about half of the total spending on Anti-poverty programmes by the Central Government) explicitly targeted towards poor. The programme was strengthened, improved and renamed as targeted public distribution system. Even after fine-tuning of the Targeted Public Distribution System, the performance of the fair price shops in some of the States, as revealed by some studies, is dismal. In some States the percentage of fair price shops not opening even once a week is estimated to be 87%. The transfer of income intended by Public Distribution System has, by and large, benefited the urban sectors and the Above Poverty Line sections of the society more than the poor. Investigations also indicate that about one-third of the supplies in the Public Distribution System are diverted. The delivery system, according to widely held public perception, seems to be the only substantial beneficiary. Finance Minister while presenting the budget for the year 2001-2002 stated that while subsidy grew to Rs.12,125 crores the satisfaction level with PDS has gone down and therefore he proposed that Centre instead of providing subsidised food-grains, would provide States with financial assistance. An efficient scheme to provide food security to poor is essential if right to life provided under Constitution is to have any meaning for poor. Introduction of scheme of food coupons or providing cash subsidy or further strengthening of targeted public distribution system itself are amongst some of the options in this regard. Scheme of Food Coupons or cash subsidy can be tried as an experimental measure in areas where public distribution system is not functioning effectively and the scheme, if found successful, can be extended to other parts of the country.

10.2.1.1 Scheme of Food Coupons

In the scheme, food coupons of entitled amount (which can be equal to the amount of subsidy) can be issued fortnightly/monthly from post offices/banks or such other agencies, against ration card or against a Food Security Account opened there in the joint name of the head of the beneficiary family and his/her spouse (no cash transactions are to be made against this account). The value of the coupons to which the beneficiary is entitled to, is to be credited fortnightly/ monthly in his account and beneficiary can obtain the coupons of the amount at his/her credit. The beneficiary would be entitled to open an account in any post office/bank etc. of their choice against a proper authorisation from the concerned food supplies office. A number of private shops dealing exclusively in food-grains are to be authorised to accept these coupons. Beneficiary can purchase food-grains from any of the shops so authorised by paying the amount of food articles purchased minus the value of the coupons exchanged. Authorised shopkeeper can deposit coupons in their bank/post office account like cheques and an amount equal to the value of coupons would get credited to their accounts. Misuse of coupons (like exchanging it for cash or any articles other than food articles) may be made an offence.

10.2.1.2 Elimination of the monopoly of fair price shops owners, elimination of corruption in delivery system and passing the full value of the subsidy to the beneficiary and providing him choices in purchasing food articles from any of the authorised private shops (competition amongst shopkeepers is likely to ensure better services and availability of better quality of food articles at competitive rates) are amongst likely advantages of the suggested scheme over the existing system. This would also save the Government from responsibility of making subsidised food articles available to fair price shops and monitoring such shops.

10.3 Provide Universal And Free Elementary Education

Experience world over shows that investment in basic education yields high returns and Indian experience itself supports it. States in India where rural poverty is declining are mostly in the South where the population is better educated and disparities between men and women in health and education are smaller – in fact, some of these States have already reached close to replacement levels of fertility. Studies confirm that female education has a positive impact on lowering fertility

rates. Illiteracy results in far reaching debilitating effects on individual freedom, initiative and skills and lowers the productivity of labour.

10.3.2 Today in the year 2001, more than 350 million Indians are illiterate – unable to read or write despite mandate of Article 45 that required the State to endeavour to provide by the year 1960, free and compulsory education to all children below the age of 14 years. The national policy of education (1986) made a commitment to make primary education free and compulsory upto the fifth standard. Not to provide universal elementary education on the pretext of financial constraints is unwise for it is rightly said "if you find education expensive, try ignorance. It is far more expensive". Majumdar Committee came to a conclusion that the costs were not the limiting factor in fulfilling this national commitment. In fact, realising a fee from professionals, educated and trained in India but taking jobs abroad is an untapped source of huge revenue that can be used to finance free and compulsory education. Delay in fulfilling this constitutional obligation has already resulted in India being overtaken by many countries including China and Indonesia in respect of literacy rates.

Are The Costs Prohibitive ?

Majumdar Committee appointed by the Ministry of Human Resource Development to assess financial requirements for providing elementary education to every child estimated that by the end of the 10th year, on an average, additional expenditure to the tune of 0.7% of Gross Domestic Product (GDP) would be needed for the purpose assuming a modest actual growth of 5% per annum in GDP over the next 10 years. Taking note of the fact that the current spending on education amounted to about 3.6% of GDP and national commitment is to raise spending on education to the level of 6% of GDP, the Committee felt that the task did not appear to be daunting at all.

Majumdar Committee estimates were based on teacher-pupil ratio of 1:30 and it assumed cent percent additional coverage at Government expense. Current trends indicate that 15% coverage is by private un-aided schools. The Department of Elementary Education and Literacy adopted a cost effective and pragmatic approach to assess the Government's expenditure for the purpose. It took into account reduction in Government expenditure on account of private coverage and by taking a higher teacher pupil ratio of 1:40, it estimated that by the end of the tenth year, an additional Rs. 8,000 crores annually would have to be invested by the Central and State Governments towards recurring cost and an additional Rs. 6,050 crores would be needed towards capital investment. Total annual expenditure of the Central Government alone is over Rs. 300,000 crores. Annual Defence expenditure is over Rs. 55,000 crores. Over Rs. 38,000 crores is spent annually on salaries, allowances and travel expenses of the Central Government employees. And then there are untapped sources of revenue which can be tapped to finance free and compulsory education. A fee from professionals, educated and trained in India but taking jobs abroad, is an untapped source of huge revenue that can be used to finance free and compulsory education. Is the task of operationalizing the right to free and compulsory education upto the age of 14 years as a justiciable Fundamental Right unachievable for want of funds?

10.3.3 The Constitution (Eighty-third Amendment) Bill, 1997 as introduced in Rajya Sabha on 28th July, 1997 seeks *interalia* to insert a new Article 21A in the Constitution so as to provide the right to education as a Fundamental Right. Clause (1) of the said Article provides that the State shall provide free and compulsory education to all citizens of the age of six to fourteen years. Clause (2) provides that the aforesaid right shall be enforced in such manner as the State may, by law, determine. Clause (3) provides that the State shall not make any law, for free and compulsory education under Clause (2), in relation to the educational institutions not maintained by the State or not receiving aid out of State funds. In the case of Unnikrishnan[1] Vs State of Andhra Pradesh, the Supreme Court held that elementary education is a fundamental right.

10.3.4 Universal and free elementary education to all children however still remains an unfulfilled constitutional promise. It is the time to fulfil that promise.

10.3.5 Achieve Excellence In Education

Universal and free elementary education would achieve little if its quality is poor. The official data claim that 95% of the population has access to a primary school within walking distance of a kilometre. This is perhaps true, but it is not a reason to become complacent. It is not the location of the school that matters alone, but what really matters is the state of the school and the quality of

[1] AIR 1993 SC 2178

education imparted therein. Studies have repeatedly shown that even where schools exist, the classrooms are inadequate, roofs leaking, and the facilities deplorable.

How well equipped are Village Schools ?

On survey of village in Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh, a PROBE team found :

- ***26% of classrooms did not have a functional backboard***
- ***44% of schools did not have a playground***
- ***54% of schools did not have drinking water***
- ***55% of schools did not have a teaching kit***
- ***61% of school did not have toys***
- ***72% of schools did not have a library***
- ***84% of schools did not have a toilet***

- RROBE TEAM SURVEY, 1999

10.3.5.1 The studies also show that the quality of education imparted in schools in public sector is generally poor. A PROBE Team found that despite the government's claim (and promise) that single-teacher schools are abolished, 12% of all primary schools in the PROBE villages had a single teacher appointed. Another 21% had a single teacher present at the time of the survey. Thus, almost one-third of the primary schools surveyed were ***de-facto*** single teacher schools. The PROBE survey also revealed that 33% of head teachers were absent, and only 25% were engaged in any teaching activity. In 72% of primary schools, Village Education Committees had been formed, but only 51% of these were functional. The PROBE team further found several irregularities in the implementation of the mid-day meal scheme in primary schools. None of this however is new knowledge to anyone and particularly to the officials in the education Departments.

10.3.5.2 When in the Eighties, faced with a situation of even a slight set back in its educational preeminence, the American Government set up a "National Commission on Excellence in Education". The opening words of the Commission's report "A Nation At Risk: The Imperative For Federal Reform" are telling. They are :

> "Our Nation is at risk. Our once unchallenged preeminence in commerce, industry, science, and technological innovation is being overtaken by competitors throughout the world. This report is concerned with one of the many causes and dimensions of the problem, but it is the one that undergirds American prosperity, security, and civility. We report to the American people that while we can take justifiable pride in what our schools and colleges have historically accomplished and contributed to the United States and the well-being of its people, the educational foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a Nation and a people. What was un-imaginable a generation ago has begun to occur – others are matching and surpassing our educational attainments."
>
> "If an unfriendly foreign power had attempted to impose on America the mediocre educational performance that exists today, we might well have viewed it as an act of war. As it stands, we have allowed this to happen to ourselves. We have even squandered the gains in student achievement made in the wake of the Sputnik challenge. Moreover, we have dismantled essential support systems, which helped make those gains possible. We have, in effect, been committing an act of unthinking, unilateral educational disarmament."
>
> "History is not kind to idlers. The time is long past when America's destiny was assured simply by an abundance of natural resources and inexhaustible human enthusiasm, and by our relative isolation from the malignant problems of older civilizations. The world is indeed one global

village. We live among determined, well-educated, and strongly motivated competitors. We compete with them for international standing and markets, not only with products but also with the ideas of our laboratories and neighbourhood workshops. America's position in the world may once have been reasonably secure with only a few exceptionally well-trained men and women. It is no longer."

10.3.5.3 Increasing enrolment and ensuring retention is only one part of the problem, more challenging part of it is to improve the quality of education and achieve excellence in education.

10.3.6 Secure Civil Society Participation in Provision And Management of Elementary Education

Management of education through remote control by officialdom in these fifty years has failed to deliver the desired results. In the State of Himachal Pradesh[@] one of the reasons identified for rapid decline in illiteracy, is civic cooperation. Civil Society participation in the planning, monitoring, financing, overseeing of elementary education can facilitate greater availability of better quality of the elementary education in a short span of time. Civil society participation can also be used for removing problems faced by the Scheduled Castes, the Scheduled Tribes and backward classes. An appropriate policy framework needs to be evolved to secure effective and meaningful participation of stakeholders, voluntary organisations and the other institutions of the civil society in provision and management of education.

10.4 Improve Quality Of Basic Health Care

Public spendings on health estimated at 1.2 per cent of GDP are low but overall spending estimated at 6% of GDP are high because of private spendings. There are large variations in private financing and provision between the States. For example, the lowest proportion of private hospital care is in rural Orissa and West Bengal (9 per cent and 18 per cent of hospitalizations respectively) which compares adversely to over 75 per cent in rural Andhra Pradesh and Bihar. Public health care network has grown extensively reaching almost every nook and corner of the country. Ninth Plan indeed, identifies health as one of the priority areas. Supreme Court has, in the case of Consumer Education & Research Centre and Others Vs. Union of India (AIR 1995, SC 922), held that the Right to Health is a fundamental right. National Human Rights Commission has also recommended that health being a basic human right, be declared as a fundamental right. Yet, infrastructural facilities provided in most of primary health care centres and quality of health care delivered remains poor. There exists wide variation in the health care facilities across the States and even between different regions in a State. Women, children, poor and deprived and the Scheduled Castes, the Scheduled Tribes and the Backward Classes are badly hit due to non-availability of quality health care at reasonable cost. They are often forced to take treatments from unqualified practitioners at enormous risk to their health and well being. Improving the quality health care in public sector and to make it responsive to the needs of poor and deprived, is the pressing need of the day.

10.4.2 Maternal Mortality And Infant Mortality

Excess of males over females (sex-ratio is 933 females per 1000 males) reflecting existence of gender bias, high maternal mortality rate (407 per lakh live births) and high percentage of anaemia (52%) amongst pregnant women show the neglected state of women health in the country and call for urgent measures to improve the reproductive health care in the country. High rates of mal-nutrition among children (53%) calls for urgent and targeted measures to improve nutritional intake of children especially of those belonging to poor and weaker sections of the society. Under-nutrition, studies have shown, has a greater impact on poor children's cognitive development than on development of

[@] A scheme in Himachal Pradesh of payment of Rs.25 to Rs.30 per month as compensation towards opportunity cost to the families of SC and ST girl child attending class VI to X has reportedly helped in substantially improving retention rate in these classes.

children who are not poor. Protein energy malnutrition, temporary hunger and micronutrient deprivation adversely affect learning achievements of a child. Economic losses due to malnutrition are estimated to cost the country at least $10 billions every year. Preventive & basic health care facilities for children need to be improved qualitatively.

10.4.3 Secure Civil Society Participation In Healthcare

Health[#] is described as 'a state of complete physical, mental and social well-being, not merely absence of disease and infirmity'. Health depends upon several factors such as nutrition, personal hygiene, family life, collective living, environmental conditions and access to social services including health and medical care. Need for public involvement in health care become self evident when the holistic view of health as defined by WHO is taken into account. In recent past, there has been growing recognition in many countries of the importance and benefits of having public participation in health care.

10.4.3.2 There are many advantages in securing public participation in the health care including policy and planning.

- Public participation improves communication, provides information, and builds constituency support. Better information leads to informed decisions and better policies.

- Providing services, which are inappropriate or inaccessible drains away scarce resources from more imaginative and responsive services. Public participation helps in greater awareness of user views and in provision of more efficient and appropriate services. Through their own involvement, communities can exert greater influence over health policies and allocation of resources. They can press for and achieve improved services, or new services, which more appropriately meet their needs. Public participation also puts pressure on providers to provide services in a more user-friendly way. Public participation can force providers to make the desired changes in policy and delivery of health services which due to vested interests of providers may otherwise be difficult to make. Clear messages from users about what they want and what is wrong with existing services are difficult to ignore for a long time and users wishes may ultimately have to be respected.

- Health services have largely been unsuccessful in meeting the needs of the most disadvantaged. Smithies and Webster[1] state that 'community involvement assists the targeting of disadvantaged or isolated groups, allowing a shift in focus from traditional priorities'. They further state that 'community involvement work is often prioritised with deprived and disadvantaged groups and communities, be they geographical or communities of interest. Community development approach, which underpins community involvement, works to counter prejudices and discrimination through creating equal opportunities and positive action'.

- Once the public 'becomes empowered and accustomed to having a voice on health issues, they begin to look for ways in which they can influence the decisions of those organisations which have a major effect on their lives and their health'. At present, major resources are being used on curative modern medical system despite the fact that the major improvements in modern health have not come primarily from curative medicine but from the other sources. This is also the position in advanced countries. In U.S.A. relatively few resources are allocated to health promotion, disease prevention, health education, nutrition, and alternative health movements. Public participation may expose vested interests and may lead to better utilisation of resources. Smithies and Webster[2] state that 'involving community in health could lead to a shift in the balance of resources with gradually more proportionately being spent on prevention of ill health and a lower proportion on illness and care'. Salmon

[#] The World Health Organisation Constitution (1948)

[1] Smithies Jan and Webster Georgina (1998), Community Involvement in Health, Ashgate, Aldershot.

[2] Smithies Jan and Webster Georgina (1998), Community Involvement in Health, Ashgate, Aldershot.

and Berliner* state that 'health practitioners, health planners, and consumers can be of substantial aid in the integration of contributions from alternative health movements into the mainstream medical care system'.

- Public participation 'promotes better access for people to health information and resources, greater awareness of an individual's own health needs and those of their community, and of the factors that influence health. It helps people to make realistic and informed decisions about their health'.

- Serious problems of public health including prevention of infections like Malaria, Tuberculosis, Hepatitis, HIV/AIDS etc. cannot be tackled without active public participation and cooperation.

10.4.3.3 The public participation also has certain disadvantages.

- It may result in delayed decisions and add to the cost of decision making.

- It might bring to the forefront many unmet needs which may result in greater demands being made that can possibly be met within the available resources.

- Legitimacy of representation is difficult to ensure.

- Consumers often lack sufficient knowledge of health care issues and planning and this coupled with emphasis on technical planning and specialised knowledge of providers in health care is a big impediment in the effective public participation.

- Public participation is often perceived by providers and planners as a threat to their professional autonomy and credibility and hence there is resistance to public participation from them.

10.4.3.4 Increasing inequalities, poor quality, uneven access, paternalism, lack of responsiveness, disease orientation and growing costs of treatment have resulted in growing disenchantment with provider dominated health systems. The growing shift to holistic view of health has further increased interest in self-help, preventive health practices and alternative forms of treatment and focus is shifting from professionals to people in many developed and developing countries of the world. The trend has further strengthened with the greater acceptance of democratic values and practices in most nations of the world especially after the collapse of command and control economies led by former Soviet Union.

10.4.3.5 To enhance participatory democracy and to improve health planning, a number of countries have enacted statutory provisions to provide for public participation in health care. In the U.K., Section 9 of the National Services Reorganisation Act, 1973 gave community health councils their statutory existence with a duty cast on these councils to represent interests in health services of the public in its district. In U.S.A. P.L. 93-641, the National Health Planning and Resource Development Act of 1974 created a network of health planning agencies at the foundation of which was the local community. WHO-UNICEF report (1978)* mentions attempts by Governments in certain developing countries to involve community participation in health care.

10.4.3.6 A number of International agencies have lent support to public participation in the health care. World Health Organisation Alma-Ata Declaration (1978)* clearly states that 'the people have the right and duty to participate individually and collectively in the planning and implementation of their health care'. According to the World Development Report, 1997@ reforming the health system is an area where public and private interests coincide to such an extent that some level of public – private

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* Salmon Warren J. and Berliner Howard S. (1981), Alternative Health Movements: Challenges to Health Planning in Checkoway Barray (ed.), Citizens and Health Care, Pergamon Press, New York.

* World Health Organisation and United Nations Children's Emergency Fund, Primary Health Care – international conference on primary health care, Alma Ata, USSR, Geneva, WHO and UNICEF, 1978.

@ World Development Report, 1997, World Bank, Oxford University Press, Oxford

deliberation is not just desirable but in fact critical to success. Community participation is the key element of the international action plan, known as Agenda 21 designed to bring about sustainable development for the twenty-first century. This plan has been endorsed by over 150 nations at the Earth Summit in 1992. 4th International Conference on Health Promotion held in 1997 in Jakarta reaffirmed the importance of community participation as key element of Health for All.

10.4.3.7 Participatory management of civil society such as Rogi Kalyan Samiti of Madhya Pradesh (see box after section 8.1.2.3) has reportedly resulted in improvement in the functioning of public hospitals in the Madhya Pradesh. Greater participation of public can perhaps achieve much more. Time has come when a serious consideration needs to be given towards taking effective measures to secure civil society participation in health care in the country.

10.5 Provide Good Governance

Good governance, as studies reveal, is essential for sustainable development and poverty reduction. Good governance alone can ensure sustainable human development. Good governance is the urgent need of the hour. The provisions of the Constitution are still valid but many remain commitments on paper that the State has failed to fulfil. Only a stronger system of democracy, public vigilance and debate and discourse backed by effective rule of law can see that the basic economic and social rights of citizens are fulfilled.

10.5.1.2 Failure of various schemes launched by the Government for people's welfare are an indicator of inherent weaknesses in the governance of the country. The manner in which those in government responsible for implementation turn a blind eye to rampant abuse of various schemes is indeed shocking. The hijacking of poverty programmes by the rich and better-off is quite well-known. Textbooks meant for poor children never reach them. Equally worse are the various incentive schemes that government introduces periodically. The family planning incentive schemes proved a disaster. The scheme to pay Rs.2 per day for every girl child who goes to school reached nowhere in Karnataka. The mid-day meal scheme for school children – soon converted into the sukha ration (dry ration) scheme – is full of deficiencies, mysteries and inefficiencies in most States where it is being implemented.

10.5.1.3 The various strands of good governance have been indicated after Section 8.1.3 (see box). All these strands needs to be strengthened individually and collectively in order to secure good governance. The public cooperation and participation from decision making to implementation needs to be secured in all important national endeavours for beneficial interaction between the government and the institutions of civil society. The State has to take lead in creating an enabling atmosphere in which other actors of the civil society can effectively participate and contribute towards sustainable human development.

10.5.2 Changing Mind-Sets And Attitudes

The colonial hangover of the notion of the 'Rulers' and the 'Ruled', 'Governors' and the 'Governed', Government and People – the 'us' and 'they' divide and even more ancient hangover of the notion of the superior and the inferior, the upper caste and the lower caste, 'Bhadra lok' and 'Chotto lok' etc. are the major stumbling blocks in ensuring social justice. A survey of 109 Indian judges in 1996 conducted by SAKSHI, a feminist legal resource group found that :

- 48% of respondents believed that it was justifiable for a husband to slap his wife on certain occasions.
- 74% of respondents believed that preserving the reputation of the family ought to be a woman's primary concern even if she encountered violence.
- 50% of the respondents believed that child abuse is not common.
- 66% believed that wearing provocative clothes is an invitation to sexual assault.

10.5.2.2 The attitudes of the most of the lawyers and judges as revealed by the said study may in themselves be a serious impediment to the administration of gender justice. The attitude of the people in these and other decision-making and decision-influencing, decision-enforcing/implementing

positions towards the Scheduled Castes, the Scheduled Tribes and backward classes is a stumbling block in achieving social justice*. Attitude of people who are in the decision making positions needs to be tuned with the scheme and philosophy of the Constitution and the interaction between the administrators and the citizens must become that of between a free and self-governing people on the one hand and their agents chosen to serve them on the other.

10.5.3 Transparency And Openness In Governance

Asymmetry of information and lack of people's reach to information is a major reason why the poor and ignorant get misled and exploited. Worse is the situation where even the educated have no easy access to information and recourse to grievance redressal systems. For instance:

- It is well known that private contractors often pay less-than-minimum wages to rural workers. This perpetuates as in many instances, the workers do not even know what they are entitled and ought to be paid. For them finding out what their minimum wages are, is not easy.
- Again, most people know that it is necessary to obtain a birth certificate for every child born. Few, however, know where and how to get one without having to pay a bribe or incur an unreasonable expense.
- Only a few know what remedy is available if a police officer refuses to register FIR of a crime.
- It is not mandated that government officials dealing with the public should identify themselves by wearing a name badge – be they income tax inspectors, electricity meter readers, telephone linesmen, or customs or police officials. This results in people even not knowing the identity of the person whom they are dealing with.
- The situation with respect to public projects is even worse. Funds are released for construction of schools and other public utilities but these do not get built. People who were to benefit never know when and how much money was released – or who was responsible for building it.

10.5.3.2 Unless people have easy access to a whole range of information, the question of accountability and performance will remain elusive. Information Technology has tremendous potential for providing greater and easy access to information to the citizens and in providing more user-friendly services to them. This technology can beneficially be used in ensuring 'a single window' service to the citizens. Easy access to information is now becoming possible through internet portals that have been launched or are in the process of being launched by various Departments/ Organisations of the Government – both Union and States. Effective use of this technology in Railway and Airlines reservation have greatly changed the way booking and reservation are done and has greatly reduced the difficulties of consumers. Similar operational systems need to be evolved in other areas of Government – public interface. Once software are developed on the basis of pre-determined rules, information technology can ensure equal treatment to all persons in a transparent manner in delivery of services. India has the core competence in information technology and communication and, therefore, chances of success in bringing greater transparency in administration through use of information technology are bright. It is time to make use of information technology on a large scale to bring about transparency and openness in administration.

10.5.4 Citizens Friendly And Responsive Public Services :

Article 350 of the Constitution recognises the rights of every person to submit a representation for the redress of his grievances. The said Article even permits such representation being made in any of the languages used in the Union or States. Common citizen today finds it very difficult even to know what services he is entitled to receive from government organisations and what public-grievance-redressal-mechanisms are available to him in case of denial of services. An effective mechanism needs to be set up in order to ensure that the citizens receive as a matter of right, efficient, responsive, timely, purposeful and user-friendly services from the service providing

* Social justice was declared as a fundamental right in the case of Consumer Education & Research Centre and Others Vs. Union of India (AIR 1995, SC 922)

agencies of the State and for the purpose citizens charters have been mooted. These Citizens Charters would list the entitlement of the citizenry to public goods and services along with time schedule within which he is entitled to expect to the services from such government organisations and from each functionary at various levels. The Citizens Charter would not prove to be an effective instrument for improving services and making them responsive and user-friendly, unless a person who fails to receive the public goods or the services in the manner and to the extent laid out in such charters, is able to secure promised services enforced easily and effectively. The enforcement of charters through consumers dispute redressal forums* established under Consumer Protection Act, 1986 or through institutions of Ombudsman at national and regional level are amongst the options in this regard. In suitable cases, monetary compensation could be granted by these bodies and in cases where monetary compensation is granted, concerned Department may be required to fix responsibilities on individuals responsible for lapse and take appropriate action against them.

10.5.5 Public Funding Of Institutions Of Civil Society

Massive financial grants are being released by various departments of the Government for aiding and promoting civil society initiatives in the country. The administration of these grants has been reported to be subjective and is said to be lacking in objectivity. The performance-appraisals are not professional. While genuine civil society initiatives need to be strengthened and promoted and supported partially by public funds, measures are necessary to secure the value of the public money. An urgent need exists to streamline distribution and administration of grants and for securing an independent and objective performance appraisal of work of organisations receiving public grants in order to decide entitlement of the claim at various stages of release of public funds.

10.6 Make Effective Use Of Science & Technology

"Today's world" says an American professor[1] "is divided not by ideology but by technology. This demands bold new thinking on development". He maintains that a small portion of the globe, accounting for some 15% population of the Earth, provides nearly all of world's technological innovations. A second part involving, perhaps, half the world's population, is able to adopt these technologies in production and consumption. The remaining part covering around one-third of the world population, he says, is technologically-disconnected neither innovative at home nor adopting foreign technologies. He includes the 'Ganges valley States' of India amongst the technologically excluded regions and observes that 'many of the technologically excluded regions, especially in the tropics are caught in a poverty trap. Among their greatest problems are tropical infectious disease, low agricultural productivity and environmental degradation – all requiring technological solutions beyond their means". In the "New map of world" a line west to east from the north of Gujarat to the south of Orissa indicates the divide between the northern technologically disconnected areas and the southern 'technological adopters'. According to him there are no technology innovative regions in India.

10.6.2 A World Bank Study[2] on India observes as under:

> "Much of the problem, it is said, is on account of poverty, infectious disease, low agricultural productivity and environmental degradation requiring technological solutions. Response of the rich countries in terms of technological and economic support is inadequate if not hesitant. The technology gap between rich and poor countries is one of the disturbing features of the times. "Free markets" says Prof. Sachs "are not enough: successful innovation requires supporting institutions, Commercial innovation today is generally a product both of basic scientific insight (based mainly on ideas in the public domain) and

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* In respect of the Scheduled Castes, the Scheduled Tribes, the Backward Classes and the Women, institutions like the National Commission for the Scheduled Castes and Scheduled Tribes, the National Commission for Backward Classes and the National Commission for Women can also be empowered to look into the complaints of non-enforcement of charters in respect of members of these classes.

[1] Jeffrey Sachs, A new map of the World Economist, June 22, 2000

[2] A World Bank Country Study : INDIA, Reducing Poverty, Accelerating Development (2000), Oxford University Press, New Delhi.

applied engineering (backed by patents). The first relies on universities and public laboratories, the second on private profit-driven firms. Successful innovation requires academia, government and industry to work in harness.....In developing countries, fruitful interaction of this kind is unheard of."

10.6.3 As industrial technologies of the developed countries become more and more sophisticated, the developing countries increasingly find their industrial infrastructure obsolete and non-competitive. This leads to a vicious chain. Lack of competitive and quality production itself impairs economic capacity for cutting edge technological research and the lack of modern technologies impedes economic growth. Developing countries are caught in this vicious circle. At the heart of the problem is the need to develop cutting-edge research standards in science and technology.

10.6.4 India no doubt has made significant progress in the areas of atomic energy, space, defence, agriculture, industry and certain Indian institutions are well-known for academic excellence but the country is far from realising its full potential of Science and Technology. A look at the systems put in place for promoting scientific and technological research and the nature of funding for its promotion and development seem to provide an answer as to what is constraining realisation of full potential of science and technology.

10.6.5 Seven Departments of Government of India viz. Department of Atomic Energy, Department of Space, Department of Defence Research and Development, Department of Science and Technology, Department of Science and Industrial Research, Department of Biotechnology and Department of Ocean Development, are major Science and Technology Departments.

10.6.6 Department of Space and Department of Atomic Energy each have a management structure of a Commission viz. Space Commission and Atomic Energy Commission and have enormous delegated powers and report to the Prime Minister. The Department of Defence Research and Development has Defence Research and Development Council with Defence Minister as its Chairman. It also has its Defence Research Council chaired by Scientific Advisor to Defence Minister and is having large delegated powers.

10.6.7 The Indian Council of Agricultural Research is governed by the Ministry of Agriculture, whereas the Indian Council of Medical Research is governed by the Ministry of Health and Family Welfare. The other socio-economic Ministries/ Departments have a number of R&D agencies under them. The Office of Principal Scientific Adviser (PSA) to the Government of India has recently been formed with PSA having Cabinet Minister rank. His office has three high level Committees/ Groups. The PSA is the Chairman of the Scientific Advisory Committee to the Cabinet, Consultative Group of Eminent Senior Scientists and Consultative Group of Government Department/ Agencies on Science and Technology. They are serviced by a full time Secretariat headed by a Secretary level Scientist. Ministries like Ministry of Information Technology, Ministry of Environment and Ministry of Non-Conventional Energy Sources are headed by Civil Servants as Secretaries and the Ministers at the helm. IITs, engineering colleges and science education institutes come under Ministry of Human Resource Development. Some States also have S&T Groups/ Councils to promote use of science and technology for development. Private sector has also recently become active in research and development and is contributing to national research and development expenditure.

10.6.8 With higher science and technology work being spread over various Ministries with multiple management structures, the question that necessarily arises is: Are our organisational structures, managerial systems and procedures such as to facilitate and promote the high standards of research initiative and achievements? Or are they with their wonted bureaucratic mould, not equal to the urgency with which advance research in Science and Technology should be promoted and nurtured? The answers seem uncomfortable. There is urgent need to look at the systems, structures, procedures and organizational roadblocks in promoting scientific talent and research efforts in high-speed, competitive world of technological advances. Apart from global competitiveness new technologies are necessary to handle many of the internal problems of education, health, hygiene, communication, information-handling and to make Indian products including produce of traditional producers globally competitive and marketable. What is required is an integrated and co-ordinated

approach in higher scientific and technological research in the country free from bureaucratic bottlenecks.

10.6.9 It is time that Government sets up an umbrella organisation in the form of a "National Science and Technology Commission" for bringing greater co-ordination and integration in planning, promotion, policy making and funding of higher scientific and technological research and for securing greater co-ordination in financial, organisational, managerial and administrative aspects of it so that while various commissions and bodies engaged in specialised research have full autonomy and freedom in their respective area of work, their work is not hindered by bureaucratic and administrative problems and the scientific and technological higher research is carried out in the country in a co-ordinated and integrated manner in consonance with the present needs of the country. In particular, the Commission may be responsible for the following functions:

(I) Evolution of Science and Technology Policy for the country

The fast growth on S&T, depends on the quality of education system from the primary to the higher-level education and research institutions. The S&T policy has to integrate the activities of science and technology with education and research based on the demands of industry, service, agricultural sector and other societal requirements. The first Scientific Policy Resolution was enunciated in 1958. The first Technology Policy Statement was made in 1983. Attempts to revise it have not succeeded, so far. The Science & Technology policy needs to be updated in consultation with Scientists, Technocrats, Academicians, Industrialists and Administrators and is to be based on the national vision of transforming the country from a developing nation to a developed nation in the shortest possible time. The Commission should be entrusted with revision of policy and it should also undertake periodical review of the policy.

(ii) Evolution of appropriate Managerial Structure in Scientific Departments/ Organisations

The Commission should be responsible for providing leadership to the scientific community and for evolving appropriate organisational structures, managerial systems, procedures and standards for scientific Departments/ Organisations, so as to create the facilitating environment in which the scientists and technocrats are able to work freely in a open environment and are accountable. It should also provide integrated Mission orientation to scientific Departments/ Organisations.

(iii) Responsibility for Allocation of Funds

The total outlay of various Central Government Departments in the year 2001-2002 put together amount to around Rs. 10,000 crores. Higher allocations are necessary for giving an impetus to higher research and technology. At present, normally 5% of the total Defence budget is being allocated for defence research. The system of funding adopted for defence research commend serious consideration. It is timely and appropriate to consider whether all the Ministries (other than scientific departments) should allocate 5% of their total budget for scientific and technological research or alternatively whether it should be ensured that investment of 2.5 to 3% of GNP is exclusively made in scientific and technological research and development. The Commission should be responsible for allocating these funds to different organisations engaged in scientific and technological research.

10.7 Give Voice To The People

Sustainable human development requires that all sections of the society including disadvantaged and deprived ones have an effective voice that is heard and taken into considerations in the decision-making processes. In this country, unfortunately, the vast majority of people – the Scheduled Castes, Scheduled Tribes, Other Backward Classes, women, farmers, unorganised labour, bonded labour, child labour, victims of prostitution and such other deprived and disadvantaged sections of the people have virtually no say in the decisions that affect them. Constitutional mandates

of social, economic and political justice and equality of status and opportunity have little meaning to them.

10.7.2 The issues relating to the Scheduled Castes, the Scheduled Tribes and Other Backward Classes have been dealt with in the preceding chapter. Article 15(3) of the Constitution permits the State to make special provisions for women and children. Article 39 enjoins the State to provide an adequate means of livelihood to men and women and secure equal pay for equal work for both men and women. Article 51A(e) makes it a duty of every citizen to renounce practices derogatory to the dignity of women. Despite these provisions, the various social indicators - sex ratio, literacy level, maternal mortality, high percentage of anaemic women in reproductive age group, etc. (see Chapter 5) indicate the continued existence of gender biases against women. Women indeed continue to be denied full freedom to work and equal opportunities in the workplace. Most of them cannot even exercise independent choice in their personal matters (Table 5.17). Dowry sadly continues to remain a cause of pre-marital humiliation and post-marital domestic mental torture and even physical violence for many women particularly those belonging to middle classes despite its abolition by an Act of the Parliament long time back. The representation of women in Lok Sabha (Table 5.12), Union Council of Ministers (Table 5.14), High Courts (Table 5.16) and in civil services (para 5.5.4.7) remains low. Their economic participation is a mere fraction of that of men. Women indeed remain far behind men in enjoying basic human rights, not to talk of equal share with men in educational institutions, the job market or in Government. Empowerment of women and giving them an effective say in decision making is essential in order to eliminate gender biases and inequality and to give them their rightful place in the society.

10.7.3 Bonded labour and child labour are prohibited by law, yet they do exist and are rather rampant. Active involvement and cooperation of civil society institutions is necessary to eliminate these evils completely. Effective implementation of the provisions prohibiting child labour and bonded labour need to be ensured and effective rehabilitation schemes for bonded labours and child labours need to be evolved so as to prevent them from falling again in the same conditions.

10.7.4 250 million workers out of a total workforce of 286 million workers are in the unorganised sector. These workers are exploited in diverse ways and targeted measures are necessary to put to an end of their exploitation. Efforts to reduce their sufferings and exploitation often are met with resistance from vested interests and often get subverted. A Central legislation formulated almost two decades back to regulate the employment and condition of service of agricultural workers, to ensure payment of prescribed wages and to provide for certain welfare measures for them did not see the light of the day. Many other instances can be quoted to show how efforts aimed at securing welfare of unorganised workers often get thwarted.

10.7.5 Marginal farmers and landless agricultural workers often fall in the grip of moneylenders and poverty due to failure of crops or other natural calamities. Farmers like industrialists need to be made entitled to the various benefits of government policy on industry so as to provide sufficient safeguards to them against losses due to natural calamities, etc. Better management of water resources in the country is needed so as to avoid situations of devastating floods in one area and paucity of water in other area of the country.

10.8 Making Legislation Work

Laws exist but many of them are poorly implemented. Some of them need review. There is a long way to go in terms of ensuring effective enforcement of the law as also to ensure reasonableness of many of them. For instance, there are State laws wherein the District Collector can postpone Panchayat elections or remove an elected Chairperson from office. Inherent biases against women and children exist in many laws and these biases need to be removed. Effective enforcement of laws also requires priority attention and measures should be evolved to secure their effective implementation.

CHAPTER 11

Issues On Which The Commission Invites Suggestions From The Public For Formulation Of Its Recommendations

11.1 Governance

11.1.1 Securing Good Governance

The first and foremost task appears to be for a radical redefinition of governance, to change the mind-set of bureaucracy, to surmount the colonial hang-over of the persistent notion of the 'Rulers' and the 'Ruled', Governors and the Governed, Government and the people – the "us" and "they" divide. The interaction between the Administrator and the citizenry needs to be informed by the awareness of and respect for the constitutional rights of the people and that the inter-action is essentially as between a free and self-governing people on the one hand and the agents chosen by them to serve them on the other. Massive and sustained participation of civil society initiatives, self-help groups, voluntary organizations etc, appears necessary in order to achieve a faster pace of socio-economic development and for building a more just, caring and equitable society the Constitution enshrined. The movement must be from Governance to self-governance. Respect for human dignity, human rights, and the rights of the citizenry, are critical to development and are not merely its rewards. This requires a radical reshaping of policies so as to create an enabling and facilitating environment in which effective interaction between the Government and the institutions of civil society becomes possible (also see Sections 8.1 & 10.5).

1. ***Do you agree with this view ? ;***

2. ***If so, will Governance improve if it is made participatory in all important national endeavours particularly in areas relating to socio-economic development and effectuation and realization of the socio-economic goals of the Constitution?; and***

3. ***If so, by what mechanism and process self-governance/participatory governance can effectively be achieved ?***

11.1.2 Transparency and openness in Governance :

Openness is in the public interest and that 'sunlight is the best disinfectant' against the virus of corruption. As a general rule, secrecy in governance is an unreasonable practice. It promotes corruption and suppresses accountability. Governance, therefore needs to be transparent and open especially in policy-making, programme-formulation and implementation in areas pertaining to socio-economic empowerment and advancement of the weaker sections of the society. (see Section 10.5.3)

4. ***Do you agree with this view?; and***

5. ***If so, in what manner Governance can be made more open and transparent especially in areas that relate to socio-economic development of the people in general, and of weaker sections of the society, in particular?***

11.1.3 Sensitization of Public Servants

Public Servants need to be made sensitive to the special needs of the Women, the Scheduled Castes, the Scheduled Tribes and the Other Weaker sections of the Society in order to ensure full enjoyment of Constitutional rights and protection by these sections of the society. A perception unfortunately exists that members of the public services, in general, are averse to working in the fields pertaining to the Scheduled Castes, the Scheduled Tribes, other backward classes, women etc. It is also said that instead of being guided by the Constitutional objectives and aspirations, many of them are guided by their own biases and

prejudices in dealing with issues pertaining to aforesaid classes of people which results in denial of rights to them. Such attitudes amongst members of public services require to be changed.

6. ***Do you think that public servants, in general, are not sufficiently sensitive and responsive to the special needs of the Women, the Scheduled Castes, the Scheduled Tribes, the Backward Classes and other Weaker sections of the society ?***

7. ***If so, how in your view, public servants can be made more sensitive and responsive to the special needs of the Women, the Scheduled Castes, the Scheduled Tribes and the Other Sections of the Society?***
   - ***Do you think any changes in personnel policies are required for the purpose?***

11.1.4 Citizen-friendly and Responsive Public Services

Article 350 of the Constitution recognizes the rights of every person to submit a representation for the redress of his grievances. The said Article even permits such representation being made in any of the languages used in the Union or in the State. Common citizen today finds it very difficult even to know what services he is entitled to receive from government organizations and what public-grievances-redressal-mechanisms are available to him in case of denial of services. Citizens' Charter in respect of every service-provider agency of the State is suggested to ensure effective, purposeful and user friendly delivery of public services. These citizens' charters would list the entitlement of the citizenry to public-goods and services along with time schedule within which he is entitled to expect services from such government organizations and from each functionary at various levels. In order to ensure that Citizen's Charters become an effective instrument for improved and user-friendly delivery of public services, it is further suggested that in case any person fails to receive the public goods and the services in the manner and to the extent set out in such charters, such persons should have recourse to an easy and effective system of grievance redressal? (see Section 10.5.4).

8. ***Do you think Citizen's Charter would help in improving public services and make them more responsive and user friendly? If so,***

   a) ***What should be the broad contents of the charters?***

   b) ***How Citizen's Charters should be institutionalized and operationalised ?***

   c) ***Should the Consumer Disputes Redressel Forums established under the Consumer Protection Act, 1986 be authorized to enforce observance of these charters and award suitable monetary compensations in appropriate cases? In cases, where monetary compensations are awarded, should it be mandatory for concerned Departments to fix responsibilities on individuals responsible for lapse and take action against them?; or***

   d) ***Institutions of a national ombudsman supported by the regional ombudsman should oversee the citizen's charters regime and administer charter marks ?; and if so,***

   e) ***Whether the institution of ombudsman be statutory or non-statutory?***

11.1.5 Public-Funding of Institutions of Civil Society

Massive financial grants are being made to institutions of civil society e.g. NGOs, Voluntary organizations, self-help groups etc. under various schemes of the several Ministries and the CAPART for the promotion of voluntary organisations. It is said that the

conditions attending the making available the grants and methods of the procedures therefor are, quite often, subjective and the performance-appraisal of these organizations are not professional. It is also said that the genuine organisations working for the weaker and disadvantaged sections of the society suffer from various handicaps put in their way both openly or surreptitiously by the vested interests. It is urged that there is an urgent need to streamline distribution and administration of grants and for providing for an independent and objective performance-appraisal of the organisations to secure value and proper use of public money.

9. ***Do you agree with this view? If so, should a framework for distribution and administration of grants to civil society institutions from public funds be laid? If so,***

   (a) Should Expert Group/ Groups evaluate and report on legitimacy and entitlement of the claims for grants?

   (b) Should the performance of the grantees and of the fund-utilization be certified by independent evaluating agencies?

   (c) Should release and renewal of grants be based on evaluation of the performance by such independent experts?

   (d) If so, what should be the form and composition of Advisory Groups and Evaluation Agencies?

   (e) What standards for identification of genuine civil society institutions working for the welfare of weaker sections of the society can you suggest? How protection can be given to such organizations ?

11.2 Elimination of Hunger

Public Distribution System is essentially the food subsidy programme explicitly targeted towards poor and is aimed at reducing hunger. Central Government incurs an annual expenditure of about Rs.12,125 crores on food subsidies. There are, it is claimed, four and a half lakh Fair Price Shops in India serving 180 million Ration Card holders/ families. The Public Distribution System is an important component of Anti-Poverty Programme. The country, unfortunately, witnesses the paradoxical situation of surplus unlifted stock of food grains in the godowns of the Food Corporation of India co-existing with hunger for lack of purchasing power. Even after fine-tuning of the Targeted Public Distribution System, the performance of the fair price shops in some of the States as revealed by some studies, is dismal. In some States the percentage of fair price shops not opening even once a week is estimated to be 87%. The transfer of income intended by Public Distribution System has, by and large, benefited the urban sectors and the Above Poverty Line sections of the society more than the poor.. Investigations also indicate that about one-third of the supplies in the Public Distribution System are diverted. The delivery system, according to widely held public perception, seems to be the substantial beneficiary.

Introduction of cash subsidy or the scheme of Food Coupons (see Section 10.2.1.1) as an experimental measure in areas where public distribution system is not functioning well and is showing persistent defiance of ethical norms and, if found successful, its extension to other areas or improving the existing public distribution system itself are amongst the options to improve the situation.

It has also been suggested that a certain percentage of the shops should be allotted to the members of the Scheduled Castes, the Scheduled Tribes and Other Backward Classes. Some State Governments already allot a particular percentage of Fair Price Shops to the Scheduled Castes and the Scheduled Tribes. Constitutionality of such allotment has already been upheld by the Court (Also see Section 10.2).

10. ***Which of the three options viz. cash subsidy, food coupons or improving the existing public distribution system as suggested in this paper is in your view the best option and why? Or can you suggest any other better option?***

- ***What can in your view be the possible problems in the scheme of cash subsidy or food coupons and how those problems can be remedied?***
- ***Can you suggest improvements in the scheme of food coupons as outlined in this paper?***
- ***What practical suggestions can you offer to make the Fair Price Shops function effectively and honestly serving the purpose of reaching foodgrains to the beneficiaries at the prescribed prices?***

11. ***Should reservation be provided in matters of allotment of Fair Price Shops and other similar allotments to the Scheduled Castes, the Scheduled Tribes/the Other Backward Classes?***

11.3 Education

11.3.1 Universal and Free Elementary Education :

Article 45 of the Constitution, the convention of the Rights of the child and international covenants on social, economic cultural rights enjoins the State to provide education to all children. The Supreme Court has declared elementary education upto the completion of the age of 14 years a fundamental right.

As India enters the 21st Century, nearly 35% of its population is still illiterate. If a country believes that it can be ignorant and at the same time free, it entertains an illusion. For those who speak of financial constraints in providing universal elementary education, the answer lies in those wise words uttered often "If you find education expensive, try ignorance. It is far more expensive". A constitutional and facilitating legal frame work to enforce the right of every child to free and compulsory education up to the completion of the age of 14 years is an immediate and absolutely essential national necessity (see Section 10.3.3).

12. ***Do you agree that the State should provide free and compulsory education to all children upto the age of 14 years ?; and***

13. ***If so, what should be the appropriate Constitutional and legal framework for the purpose ?***

- ***Will it be appropriate to fund elementary education from revenue collected from realisation of a fee from professionals educated and trained in India but taking jobs abroad?***

11.3.2 Civil Society Participation In Universal Elementary Education

Utilization of the potential of civil society through active participation and involvement of voluntary organizations, self-help groups etc. under an appropriate policy framework and scheme of grant-in-aid in provision and management of the education policy appears necessary having regard to the magnitude of the task and its significance for the future of the country in order to ensure that the task is shared by the nation as a whole in a truly participatory spirit and endeavour.

Participation by the stake holders and other institutions of civil society, if secured in a beneficial manner, can improve quality and availability of education. It is often complained that in single teacher or double teacher schools in villages, the teacher officially engaged

does not teach the students himself but hires or deputes his agents to teach. This, it is said, results in higher drop-out rate. A Watch Committee under a suitable frame-work, consisting of local people specially those having a stake in quality education can easily monitor the attendance of teachers. On the other hand, leaving this task to be remote controlled by officialdom hardly yields the desired results.

14. ***Whether involvement and participation of Institutions of civil society including those of deprived and disadvantaged people in provision and management of elementary education would be beneficial?***

    - ***If so, in what manner effective and beneficial civil society participation and involvement can be secured and what frame work – statutory or non-statutory – is needed for the purpose?***

11.3.3 Sustaining High Quality of Education

The quality of education in the schools is as important as its provision. Universal free elementary education would achieve little if its quality is poor. It would only widen the chasm between the better-educated urban-rich and poorly educated rural-poor. The question of quality assurance in elementary education, which is the foundation for the empowerment of masses, is too serious a matter to be left alone to the educational administrators. Civil society initiatives/ Neighbourhood Committees/ Voluntary organization/ Self-help Group need to be involved to share this responsibility as a call of national duty. (See Section 10.3)

15. ***Should stake holders – viz. Parents, voluntary organisations engaged in the promotion of education particularly of Scheduled Castes, Scheduled Tribes and other Weaker Sections of society, locally settled retired or serving administrators, educationists, legal and medical professionals, philanthropists, etc.. be involved (not acting, of course, in a manner seen to be intrusive in the administration or constituting a parallel administration) in the evaluation of quality in elementary education programme ?***

    a) ***What should be the composition of teams to assess quality of education in the schools and to make an independent and neutral assessment of the educational standards?***
    b) ***What should be the area or the number of schools each team should look into?***
    c) ***What should be the specific tasks?***

16. ***How can accountability of schools for student performance be laid and enforced?***

    - ***How should performance of schools in providing quality education be assessed and rated ?***
    - ***What should be the rewards for performance and sanctions for non-performance?***

17. ***What frame work – statutory or non-statutory – is needed to improve the quality of education ?***

11.3.4 Protection of Educational Interests of Weaker Sections:

Article 46 of the Constitution provides that the 'State shall promote with special care the educational and economic interests of weaker sections of the people and, in particular, of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation'. A.P. High Court in D. Murali Krishna Public School Vs. Regional Jt. Director of School Education (AIR 1986 AP 204) has declared that education is a fundamental right of the Scheduled Castes and Scheduled Tribes. The State, therefore, has

a mandatory duty to provide facilities and opportunities for education at all levels to the weaker sections of the society particularly to the Scheduled Castes and Scheduled Tribes.

18. ***What statutory/ policy framework is necessary to ensure that the Scheduled Castes and Scheduled Tribes and other weaker sections of the people have opportunity to get educated at all levels of education and they avail of admissions in all the educational institutions maintained by the State or receiving aid from it as per percentages of reservation provided to them by the Union of India or the State Governments?***

11.4 Health

11.4.1 Maternal Mortality

In India, maternal mortality is 407 per one lakh live births (1998). The percentage of anaemia among married women is 52%. By international comparison these are unacceptable levels of women's health.

The average sex ratio in India is 933 females per 1000 males though women outnumber men in some States like Kerala (See section 5.1.2). Women out-number men by 1005:1000 in countries where they do not suffer from discrimination and neglect. These indicators suggest poor and neglected state of health of women in the country as well as indication to the prevalence of the dreaded female foeticide leading to the phenomenon of 'missing-women' (Also see sections 5.1.2. and 5.1.4).

19. ***What special measures should be taken for the improvement of the state of health of women?***

20. ***Are the existing safe-guards against the misuse of sex-determination tests as a prelude or preparatory to termination of pregnancy effective? If not, what further steps do you suggest?***

11.4.2 Infant Mortality

Infant mortality in India is 72 per thousand child births. Regional and inter-sectoral disparities and imbalances are appalling. For instance, while in Kishanganj district of Bihar infant mortality is 146, it is only 12 in Kerala. The record of Kerala in this regard is so impressive that it is said that a child born in Kerala today can expect to live longer than a child born in Washington D.C. In India 53% of all children below the age of 5 years suffer from mal-nutrition. A combination of maternal-anaemia and low birth-weight related to neurological problems impede mental ability of such children. Immediate remedial steps are necessary to improve situation in respect of Infant Mortality, Child anaemia and Child mal-nutrition (See sections 5.1.3, 5.2.1, 5.2.2 and 5.2.3).

21. ***What steps should be taken to ameliorate the conditions of infant mortality, child anaemia and child mal-nutrition?***

22. ***What steps are necessary to ameliorate conditions of maternal anaemia and low birth related health problems of children?***

11.4.3 Civil Society Participation

Serious problems of public health care including prevention of infections like Malaria, Tuberculosis, Hepatitis, HIV/AIDS, etc. cannot be tackled without active participation of civil society. Public hospitals under the management of the respective State Government or Union of India have serious logistic, administrative and other problems seriously impairing their utility. There is enormous public dissatisfaction about the honesty and integrity of those engaged in the health-delivery system. Participatory management of the civil society such as Rogi Kalyan Samitis of Madhya Pradesh (see Box in Section 8.1.2) is said to have resulted

in improvement of public hospitals and their functioning. Participation and involvement of the civil society appears essential for management of health care so as to secure more responsive and efficient health services (also see Section 10.4.3).

23. ***In what manner, effective participation of civil society can be secured for effective management of the health care?;***

24. ***What mechanism - statutory or non-statutory - needs to be evolved to ensure meaningful participation of civil society in health care?***

11.5 Effective use of Science & Technology for Socio-Economic Development

The significance and importance of higher scientific and technological research in accelerating the pace of socio-economic development hardly needs to be emphasized. A high powered "National Science and Technology Commission" as an umbrella organisation for policy making, planning, promoting and funding of higher scientific and technological research endeavours is necessary for progress and to ensure better coordination and to cut down bureaucratic bottlenecks in the attainment of higher standards in Science and Technology. (see Section 10.6).

25. ***Do you agree that a National Science & Technology Commission needs to be set up? If so,***

    - ***Will including a provision for establishment of a National Commission for Science & Technology in Part IV of the Constitution help?***
    - ***What should be the precise composition of the Commission and its duties and responsibilities ?***
    - ***Should the Prime Minister himself head the Commission with the Minister for Science and Technology as the Ex-officio Deputy Chairman?***
    - ***Do you agree that the Commission, in particular, should be responsible for:***

        i. ***Framing of science and technology policy for the country and for undertaking its periodic review;***

        ii. ***Evolving appropriate structures, systems and procedures and standards for Scientific Departments/ Organisations and undertaking their periodical review; and***

        iii. ***Allocating funds to various Scientific and Technological Departments/organisations.***

26. ***Should it be made mandatory that each Department of the Government (other than scientific departments) allots 5% of their total budget exclusively for funding of higher scientific and technological research?***

    OR

    Should a fixed percentage of GNP be spent on higher scientific and technological research in the country? If so, what should be this percentage?

27. ***What suggestions do you have to bring about actual equality of opportunity in the field of higher scientific and technology research for Women, the***

Scheduled Castes, the Scheduled Tribes, Backward Classes and poorer sections of the society?

11.6 Welfare of Scheduled Castes, Scheduled Tribes and Other Backward Classes*

11.6.1 Establishment of Residential Talent Schools:

In India, the prospects of talented children achieving their potential depend on the accident of their birth and in particular the social and economic background of the family of birth. Those born in affluent families have opportunities of education and training in elite schools while the talents of those in poorer circumstances merely waste and wither away owing to lack of opportunity. This is the lot of brilliant children with talent and promise, in poor families and it has its chilling effects on the requisite opportunity. It is necessary, therefore, to identify and groom talent amongst the boys and girls of the Scheduled Castes, Scheduled Tribes and Other Backward Classes and train them in special talent schools to enable them to compete with the rest of the society in an equal manner.

28. Do you agree that talent schools need to be established for the Scheduled Castes, the Scheduled Tribes and Backward Classes?; and

a) If so, should the children, both boys and girls, of the Scheduled Castes, Scheduled Tribes and other Backward Classes for Talent Schools be selected on the basis of their high potential talent ratings?

b) Should these schools be residential, devoted to grooming the children for high competitive educational excellence to serve the country as Administrators, Scientists and in high professions without losing the common touch and retaining the sensitive awareness of the plight of the poor in the country?

c) Should their schooling in Talent Schools be till the completion of the age of 14 years, and they be trained for future competitive performance and leadership?

d) What mission or Vision Statement this project should have?

- *Can it be called "Preparing future professionals and administrators of the highest calibre"?*

e) What other features should such a Scheme incorporate?

f) Should initially, as the first stage, such Talent Schools be established in each or a group of Districts among the 100 Districts (which together have a Scheduled Caste population of over 50% and in the 40 Districts which together have over 50% Scheduled Tribe population)? (A list of these districts are at Appendices-V and X respectively).

OR

Should each State initially establish Talent Schools in such number of districts selected in decreasing order of the population of the Scheduled Castes and Scheduled Tribes as to separately cover 50% of population of these categories in that State?

g) How can the maximum contribution and cooperation of the civil society and its institutions such as self-help groups, educational societies with high reputation and experience, voluntary organisation etc. be secured in this effort?

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* see Chapter 9

h) How should these Schemes be funded and managed?

11.6.2 Prohibition Of Occupations That Are Degrading And Offend Human Dignity: Employment Of Manual Scavengers And Construction Of Dry Latrines (Prohibition) Act, 1993

An unfortunate blemish of India's urban sanitization system has been scavenging by members of certain communities of the Scheduled Castes under inhuman conditions. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 was enacted to put to an end to this practice. The Act is said to relate to entry 6 i.e. "Public health and sanitation; hospital and dispensaries" in List II of the Seventh Schedule of the Constitution and the law, therefore, is applicable to the States (other than those at whose instance the Central law was made) only after such States adopt the law. Many States have not yet adopted the law.

There appears to be a fundamental lacuna in its approach as to the source of legislative competence, which the statute relies on and invokes. The topic of the legislation, in its pith and substance, falls within Entry 24, List III of the Constitution, respecting which the Union Parliament has concurrent competence to legislate. The encroachment on the topic of entry 6 of List II is merely incidental. Both the Preamble and the provision as to the extent of applicability of the statute need to be amended so as to bring them in accord with the position that the legislation, in pith and substance, falls within concurrent powers of legislation. This would make the law applicable to the entire country without the need for the States to adopt it.

In implementation of the abolition and eradication of Safai Karmachari (manual scavenger) system in the country, even the State Governments, which adopted the Act, have not taken adequate steps to ensure total abolition of employment of Safai Karmacharis.

29. Do you agree that the said Act needs to be amended as mentioned above.

30. Does the said Act need further amendment to completely prohibit employing whether directly or indirectly any person as Safai Karamachari in Scavenging?

31. What further measures need be taken to liberate Safai Karmacharis from the degrading occupation of 'Safai' (scavenging) without loss of employment and income and ensuring education and training for their children so that they may take alternate employments?

11.6.3 Effectuation of Right to Livelihood

Right to Livelihood has been declared by the Supreme Court as part of right to life under Article 21 of the Constitution. Article 39(a) requires that the State shall direct its policy towards securing that its citizens, men and women equally, have "the right to an adequate means of livelihood". Article 46 requires that the State shall promote with special care the educational and economic interests of the weaker sections of the people and, in particular, of the Scheduled Castes and the Scheduled Tribes and protect them from social injustice and all forms of exploitation.

32. What legal framework is necessary to ensure the effectualisation of combined mandate of constitutional assurances under Articles 21, 39(a) and 46 in respect of Scheduled Castes and Scheduled Tribes ?

11.6.4 Monitoring of Nutritional Status of Weaker Sections

In any human group (in any social and economic sample), there will be people of high intellectual potential. But none of them realizes his/her potential unless afforded an

opportunity to do so. Their latent talent is quite often submerged under the burden of social neglect and denial of opportunity. Many of the poor, particularly from the Scheduled Castes and Scheduled Tribes and Other Backward Classes, suffer from mal-nutrition. Maternal anaemia coupled with low birth weight related neurological deficiencies resulting from poverty and malnutrition, exact a great human price. Opportunities in life are denied to them.

The district administration should undertake the monitoring, either by itself or through voluntary organisations, of the nutritional status of at least 200 Scheduled Caste/Scheduled Tribe families in the District in the format at Appendix XVIII. The statistics so obtained should be professionally evaluated by experts (such as NCAER) as sources for policy options and midcourse-corrections of the anti-poverty and health programmes.

33. ***Do you think such monitoring would help in formulation of appropriate policies for improved nutritional status of weaker sections?***

34. ***Is format at Appendix XVIII adequate?, if not, what additional information/changes are needed in it ?***

11.6.5 Human Dignity - Elimination of Untouchability and Prevention of Atrocities

Article 17 of the Constitution abolished untouchability but its practice and resultant disabilities remain unabated even after more than 50 years of working of the Constitution. Suppression of human spirit inherent in untouchability has now taken diverse subtle forms for its perpetration (e.g., touching the feet of people of upper castes, etc.). Atrocities are also rampant against the Scheduled Castes, the Scheduled Tribes and other weaker sections. (see 9.2.2)

35. ***Do you agree with this view ? If so,***

    a) ***What remedial steps are needed to prevent atrocities on the Scheduled Castes and Scheduled Tribes and eradicate untouchability completely?***

        - ***Whether Human Rights Education would help in eradicating this evil and if so what methods and means are necessary to successfully carry out this campaign against it?***

    b) ***What measures should be taken to build up a powerful democratic mass movement to eradicate the practice of untouchability and untouchability-based discriminations and disabilities at the village and mohalla level?***

    c) ***Do you feel that the police force and administration are taking effective steps for curbing untouchability and atrocities in accordance with the Protection of Civil Rights Act, 1955 (PCR Act) and the Scheduled Castes, the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (POA Act) and if not, what is the remedy?***

        - ***Whether providing of a separate cell in every police station for investigation and prosecution of offences under the aforesaid Acts shall be an effective remedy? Should, this be done, at the least, in areas with significant population of SCs and STs?***

        - ***Since the occurrence of untouchability and the sites of the occurrence like hotels, wells, temples, etc. are known, and untouchability is practiced openly, should on detection of any such crime where appropriate action by local police officers***

was not taken, be treated as an abetment by concerned police officers and, be made punishable as such?

d) ***What measures can be taken to strengthen the PCR Act and the POA Act and make them more effective?***

- ***The operation of the P.O.A., it is widely alleged, is often defeated by the practice of filing false criminal cases against Scheduled Caste and Scheduled Tribe victims of atrocities who lodge complaints with the police under the said Act. What measures can be taken to prevent this practice?***

- ***Do you think that practices like social boycott, economic boycott, social blackmail and economic blackmail should be specifically listed as crimes of atrocities under Section 3(2) of the P.O.A. Act?***

- ***What deterrent steps and punishment would you approve for multiple murders, mass rapes, gang rapes perpetuated on SCs and STs?***

- ***Should the P.O.A. Act be amended to bring within its purview cases where most, though not all, the perpetrators of the crime are non-SCs or non-STs or where the crime is promoted or engineered by non-SCs/non-STs?***

- ***Should Section 10 of the P.O.A. Act be amended by adding the words "or in any other area of any district" in sub-section 1 of Section 10 after the following existing words "...in any area included in Scheduled Areas or Tribal Areas as referred to in Article 244 of the Constitution", in order to make the protection of this Section available to SCs also?***

- ***Do you feel that the establishment of exclusive special courts in every district supported by exclusive special public prosecution machinery and special investigating agency to ensure speedy trial and punishment of those convicted shall help in deterring atrocities?***

- ***Do you feel that the establishment of special mobile courts in every district to go to the spots where untouchability is notoriously prevalent and to deal out punishment on the spot, help?***

11.6.6 Adequacy of representation in Public Services

Adequate representation of the Scheduled Castes and the Scheduled Tribes at all levels in public services is the mandate of Article 335. There is a widespread dissatisfaction amongst the Scheduled Castes and the Scheduled Tribes over the changes brought since 1996 in Government orders providing reservation in public services in purported implementation of the directives of the courts and a feeling persists amongst them that amendments are detrimental to the Constitutional objective of achieving adequate representation for them in services. Adequacy of representation has not been achieved in Government services even after 50 years at any level for the Scheduled Tribes and save at lower levels of Group C and D posts for the Scheduled Castes (See Table 9.2 in Chapter 9). In order that the serious apprehensions of the Scheduled Castes and the Scheduled Tribes of denudation of the constitutional rights to reservation in educational institutions and civil posts under the State are allayed, it has been suggested that the position of reservation as it existed prior to 1996 be restored.

36. ***Do you agree that the position of reservation in public services for Scheduled Castes /Scheduled Tribes as it existed prior to 1996 needs to be restored ?***

37. ***What further measures in your view are necessary to ensure adequate representation of the Scheduled Castes and the Scheduled Tribes in the higher levels of public service ?***

38. ***Do you feel that reservation should be brought under the purview of a statute to be named as Scheduled Castes and Scheduled Tribes (Reservation of Appointments or Posts and of Seats in Educational Institutions) which will provide for all aspects of reservation including the setting up of Arakshan Nyay Adalats or Tribunals for providing Justice in Reservation with its main bench at Delhi and other benches in every place where the Central Administrative Tribunal has got benches with the status of High Court and with appeals lying to the Supreme Court?***

39. ***How can it be ensured that reservation for Backward classes is fully implemented every year and there is no shortfall in filling the vacancies reserved for them?***

40. ***Do you feel that it will help to bring reservation for BCs under the purview of statute to be named as the Backward Classes (Reservation in Appointments to Posts and of Seats in education institutions) Act which will provide for all aspects of reservation pertaining to backward classes including the establishment of Arakshan Nyay Adalat or Tribunals for Justice in Reservation?***

41. ***The ongoing process of privatization of Public Sector Undertakings and other such bodies is likely to adversely affect the existing reservation for the Scheduled Castes, the Scheduled Tribes and Backward Classes in those bodies. What measures can be taken to ensure adequate representation of these categories in such bodies even after their privatization?***

    - ***Do you feel that every Memorandum of Understanding or privatisation should mandatorily stipulate the continuance of policy of reservation in favour of SC, ST and BC in the form as it exists in the Government with amendments made from time to time?***

    - ***Should this provision also be incorporated in the Reservation Act mentioned above?***

11.6.7 Representation in Higher Judiciary

In higher judiciary, the representation of judges from Scheduled Castes, Scheduled Tribes and other backward classes is inadequate. Out of 610 judges in the High Courts, there are hardly about 20 judges belonging to the Scheduled Castes and the Scheduled Tribes. In S.P. Gupta's case[1] and Supreme Court Advocates on Record case[2], popularly known as the First Judges' Case and Second Judges' Case respectively, the Supreme Court upheld the constitutionality of the circular letter addressed by the Union Law Minister requesting the State Governments and the High Courts to recommend the names of competent candidates belonging to the Scheduled Castes, the Scheduled Tribes, women and Other Backward Classes.

[1] AIR 1982 SC 149
[2] AIR 1994 SC 268

42. ***What steps are necessary to ensure the appropriate representation of the Scheduled Castes, the Scheduled Tribes and other backward classes in the higher judiciary.***

11.6.8 Allocation and Management of funds – Revitalization of Special Component Plan for the Scheduled Castes and Tribal Sub-plans

The Schemes for socio-economic empowerment of Scheduled Castes, Scheduled Tribes and other Weaker Sections of the Society mandated by Article 46 and other provisions of the Constitution are presently being implemented by different Departments of the Government. For comprehensive development and empowerment of Scheduled Castes and Scheduled Tribes, it has been a policy for last twenty five years or so that a proportion of total plan outlay equivalent to the population proportion of the Scheduled Castes and Scheduled Tribes respectively are constituted as a special component plan for Scheduled Castes (SCP) and Tribal Sub-Plans for Scheduled Tribes (TSP) so that adequate financial outlay for their development are made available. There is, however, no specific constitutional or statutory provision for separate allocation of funds for socio-economic empowerment of the Scheduled Castes, Scheduled Tribes and other Weaker Sections of the Society. This laudable policy, however, has only partially succeeded in achieving its objectives as in practice full budgetary allocations as required to be made under the policy are hardly made. The share of budgetary allocations for the welfare of the Scheduled Castes and Scheduled Tribes has declined in recent years. Due to lack of coordination amongst various Departments, even budgetary allocations lapse for want of finalization of schemes. Centralisation of schemes under one Body/ Department has been suggested as a remedy. It has also been suggested that funds allocated for the welfare of the Scheduled Castes and the Scheduled Tribes be transferred to this Body. This Body/ Department is to be made responsible for formulation, implementation and accountability of the benefits to the targeted Groups (see Section 9.2.5).

43. ***How can it be ensured that appropriate budgetary allocations for socio-economic empowerment of the Weaker Sections of the Society are made every year and how appropriate budgetary allocations for the purpose should be determined?***

44. ***What mechanism – constitutional, statutory or non-statutory – needs to be evolved to ensure that funds allocated for the welfare of Scheduled Castes and Tribes are used exclusively for their welfare?***

45. ***What mechanism needs to be devised in the emerging new economic scenario to ensure easy availability of loans/advances to Scheduled Castes and Scheduled Tribes from banks and other financial institutions?***

46. ***Whether a percentage equal to the percentage of the Scheduled Castes/Scheduled Tribes of MP/MLA Development Funds should be used exclusively on schemes for development of Scheduled Castes/ Scheduled Tribes ?***

47. ***Whether a prescribed percentage of amount released to the Village Panchayats/ bodies of Local Self Government should be allotted and be exclusively used for individual works of the Scheduled Castes /Scheduled Tribes so as to build up individual assets of the Scheduled Castes and Scheduled Tribes?***

48. ***Do you feel it will help to have a National SC and ST Development Authority (constituted with appropriate experts and members) both at the Union and State levels for formulating and approving national Plans and State Plans, Annual, Five Year Plans and Perspective Plans – based on the priorities of the developmental needs of SCs and STs and to supervise monitor and direct the implementation of the developmental plans of SCP and TSP of the Central and State Plans for achieving the objectives of various Plan schemes***

- ***Do you also endorse the view that proportionate funds as plan outlays of Centre, States and UTs corresponding to the population of SCs, STs as corpus of the SCP and TSP be placed at the disposal of this Body for making sector-wise, scheme-wise allocation?***

- ***Do you think it will help to have District and SC and ST Development Authorities in each district involving officials, public representatives, Panchayat Raj and other local bodies representatives, NGOs, etc. for implementation, monitoring and reporting?***

- ***Do you think, it will help to give these Authorities a constitutional status by making a suitable provision in the Constitution?***

11.6.9 Social Responsibilities of the Private Sector

In the changed economic scenario, private sector is likely to grow rapidly. The Private Sector Enterprises, by and large, draw substantial support from Government bodies and Banks which handle public-funds. Large investments in their enterprises come from the public funds. Private sector has, therefore, social responsibilities to perform. It needs actively to help in the improvement of socio-economic conditions of the people especially those belonging to the weaker sections of the society so as to build a conflict free and caring society without which no enterprise either public or private can hope to flourish. At present, Scheduled Castes and Scheduled Tribes employees in the private sector are believed to be numerically insignificant except at the shop-floor level. There is a increasing apprehension that the employment opportunities of the Scheduled Castes, Scheduled Tribes and the other weaker sections would shrink with the reduction in role of the Government.

Areas of social obligation of the private sector needs to be identified. Private Sector should contribute in the areas of advancement of education, health and in provision of employment opportunities of weaker sections of the people including the Scheduled Castes, the Scheduled Tribes and other backward classes. Policy frame work for active involvement and participation of private sector for socio-economic development of the people needs to be evolved after a meaningful, purposeful and result oriented debate with the leaders of the Indian Industry, Trade and Commerce.

49. ***What should be the areas of social obligation of the private sector?.***

50. ***What should be the appropriate policy framework for meaningful contribution of private sector in the identified areas?***

51. ***What measures can be taken to ensure that the private sector especially the large private sector does actually take in qualified Scheduled Castes, Scheduled Tribes and backward classes in adequate numbers at supervisory, technological and managerial levels? OR, Is the reservation in jobs, as suggested by some persons, the only alternative?***

1.6.10 Transfer Of Areas Under Fifth Schedule To The Sixth Schedule

The Fifth Schedule deals with the administration and control of Scheduled Areas and Scheduled Tribes while the Sixth Schedule relates to the Administration of the Tribal Areas in the North-Eastern States. The Sixth Schedule provides for the autonomous districts and autonomous regions and power of constitution of district and regional councils, their respective powers, etc. etc. The Fifth Schedule read with Article 244 empowers the Governor of the State to regulate administration and control of Tribal Areas, Scheduled Areas and Scheduled Tribes with the power to modify, annul any law made by the Parliament or the State Legislature or limiting its application to a particular area.

During the working of the Constitution in 51 years, anomalies have occurred in the administration and control of the Scheduled Areas and Scheduled Tribes governed by Fifth

Schedule. The Scheme under the Sixth Schedule on the other hand has worked reasonably well.

Some tribal areas in the country have neither come under the Fifth Schedule nor the Sixth Schedule. It has been suggested that the Scheme envisaged in the Sixth Schedule for the Administration of the Tribal Areas in the North-Eastern States be extended to the areas covered by the Fifth Schedule with necessary amendments thereto and these areas be brought under the Sixth Schedule. It has further been suggested that the tribal areas which are presently neither under the Fifth nor under the Sixth Schedule should also be brought under the Sixth Schedule directly.

52. ***Do you agree that the scheme under the Sixth Schedule has worked better;***

- ***if so, what are your views about bringing the areas under the Fifth Schedule and the left over Tribal areas under the Sixth Schedule?***

11.6.11 Transfer Of Tribal Land

In certain States covered by the Fifth Schedule, such as, Andhra Pradesh, Bihar and Orissa, there are laws prohibiting the transfer of the lands owned or in the possession of the tribals to non-tribals. There have, however, been large-scale complaints, even in areas where such land transfer laws prevail, of transfer of tribal lands to non-tribals through various surreptitious means. Efforts made to reverse the process and restore land to tribal people as laid down in the laws have produced only limited results. Despite deficiencies in implementation, these laws have nonetheless provided protection to the tribals in these areas. In Samatha's Case[*], the Supreme Court while construing the word 'land' in Andhra Pradesh Scheduled Area land Transfer Regulation Act held that the 'land ' included both transfer *inter vivos* between a tribal to a non-tribal as well as transfer of Government land in tribal areas in favour of anybody other than tribals. Any transfer, by way of lease or licence, therefore cannot be made in favour of non-tribals. There is a move to amend the existing land transfer laws so as to enable the transfer of lands belonging to Scheduled Tribes or Government land situated in the Tribal Areas in favour of companies and multi-nationals for the purpose of securing more efficient agricultural practices or better exploitation of minerals and forest wealth.

53. ***How can tribal ownership and control over land in tribal areas, whether individually owned or communally owned, or vesting in government or any other, be protected while ensuring that land and other resources in the tribal areas are beneficially utilized in the interest of tribals and in larger national interests with their consent and participation?***

- ***Since tribals are extremely emotional about their land, what specific measures can be taken to respect their feelings and help them to organise in protecting their land and other cultural interests? Will co-operative societies or companies wholly owned and managed by the tribals be of help?***

54. ***In what way can the lands illegally transferred in breach of existing laws from Scheduled Tribes be restored to them? How breach of such laws can be prevented?***

55. ***Should there be a constitutional / statutory framework for a scheme of resettlement of those affected by development works and projects? If so, what should broadly be the contents of the constitutional policy framework?***

- ***How dislocation can be minimized?***

[*] Samatha's Case, AIR 1997 SC 3297

- ***Will it help if resettlement plans and costs are built into the project plans and costs as first charge to be fulfilled before/simultaneously with the project constructions?***

56. ***How can symbiotic relationship that has traditionally existed between Tribals and forests and which has been disturbed by commercial interests, be restored so as to ensure harmonious protection and growth of Tribals and forests, including protection of their traditional rights in the forest?***

57. ***Considering that the tribals are dependant to a large extent on minor forest produce (MFP) for their livelihood, what measures should be taken to ensure that they get the full returns on the produce they collect and sell? What steps should be taken to continuously replenish and regenerate the shrinking stock of MFP?***

11.6.12 Protection Of Land Ownership/Land Tenures

The statistical data [see Tables 9.3(A) & (B) and 9.4] indicate that the majority of the Scheduled Caste and the Scheduled Tribes continue to be agricultural labourers and marginal land-holders, despite various measures taken by the Government to improve their lot in the last fifty years. Under various land reforms schemes land has been made available to landless labourers. These schemes, however, have not altered the lot of landless labourers particularly of those belonging to the Scheduled Caste and the Scheduled Tribes. A number of land reform cases are held up in judicial process and in certain cases judgements are said to have run contrary to the legislative intent. Cultivable Government land and Bhoodan land is still available in some States for distribution to beneficiaries. In many cases, the Scheduled Castes and Scheduled Tribes to whom lands have been allocated/granted have been forcibly evicted and persecuted. True implementation of land reforms legislation and proper allotment/distribution of land under these schemes could have substantially improved the lot of landless labourers and it still has the potential to do so.

58. ***What measures should be taken to expeditiously distribute available Government land (not required for the public purpose), Bhoodan land and celling-surplus-land amongst landless poor, SCs, STs and other weaker sections?***

    - ***What measures should be taken to put them promptly in possession of those lands?***

    - ***What measures should be taken to develop these lands through irrigation and otherwise?***

    - ***What steps should be taken to recover Government lands, Bhoodan lands and ceiling-surplus lands occupied by those non-eligible for the allotment of such lands and make such lands available for distribution among the landless poor, SCs, STs and other weaker sections?.***

59. ***What measures need to be taken to avoid forcible eviction of the Scheduled Castes and the Scheduled Tribes from the land allotted to them under the various schemes and to restore the land, from which they have been dispossessed, to them?***

60. ***How can be true implementation and better enforcement of land reform legislations ensured?***

11.6.13 Strengthening of constitutional provisions

61. ***What amendments, if any, in your view are needed in the Constitution to protect and promote legitimate interests of SCs, STs, BCs and other weaker sections of the society? The following proposals have been***

received by the Commission suggesting amendments to the Constitution. What are your views regarding the need, appropriateness and desirability of making the suggested amendments?

a) *Article 46 which is presently non-justiciable is made a part of Fundamental Rights and the following addition is made at the end of it:*

"and it shall be the right of the weaker sections of the people and, in particular, of the SC and ST that the State and all institutions of or created by or promoted by or assisted by the State shall at all times function fully and totally in accordance with this right, shall take every measure required to fulfil this right and shall not take any measure the effect of which will be contrary to it."

b) *To overcome the difficulties arising from the judicial interpretation of the clause in Article 335 of the Constitution which reads as "consistently with the maintenance of efficiency of administration", the aforesaid clause be deleted from Article 335.*

c) *Article 335 be transferred to Fundamental Rights as a new clause in Aricle 16 with suitable changes to ensure that reservation for SC and ST becomes mandatory with enabling powers for a legislation covering all aspects of reservation for the Scheduled Castes and the Scheduled Tribes.*

d) *Clause 4 of Article 16 which is presently worded 'permissibly ' be made mandatory in line with clause 1 of Article 15 and 16 so that Article 16(4) becomes a source of reservation for Backward Classes.*

- *Clause 4 of Article 15 be made mandatory.*

e) *Inclusion of the following entries in List III of the Constitution.*

i. *Development, welfare and protection of the Scheduled Castes and the Scheduled Tribes.*

ii. *Development, welfare and protection of women.*

11.7 Giving Voice To The Disadvantaged And Deprived

11.7.1 Empowerment of Women

The representation of women at all levels of Government is 7.1% of Government service. The representation of women in the Indian Administrative Service is about 10%. Out of the 500 and odd Judges of the superior courts, there are only 15 women Judges. The number of women Members of Lok Sabha is 49. The full potential of women therefore remains grossly underutilized even after more than 50 years of the working of the Constitution (see Section 5.5).

62. *What steps need to be taken to enhance the representation of women at various levels of policy making and administration?*

63. *Should the process of empowerment of women that began with reservation of one-third seats in Panchayats and Municipalities need to be extended to State Legislatures and Parliament?*

11.7.2 Unorganized Labour

In India, out of 286 million working force in 1991, 259 millions were in unorganized sector. The largest numbers of unorganised labourers are in occupational sectors like agricultural labour, traditional and village industries, primary production in fisheries etc. There are also sizable number of workers in bidi rolling, match stick making etc. The unorganized labour continues to be exploited in diverse ways. Practice of employing contract labour even for works of continuing and long term nature which increasingly is being adopted both by Public and Private sector results in their exploitation and is a problem area. They need protection from exploitation. A mechanism under which such unorganized labour can be enabled to form cooperative societies/self-help groups may help in reducing their exploitation and in improving their economic conditions. For instance, rickshaw pullers vegetable vendors, street-vendors, hawkers do not own their rickshaws or carts but take them on rent. The rent paid by them in a year often is sufficient to pay back the cost of rickshaws and interest thereon. A cooperative movement should enable easy loans from banks to be made available to them through cooperative institutions. The cooperative institution could themselves supply such rickshaws and carts on hire-purchase basis enabling them to be the owners, and thus ending their exploitation. Institutions of civil society too can play an important role in preventing exploitation of unorganized labour.

64. ***What mechanism – statutory or non-statutory – needs to be evolved to prevent exploitation of unorganized labours and to ensure payment of prescribed / statutory wages to them?***

    - ***Do you feel a Central Act on the lines the one was drafted for agricultural workers in 1978-80 to regulate their employment and conditions of service and to ensure prescribed wages to them, if enacted, would help agricultural workers? If so, whether similar measures are also necessary for other classes of unorganised workers?***

65. ***In what way participation of civil society can be secured to prevent exploitation of unorganized labour?***

66. ***what steps can be taken to stop exploitation of labourers on long term jobs by treating them as contract labourers?***

11.7.3 Statutory Protection To Farmers

Mahatma Gandhi, the Father of the Nation, said that India lives in villages. Agriculture is the main rural economy. The Freedom movement laid emphasis on empowerment of agriculturists and conferment of title to the tiller of the soil. The Constitution enjoins in Article 48 that the State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps to preserve and improve the breeds, etc. Despite the Green Revolution having been achieved over the years, the agricultural economy remains in precarious condition. The agriculturists, due to diverse reasons, like natural calamities, marketing exploitation of their produce etc. are subjected to recurring losses. In Dalmia Cement (Bharat) Ltd. Case[1], (1996), the Supreme Court declared that agriculture is an industry, the livelihood and sustained economic development of agriculturists depends on the production and return from the agricultural produce. Socio-economic justice to the farmer was declared a Fundamental Right in the said judgment. Like an industrialist, the agriculturist should also be made entitled to all the benefits of Government policy on industry. Farmers also need to be protected from the adverse effects of the WTO and IPR regimes, while at the same time securing the benefits of these regimes for them.

[1] 1996 (10) SCC 104

67. ***Do you agree that the agriculturists should be made entitled to all the benefits of Government policy on Industry?***

- ***If so, what remedial steps - legislative and administrative - are necessary to protect the agriculturists from incurring losses, to arrange sustained growth of agriculture, which includes sericulture, fishiculture, animal husbandry, etc?***

68. ***What steps should be taken to protect Indian peasantry and other traditionally producing classes from the adverse effects of the regimes of WTO, IPR etc. while at the same time helping them to secure the benefits of those regimes.***

11.7.4 Management of Water Resources

Management of water resources is the largest single issue which will dominate the discourse on natural resources. It is said, hyperbolically, that the Third World War would be fought over water. The country has, alternatively, seen devastating floods and paucity of drinking water. It is 'apoplexy' at one time and 'Anemia' at another. Watershed management, check-dams, rain-water harvesting are among the issues of utmost priority.

69. ***What mechanism – statutory or non-statutory is required to secure beneficial participation of civil society institution in better management of the water resources in the country?***

70. ***What steps should be taken to ensure that farmers of the Scheduled Castes, Scheduled Tribes and weaker sections are enabled to secure the benefits of water resources?***

11.7.5 Bonded Labour and Child Labour

Despite prohibition of 'begar' and other forms of forced labour, the practice of bonded labour has not ended, Child labour too exist (see Section 10.7.3).

71. ***What steps are required to be taken to ensure effective implementation of the provisions in this regard?***

72. ***Whether the definition of the 'bonded labourer' needs to be amplified to bring all forms of bondage within its ambit ?***

73. ***Would it be useful to associate local self-government mobilization like Zila Panchayat, Municipality, Gram Panchayat with district administration in identification and rehabilitation of the bonded labour?***

74. ***What schemes need to be formulated with a view to ensure effective rehabilitation of bonded labourers ?***

    a) ***Whether a cooperative society of bonded labourers would be helpful in this regard ? (Major portion of the amount paid for rehabilitation of bonded labourers may be credited to the cooperative society as its share capital. Surplus governmental land may also be made available to it, so that individual members can work in a cooperative spirit and are able to pay loans taken for rehabilitation etc.)***

    b) ***Whether it should be made mandatory that on retrieval of a child labourer/ child bonded labourer, an adult member of his family would have to be employed in place of child to supplement the family income ?***

75. ***Whether a consolidated fund be created for rehabilitation of bonded labourers/ child labourers/ child bonded labourers ?***

11.7.6 Immoral Trafficking in Women – Rescue & Rehabilitation

In Gaurav Jain's Case[1], the Supreme Court of India on 9th July, 1997 directed the Union of India to constitute a committee to make an 'in depth study' of the problems relating to prostitution, child prostitutes and children of prostitutes and to evolve suitable schemes for rescue and rehabilitation of the victims of prostitution. The court directed that the report should be circulated to all the State Governments eliciting their views thereon. Thereafter, the Prime Minister was to convene a conference of all the Ministers dealing with women and child, consider the recommendations and the responses, evolve policies and plans of action. A permanent committee of three Secretaries was directed to be constituted for implementation and continued monitoring of the implementation. Government of India in the Ministry of Human Resource Development (Department of Women and Child Development) had, accordingly, constituted a committee on Prostitution, Child Prostitutes and Children of Prostitutes on 21st August, 1997. The Committee in its Report[2] has *inter alia* recommended certain Plan of Action[3] to combat trafficking and commercial sexual exploitation of women and children. These include action points on (i) Prevention, (ii) Trafficking, (iii) Awareness Generation and social mobilization, (iv) Health Care Services, (v) Education and Child Care, (vi) Housing, Shelter and Civic Amenities, (vii) Economic Empowerment, (viii) Legal Reforms and Law Enforcement, (ix) Rescue and Rehabilitation, (x) Institutional Machinery and (xi) Methodology.

The Centre of Concern for Child Labour has identified certain child prostitution prone areas in India as is indicated in Appendix XIX.

76. In what manner, if any, the recommendations of 'Secretaries Committee' need augmentation?

77. Will immediate implementation of these recommendations help improve the position?

78. What further steps need to be taken to ensure elimination of Child Prostitution and their rehabilitation?

11.8 Other Suggestions

79. Are you satisfied with the pace of socio-economic change since independence and do you think that it commensurate with the financial outlays and expenses? If not, what factors in your view have constrained its pace and how it can be accelerated to achieve constitutional objectives of ensuring a life of dignity to every citizen?

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[1] Gaurav Jain Vs Union of India , AIR 1997 SC 3021

[2] See the Report of the Committee on Prostitution, Child Prostitutes and Children of Prostitutes & Plan of Action published by Department of Women & Child Development, Ministry of Human Resource Development, Govt. of India, 1998.

[3] ibid

APPENDICES

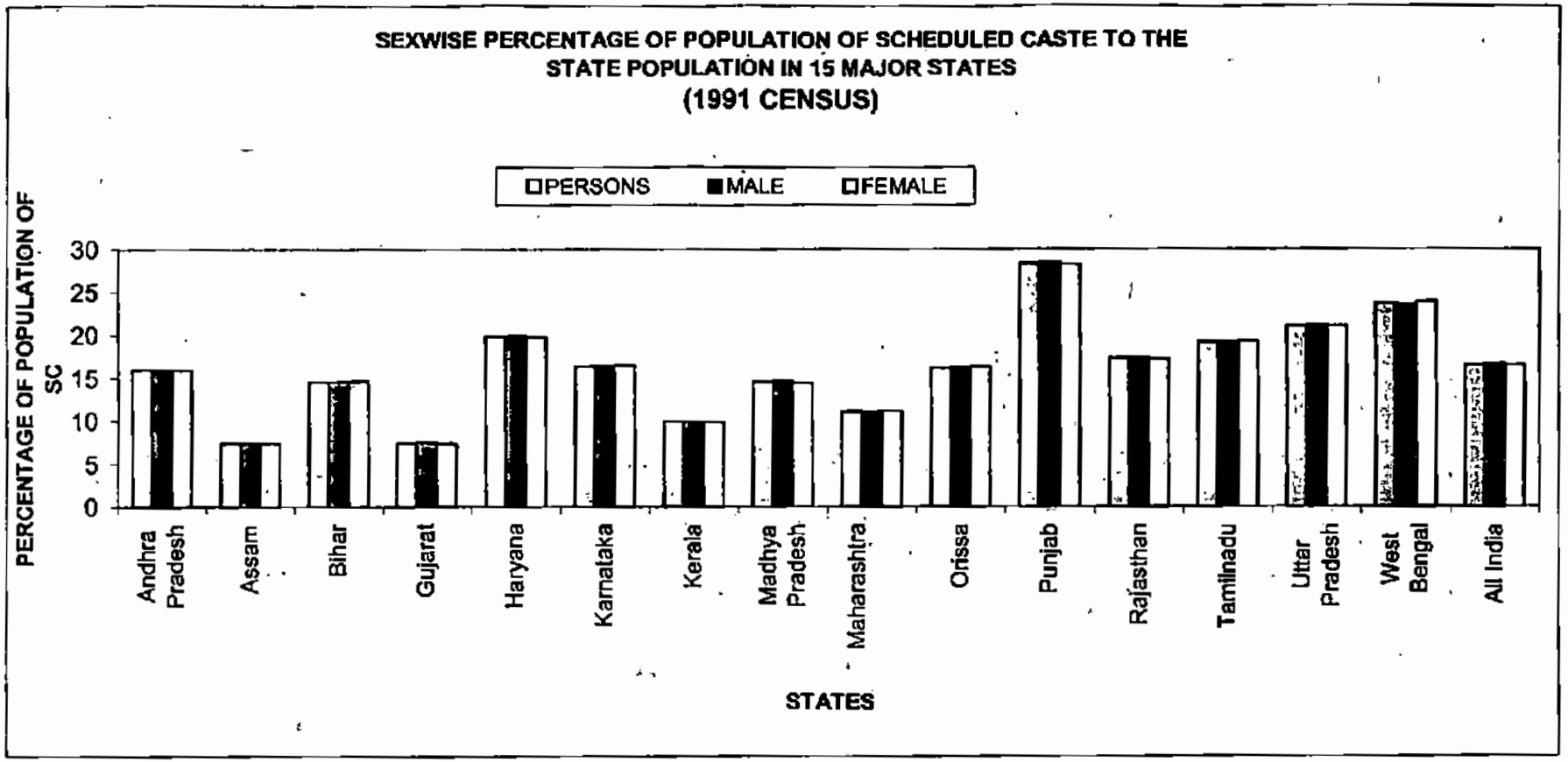
Appendix I

DISTRIBUTION OF SCHEDULED CASTE POPULATION (1991 CENSUS) IN 15 STATES WHICH ACCOUNT FOR 97.2% OF THEIR TOTAL POPULATION

	Total population in 1991	SC population in 1991	SC population as % of State population	SC as % of total population	Cumulative SC population
INDIA	**838,583,988**	**138,223,277**	**16.5**	**16.5**	
15 most populous states					
UTTAR PRADESH	139,112,287	29,276,455	21.0	21.2	21.2
WEST BENGAL	68,077,965	16,080,611	23.6	11.5	32.8
BIHAR	86,374,465	12,571,700	14.6	9.1	41.9
TAMIL NADU	55,858,946	10,712,266	19.2	7.7	49.6
ANDHRA PRADESH	66,508,008	10,592,066	16.9	7.7	57.3
MADHYA PRADESH	66,181,170	9,626,679	14.5	7.0	64.3
MAHARASHTRA	78,937,187	8,757,842	11.1	6.3	70.6
RAJASTHAN	44,005,990	7,607,820	17.3	5.5	76.1
KARNATAKA	44,977,201	7,369,279	16.4	5.3	81.4
PUNJAB	20,281,969	5,724,528	28.3	4.2	85.6
ORISSA	31,659,736	5,129,314	16.2	3.7	89.3
HARYANA	16,463,648	3,250,933	19.7	2.4	91.7
GUJARAT	41,309,582	3,060,358	7.4	2.2	93.9
KERALA	29,098,518	2,886,522	9.9	2.1	96.0
ASSAM	22,414,322	1,652,412	7.4	1.2	97.2
Total for 15 major states	**811,260,994**	**134,323,785**	**16.6**	**16.6**	**97.2**
Other smaller states*	**27,322,994**	**3,899,492**	**14.3**	**14.3**	**2.8**
INDIA	**838,583,988**	**138,223,277**	**16.5**	**16.5**	**100**

Source : Census of India 1991

*Detail in Appendix IV (iii)



Source : Census of India, 1991

SEXWISE PERCENTAGE OF POPULATION OF SCHEDULED CASTE TO THE STATE POPULATION IN 15 MAJOR STATES (1991 CENSUS)

S.No.	STATE	SCHEDULED CASTE		
		PERSONS	MALE	FEMALE
1	Andhra Pradesh	15.93	15.95	15.9
2	Assam	7.4	7.42	7.39
3	Bihar	14.55	14.53	14.58
4	Gujarat	7.41	7.44	7.37
5	Haryana	19.75	19.8	19.68
6	Karnataka	16.38	16.36	16.4
7	Kerala	9.92	9.96	9.88
8	Madhya Pradesh	14.55	14.67	14.41
9	Maharashtra	11.09	11.04	11.16
10	Orissa	16.2	16.16	16.24
11	Punjab	28.31	28.44	28.17
12	Rajasthan	17.29	17.39	17.18
13	Tamil Nadu	19.18	19.13	19.22
14	Uttar Pradesh	21.05	21.07	21.02
15	West Bengal	23.62	23.45	23.81
	All India	16.48	16.53	16.44

Source: Census of India, 1991.

DISTRIBUTION OF SCHEDULED CASTE POPULATION (1991 CENSUS) IN OTHER STATES AND UNION TERRITORIES WHICH ACCOUNT FOR 2.8* PER CENT OF THEIR TOTAL POPULATION

	Total population in 1991	SC population in 1991	SC as % of their total population	Cumulative % of SC population
INDIA	**838,583,988**	**138,223,277**	**16.5**	
HIMACHAL PRADESH	51,70,877	13,10,296	0.9	0.9
DELHI	94,20,644	1794836	1.3	2.2
TRIPURA	2757295	451116	0.3	2.5
PONDICHERY	807785	131278	0.1	2.6
CHANDIGARH	642015	105977	0.1	2.7
MANIPUR	1837149	37105	0.1	2.8
GOA	1169793	24364	0.0	2.8
SIKKIM	406457	24084	0.0	2.8
MEGHALAYA	1774778	9072	0.0	2.8
ARUNACHAL PRADESH	864558	4052	0.0	2.8
DAMAN & DIU	101586	3891	0.0	2.8
DADRA & NAGAR HAVELY	138477	2730	0.0	2.8
MIZORAM	689756	691	0.0	2.8
NAGALAND	1209546	0	0.0	2.8
ANDAMAN & NICOBAR ISLANDS	280661	0	0.0	2.8
LAKSHADWEEP	51707	0	0.0	2.8

Source : Census of India 1991

*See Appendix IV for distribution of SC population in States accounting for 97.2 per cent of their total population.

PROJECTED SCHEDULED CASTE POPULATION IN 2001
(assuming same proportion of states' population as in 1991)

2001	Total population in 2001	SC population in 2001	SC population as % of State population	SC as % of total population	Cumulative SC population
15 most populous states					
UTTAR PRADESH	175,626,000	36,960,838	21.0	21.2	21.2
WEST BENGAL	80,312,000	18,970,397	23.6	11.6	32.8
BIHAR	102,423,000	14,907,545	14.6	9.1	41.9
TAMIL NADU	62,400,000	11,966,667	19.2	7.7	49.7
ANDHRA PRADESH	76,773,000	12,226,869	15.9	7.7	57.3
MADHYA PRADESH	81,666,000	11,879,094	14.5	7.0	64.3
MAHARASHTRA	92,314,000	10,241,959	11.1	6.3	70.6
RAJASTHAN	54,816,000	9,476,670	17.3	5.5	76.1
KARNATAKA	52,922,000	8,670,993	16.4	5.3	81.5
PUNJAB	23,858,000	6,755,026	28.3	4.2	85.6
ORISSA	36,284,000	5,878,509	16.0	3.7	89.3
HARYANA	20,204,000	3,989,508	19.7	2.4	91.7
GUJARAT	49,194,000	3,644,463	7.4	2.2	93.9
KERALA	32,605,000	3,234,359	9.9	2.1	96.0
ASSAM	26,589,00	1,968,478	7.4	1.2	97.2
Total for 15 major states	967,986,000	160,771,375	16.6	16.6	95.8
Other smaller states	49,558,000	7,036,794	14.3	14.3	4.2
INDIA	1,017,544,000	167,858,169	16.5	16.5	100.0

Source: Population estimates for 2001 are official estimates based on projections by the Expert Committee.

100 DISTRICTS WITH THE HIGHEST SCHEDULED CASTE POPULATION: 1991 CENSUS.
(accounting for 51% of India's SC population and ranked in descending order of SC population)

			Total population	SC population	SC as % of District population	SC as % of total SC population	Cumulative SC population
1	WEST BENGAL	SOUTH 24 PARGANAS	5,715,030	1,968,814	34.4	1.4	1.4
2	DELHI	DELHI DISTRICT	9,420,644	1,794,836	19.1	1.3	2.7
3	WEST BENGAL	BARDDHAMAN	6,050,605	1,660,493	27.4	1.2	3.9
4	WEST BENGAL	NORTH 24 PARGANAS	7,281,881	1,564,689	21.5	1.1	5.1
5	WEST BENGAL	MEDINIPUR	8,331,912	1,361,828	16.3	1.0	6.0
6	TAMIL NADU	SOUTH ARCOT	4,878,433	1,323,299	27.1	1.0	7.0
7	TAMIL NADU	CHENGALPATTU-MGR	4,653,593	1,208,417	26.0	0.9	7.9
8	UTTAR PRADESH	ALLAHABAD	4,921,313	1,203,847	24.5	0.9	8.7
9	ORISSA	CUTTACK	5,522,659	1,124,160	20.4	0.8	9.6
10	WEST BENGAL	COOCH BEHAR	2,171,145	1,123,719	51.8	0.8	10.4
11	WEST BENGAL	NADIA	3,852,097	1,117,506	29.0	0.8	11.2
12	TAMIL NADU	THANJAVUR	4,531,457	1,095,474	24.2	0.8	12.0
13	WEST BENGAL	HUGLI	4,355,230	1,050,280	24.1	0.8	12.7
14	WEST BENGAL	JALPAIGURI	2,800,543	1,035,971	37.0	0.7	13.5
15	UTTAR PRADESH	SITAPUR	2,857,009	920,415	32.2	0.7	14.1
16	WEST BENGAL	WEST DINAJPUR	3,127,653	907,553	29.0	0.7	14.8
17	UTTAR PRADESH	VARANASI	4,860,582	881,913	18.1	0.6	15.4
18	WEST BENGAL	BANKURA	2,805,065	879,931	31.4	0.6	16.1
19	UTTAR PRADESH	HARDOI	2,747,082	866,580	31.5	0.6	16.7
20	ANDHRA RADESH	EAST GODAVARI	4,541,222	826,057	18.2	0.6	17.3
21	UTTAR PRADESH	AZAMGARH	3,153,885	807,612	25.6	0.6	17.9
22	PUNJAB	JALANDHAR	2,026,787	792,098	39.1	0.6	18.5
23	TAMIL NADU	TIRUCHIRAPALLI	4,138,048	792,060	19.1	0.6	19.0
24	BIHAR	GAYA	2,664,803	788,293	29.6	0.6	19.6
25	WEST BENGAL	BIRBHUM	2,555,664	784,062	30.7	0.6	20.2
26	RAJASTHAN	GANGANAGAR	2,622,777	775,800	29.6	0.6	20.7
27	RAJASTHAN	JAIPUR	4,722,551	766,403	16.2	0.6	21.3
28	UTTAR PRADESH	ALIGARH	3,295,982	758,308	23.0	0.5	21.8
29	KARNATAKA	BANGALORE	4,839,162	711,775	14.7	0.5	22.3
30	PUNJAB	AMRITSAR	2,504,560	701,444	28.0	0.5	22.9
31	UTTAR PRADESH	JAUNPUR	3,214,636	700,087	21.8	0.5	23.4

32	UTTAR PRADESH	RAE BARELI	2,322,810	693,574	29.9	0.5	23.9
33	UTTAR PRADESH	DEORIA	4,440,024	690,501	15.6	0.5	24.4
34	UTTAR PRADESH	FAIZABAD	2,978,484	689,629	23.2	0.5	24.9
35	MADHYA PRADESH	BILASPUR	3,793,566	687,221	18.1	0.5	25.4
36	UTTAR PRADESH	GORAKHPUR	3,066,002	675,662	22.0	0.5	25.8
37	UTTAR PRADESH	UNNAO	2,200,397	671,975	30.5	0.5	26.3
38	UTTAR PRADESH	MORADABAD	4,121,035	665,081	16.1	0.5	26.8
39	UTTAR PRADESH	BARABANKI	2,423,136	654,685	27.0	0.5	27.3
40	UTTAR PRADESH	KHERI	2,419,234	650,810	26.9	0.5	27.8
41	TAMIL NADU	SALEM	3,896,382	650,759	16.7	0.5	28.2
42	MAHARASHTRA	GREATER BOMBAY	9,925,891	646,914	6.5	0.5	28.7
43	UTTAR PRADESH	AGRA	2,751,021	638,333	23.2	0.5	29.2
44	WEST BENGAL	MURSHIDABAD	4,740,149	634,971	13.4	0.5	29.8
45	MAHARASHTRA	PUNE	5,532,532	631,063	11.4	0.5	30.1
46	ANDHRA PRADESH	WEST GODAVARI	3,517,568	629,233	17.9	0.5	30.5
47	TAMIL NADU	NORTH ARCOT-AMBEDKAR	3,026,432	627,318	20.7	0.5	31.0
48	MAHARASHTRA	NAGPUR	3,287,139	619,226	18.8	0.4	31.4
49	BIHAR	PALAMU	2,451,191	614,560	25.1	0.4	31.9
50	ANDHRA PRADESH	KRISHNA	3,698,833	613,230	16.6	0.4	32.3
51	PUNJAB	LUDHIANA	2,471,594	611,399	24.7	0.4	32.8
52	KARNATAKA	GULBARGA	2,582,169	610,641	23.6	0.4	33.2
53	UTTAR PRADESH	LUCKNOW	2,762,801	604,410	21.9	0.4	33.6
54	UTTAR PRADESH	BULANDSHAHR	2,849,859	604,067	21.2	0.4	34.1
55	ANDHRA PRADESH	CHITTOOR	3,261,118	599,516	18.4	0.4	34.5
56	KARNATAKA	MYSORE	3,165,018	597,921	18.9	0.4	34.9
57	PUNJAB	FARIDKOT	1,730,876	589,898	34.1	0.4	35.4
58	WEST BENGAL	HOWRAH	3,729,644	588,907	15.8	0.4	35.8
59	UTTAR PRADESH	BASTI	2,738,522	579,812	21.2	0.4	36.2
60	TAMIL NADU	COIMBATORE	3,508,374	575,279	16.4	0.4	36.6
61	UTTAR PRADESH	MEERUT	3,447,912	573,673	16.6	0.4	37.1
62	ANDHRA PRADESH	GUNTUR	4,106,999	573,407	14.0	0.4	37.5
63	UTTAR PRADESH	SULTANPUR	2,558,970	572,092	22.4	0.4	37.9
64	KARNATAKA	KOLAR	2,216,889	570,400	25.7	0.4	38.3
65	ANDHRA PRADESH	KARIMNAGAR	3,037,486	563,941	18.6	0.4	38.7
66	MADHYA PRADESH	RAIPUR	3,908,042	563,577	14.4	0.4	39.1
67	BIHAR	PATNA	3,618,211	560,094	15.5	0.4	39.5
68	UTTAR PRADESH	GONDA	3,573,075	556,378	15.6	0.4	39.9
69	ORISSA	BALESHWAR	2,802,417	555,069	19.8	0.4	40.3

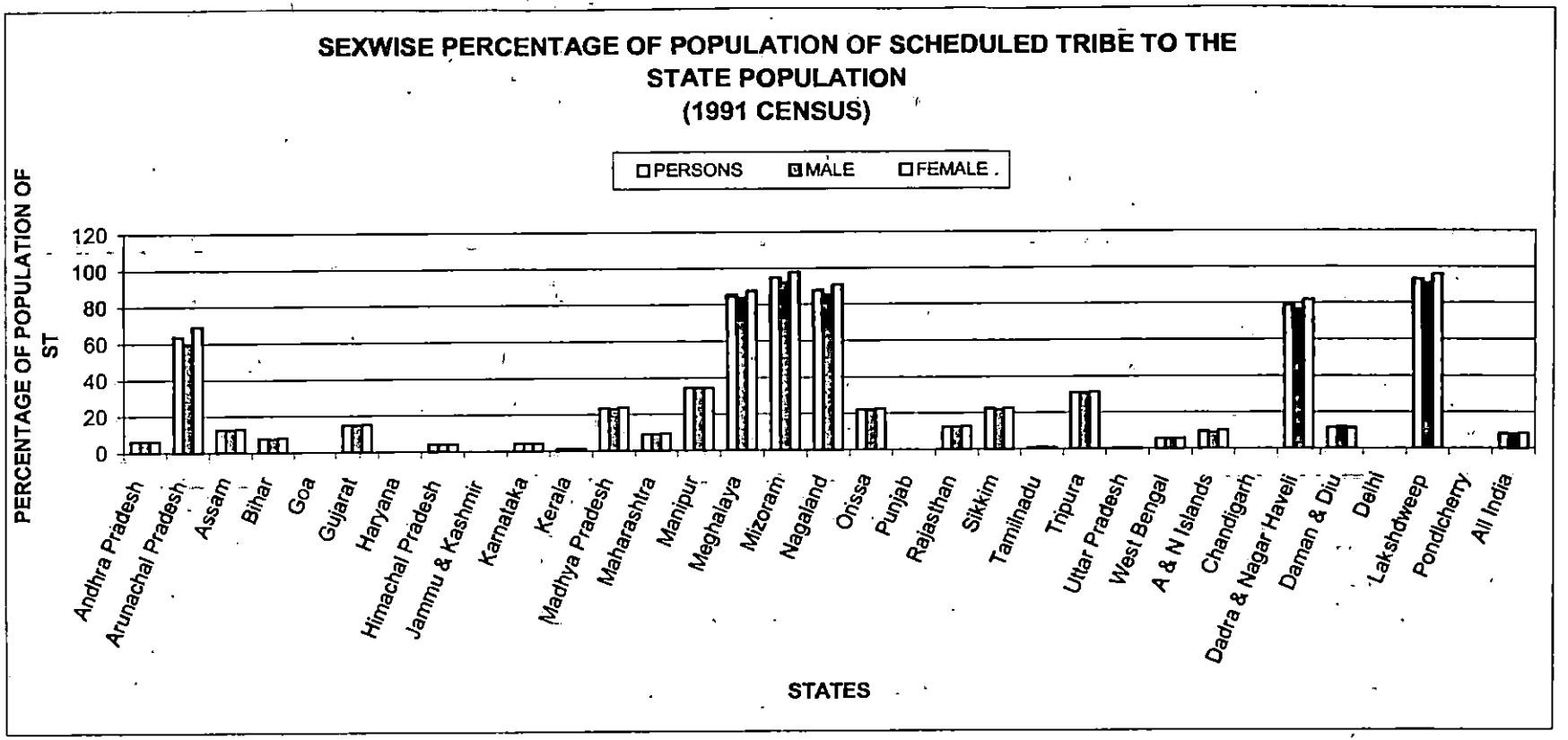
70	ORISSA	PURI	3,590,026	554,689	15.5	0.4	40.7
71	GUJARAT	AHMADABAD	4,801,812	553,846	11.5	0.4	41.1
72	ANDHRA PRADESH	PRAKASAM	2,759,166	552,640	20.0	0.4	41.5
73	BIHAR	ROHTAS	2,900,685	545,656	18.8	0.4	41.9
74	ANDHRA PRADESH	MAHBUBNAGAR	3,077,050	542,380	17.6	0.4	42.3
75	UTTAR PRADESH	KANPUR DEHAT	2,138,317	538,288	25.2	0.4	42.7
76	BIHAR	HAZARIBAG	2,843,644	537,157	18.9	0.4	43.1
77	UTTAR PRADESH	ETAWAH	2,124,655	531,855	25.0	0.4	43.5
78	TAMIL NADU	MADRAS	3,841,396	529,712	13.8	0.4	43.9
79	ORISSA	GANJAM	3,158,764	524,085	16.6	0.4	44.2
80	ANDHRA PRADESH	NELLORE	2,392,260	522,819	21.9	0.4	44.6
81	UTTAR PRADESH	SAHARANPUR	2,309,029	519,550	22.5	0.4	45.0
82	ANDHRA PRADESH	KURNOOL	2,973,024	518,108	17.4	0.4	45.4
83	KARNATAKA	BIJAPUR	2,927,990	509,862	17.4	0.4	45.7
84	UTTAR PRADESH	BIJNOR	2,454,521	507,351	20.7	0.4	46.1
85	ANDHRA PRADESH	NALGONDA	2,852,092	504,206	17.7	0.4	46.5
86	BIHAR	MUNGER	3,060,027	503,981	16.5	0.4	46.8
87	TAMIL NADU	MADURAI	3,449,662	503,570	14.6	0.4	47.2
88	MAHARASHTRA	SOLAPUR	3,231,057	497,913	15.4	0.4	47.6
89	UTTAR PRADESH	GHAZIPUR	2,416,617	497,100	20.6	0.4	47.9
90	BIHAR	SAMASTIPUR	2,716,929	489,985	18.0	0.4	48.3
91	PUNJAB	HOSHIARPUR	1,455,028	484,876	33.3	0.4	48.6
92	ANDHRA PRADESH	WARANGAL	2,818,832	484,654	17.2	0.4	49.0
93	UTTAR PRADESH	GHAZIABAD	2,703,933	483,630	17.9	0.3	49.3
94	WEST BENGAL	MALDAH	2,637,032	477,896	18.1	.3	49.7
95	UTTAR PRADESH	PRATAPGARH	2,210,700	475,102	21.5	0.3	50.0
96	ORISSA	SAMBALPUR	2,697,153	471,460	17.5	0.3	50.3
97	UTTAR PRADESH	FATEHPUR	1,899,241	469,453	24.7	0.3	50.7
98	BIHAR	MUZAFFARPUR	2,953,903	464,362	15.7	0.3	51.0
99	PUNJAB	SANGRUR	1,710,120	458,856	26.8	0.3	51.4
100	UTTAR PRADESH	SONBHADRA	1,075,041	456,872	42.5	0.3	51.7

Source : Census of India 1991

DISTRIBUTION OF SCHEDULED TRIBE POPULATION IN STATES AND UNION TTERRITORIES
(1991 CENSUS)

Source : Census of India 1991

States	Total population	ST population	ST population as % of State population	ST population as % of total ST population	Cumulative ST population
INDIA	**838,583,988**	**67,758,380**	**8.1**	**100.0**	
MADHYA PRADESH	66,181,170	15,399,034	23.3	22.7	22.7
MAHARASHTRA	78,937,187	7,318,281	9.3	10.8	33.5
ORISSA	31,659,736	7,032,214	22.2	10.4	43.9
BIHAR	86,374,465	6,616,914	7.7	9.8	53.7
GUJARAT	41,309,582	6,161,775	14.9	9.1	62.8
RAJASTHAN	44,005,990	5,474,881	12.4	8.1	70.8
ANDHRA PRADESH	66,508,008	4,199,481	6.3	6.2	77.0
WEST BENGAL	68,077,965	3,808,760	5.6	5.6	82.7
ASSAM	22,414,322	2,874,441	12.8	4.2	86.9
KARNATAKA	44,977,201	1,915,691	4.3	2.8	89.7
MEGHALAYA	1,774,778	1,517,927	85.5	2.2	92.0
NAGALAND	1,209,546	1,060,822	87.7	1.6	93.5
TRIPURA	2,757,205	853,345	30.9	1.3	94.8
MIZORAM	689,756	653,565	94.8	1.0	95.8
MANIPUR	1,837,149	632,173	34.4	0.9	96.7
TAMIL NADU	55,858,946	574,194	1.0	0.8	97.5
ARUNACHAL PRADESH	864,558	550,351	68.7	0.8	98.4
KERALA	29,098,518	320,967	1.1	0.6	98.8
UTTAR PRADESH	139,112,287	287,901	0.2	0.4	99.3
HIMACHAL PRADESH	5,170,877	213,349	4.2	0.3	99.6
DADRA & NAGAR HAVELI	138,477	109,380	79.0	0.2	99.7
SIKKIM	406,457	90,901	22.4	0.1	99.9
LAKSHADWEEP	51,707	48,163	93.1	0.1	99.9
A. & N. ISLANDS	280,661	26,770	9.5	0.0	100.0
DAMAN & DIU	101,586	11,724	11.6	0.0	100.0
GOA	1,169,793	376	0.0	0.0	100.0
PUNJAB	20,281,963	0	0.0	0.0	100.0
HARYANA	16,463,648	0	0.0	0.0	100.0
DELHI	9,420,644	0	0.0	0.0	100.0
PONDICHEERY	807,785	0	0.0	0.0	100.0
CHANDIGARH	642,015	0	0.0	0.0	100.0
	838,583,988	**67,758,380**	**8.1**		



Source : Census of India, 1991

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Table to Appendix – VII

SEXWISE PERCENTAGE OF SCHEDULED TRIBE TO THE STATE POPULATION (1991 CENSUS)

STATES	SCHEDULED TRIBES		
	PERSONS	MALE	FEMALE
Andhra Pradesh	6.31	6.35	6.27
Arunachal Pradesh	63.66	59.22	68.82
Assam	12.82	12.54	13.14
Bihar	7.66	7.43	7.92
Goa	0.03	0.03	0.03
Gujarat	14.92	14.67	15.18
Haryana	0	0	0
Himachal Pradesh	4.22	4.21	4.23
Jammu & Kashmir	0	0	0
Karnataka	4.26	4.26	4.26
Kerala	1.1	1.13	1.08
Madhya Pradesh	23.27	22.64	23.94
Maharashtra	9.27	9.11	9.45
Manipur	34.41	34.39	34.43
Meghalaya	85.53	83.76	87.38
Mizoram	94.75	91.88	97.87
Nagaland	87.7	85.05	90.79
Orissa	22.21	21.87	22.57
Punjab	0	0	0
Rajasthan	12.44	12.31	12.58
Sikkim	22.36	21.95	22.84
Tamil Nadu	1.03	1.04	1.02
Tripura	30.95	30.62	31.29
Uttar Pradesh	0.21	0.2	0.21
West Bengal	5.59	5.46	5.74
A & N Islands	9.54	8.91	10.31
Chandigarh	0	0	0
Dadra & Nagar Haveli	78.99	76.25	81.86
Daman & Diu	11.54	11.77	11.3
Delhi	0	0	0
Lakshdweep	93.15	90.77	95.67
Pondicherry	0	0	0
All India	**8.08**	**7.82**	**8.2**

Source: Census of India, 1991

Appendix - VIII

PROJECTION OF STATEWISE SCHEDULED TRIBES POPULATION FOR 2001
(assuming the same proportion of Scheduled Tribe as in 1991)

2001	Total population in 2001	ST population	ST population as % of State population
INDIA	**1,017,544,000**	**84,465,196**	**8.3**
MADHYA PRADESH	81,666,000	19,002,044	23.3
MAHARASHTRA	92,314,000	8,558,448	9.3
ORISSA	36,248,000	8,051,352	22.2
BIHAR	102,423,000	7,846,349	7.7
GUJARAT	49,194,000	7,337,822	14.9
RAJASTHAN	54,816,000	6,819,778	12.4
ANDHRA PRADESH	76,773,000	4,847,638	6.3
WEST BENGAL	80,312,000	4,493,218	5.6
ASSAM	26,589,000	3,409,807	12.8
KARNATAKA	52,922,000	2,254,080	4.3
TAMIL NADU	62,400,000	641,432	1.0
KERALA	32,605,000	359,645	1.1
UTTAR PRADESH	175,626,000	363,468	0.2
PUNJAB	23,858,000	0	0.0
HARYANA	20,204,000	0	0.0
Total of 15 major states	**967,950,000**	**73,985,081**	**7.6**
Total of smaller states and UTs	**49,594,000**	**10,480,115**	**21.1**
INDIA	**1,017,544,000**	**84,465,196**	**8.3**

DISTRICTWISE BREAKUP OF SCHEDULED TRIBE POPULATION (1991 CENSUS)

Sl. No.		Total population	ST population	ST population as % of district population	ST population as % of total ST population	Cumulative ST population
1	KORAPUR	3012546	1636079	54.3	2.4	2.4
2	BASTAR	2271314	1529888	67.4	2.3	4.7
3	PANCH MAHALS	2956456	1395050	47.2	2.1	6.7
4	SURAT	3397900	1225080	36.1	1.8	8.5
5	VALSAD	2173672	1181404	54.4	1.7	10.3
6	SARGUJA	2082630	1117577	53.7	1.6	11.9
7	MAYURBHANJ	1884580	1090626	57.9	1.6	13.5
8	UDAIPUR	2889301	1063071	36.8	1.6	15.1
9	DHULE	2535715	1036491	40.9	1.5	16.6
10	PASHCHIMI SINGHBHUM	1787955	978069	54.7	1.4	18.1
11	JHABUA	1130405	968372	85.7	1.4	19.5
12	RANCHI	2214048	964422	43.6	1.4	20.9
13	THANE	5249126	951205	18.1	1.4	22.3
14	WEST NIMAR	2028145	937710	46.2	1.4	23.7
15	NASHIK	851352	931069	24.2	1.4	25.1
16	BILASPUR	3793566	873741	23.0	1.3	26.4
17	BANSWARA	1155600	849050	73.5	1.2	27.6
18	VADODARA	3089610	821697	26.6	1.2	28.9
19	RAIGARH	1722291	821477	47.7	1.2	30.1
20	GUMLA	1153976	816988	70.8	1.2	31.3
21	SHAHDOL	1743869	807764	46.3	1.2	32.5
22	SUNDARGARH	1573617	798481	50.7	1.2	33.6
23	MANDLA	1291263	785587	60.8	1.2	34.8
24	SAMBALPUR	2697153	740323	27.4	1.1	35.9
25	DHAR	1367412	731272	53.5	1.1	37.0
26	RAIPUR	3908042	714027	18.3	1.1	38.0
27	BHARUCH	1546145	703956	45.5	1.0	39.1
28	MEDINIPUR	8331912	689636	8.3	1.0	40.1
29	DUMKA	1495709	621484	41.6	0.9	41.0
30	KENDUJHAR	1337026	595184	44.5	0.9	41.9
31	JALPAIGURI	2800543	589225	21.0	0.9	42.7

32	DUNGARPUR	874549	575805	65.8	0.8	43.6
33	KHAMMAM	2215809	558958	25.2	0.8	44.4
34	CHHINDWARA	1568702	540708	34.5	0.8	45.2
35	JAIPUR	4722551	531652	11.3	0.8	46.0
36	EAST KHASI HILLS	665218	521482	78.4	0.8	46.8
37	SAHIBGANJ	1301088	507321	39.0	0.7	47.5
38	KALAHANDI	1600385	495425	31.0	0.7	48.3
39	JABALPUR	2649962	474466	17.9	0.7	49.0
40	VISAKHAPATANAM	3285092	468886	14.3	0.7	49.6
41	PURBI SINGHBHUM	1613088	466572	28.9	0.7	50.3
42	NAGPUR	3287139	457715	13.9	0.7	51.0
43	AIZAWL	478465	452942	94.7	0.7	51.7
44	YAVATMAL	2077144	445840	21.5	0.7	52.3
45	SAWAI MADHOPUR	1963246	443469	22.6	0.7	53.0
46	PALAMU	2451191	443266	18.1	0.7	53.6
47	BETUL	1181501	443132	37.5	0.7	54.3
48	PURULIYA	2224577	427766	19.2	0.6	54.9
49	SIDHI	1373434	418004	30.4	0.6	55.5
50	WEST GARO HILLS	480100	387043	80.6	0.6	56.1
51	WARANGAL	2818832	385309	13.7	0.6	56.7
52	EAST NIMAR	1431662	383231	26.8	0.6	57.3
53	BARDDHAMAN	6050605	376033	6.2	0.6	57.8
54	SEONI	1000831	369827	37.0	0.5	58.4
55	RAJNANDGAON	1439951	362355	25.2	0.5	58.9
56	ADILABAD	2082479	354902	17.0	0.5	59.4
57	CHANDRAPUR	1771994	349169	19.7	0.5	59.9
58	KARBI ANGLONG	662723	341718	51.6	0.5	60.4
59	SOUTH TRIPURA	766014	329525	43.0	0.5	60.9
60	KOKRAJHAR	800659	329461	41.1	0.5	61.4
61	WEST TRIPURA	1293861	325845	25.2	0.5	61.9
62	SABAR KANTHA	1761086	324199	18.4	0.5	62.4
63	PHULBANI	863903	322408	37.3	0.5	62.8
64	CHITRADURGA	2180443	318381	14.6	0.5	63.3
65	BALANGIR	1707753	316797	18.6	0.5	63.8
66	AMRAVATI	2200057	316448	14.4	0.5	64.2
67	JALGAON	3187634	313551	9.8	0.5	64.7
68	BHANDARA	2107629	309822	14.7	0.5	65.2
69	WEST DINAJPUR	3127653	307487	9.8	0.5	65.6
70	GADCHIROLI	787010	304535	38.7	0.4	65.1
71	CHITTORGARH	1484190	300971	20.3	0.4	66.5
72	BALAGHAT	1365870	298665	21.9	0.4	67.0
73	DURG	2397134	298059	12.4	0.4	67.4

74	GANJAM	3158764	296845	9.4	0.4	67.8
75	BANKURA	2805065	289906	10.3	0.4	68.3
76	KOHIMA	387581	288626	74.5	0.4	68.7
77	KOTA	2030831	288367	14.2	0.4	69.1
78	NANDED	2330374	275972	11.8	0.4	69.5
79	NALGONDA	2852092	275638	9.7	0.4	69.9
80	GIRIDIH	2225480	271924	12.2	0.4	70.3
81	HAZARIBAG	2843544	250586	8.8	0.4	70.7
82	AHMEDNAGAR	3372935	240141	7.1	0.4	71.1
83	RAIGARH	1824816	233953	12.8	0.3	71.4
84	DHENKANAL	1908907	232519	12.2	0.3	71.7
85	MAHBUBNAGAR	3077050	227405	7.4	0.3	72.1
86	RATLAM	971888	226156	23.3	0.3	72.4
87	DHANBAD	2674651	225282	8.4	0.3	72.7
88	DARRANG	1298860	224957	17.3	0.3	73.1
89	TUENSANG	232906	221497	95.1	0.3	73.4
90	HOSHANGABAD	1267211	220038	17.4	0.3	73.7
91	PUNE	5532532	216336	3.9	0.3	74.0
92	GODDA	861182	216047	25.1	0.3	74.4
93	WEST KHASI HILLS	220157	215995	98.1	0.3	74.7
94	KAMRUP	2000071	214340	10.7	0.3	75.0
95	NELLORE	2392260	214062	8.9	0.3	75.3
96	JAINTIA HILLS	220473	210558	95.5	0.3	75.6
97	DHEMAJI	478830	210312	43.9	0.3	75.9
98	SATNA	1465384	202412	13.8	0.3	76.2
99	BALESHWAR	2802417	197992	7.1	0.3	76.5
100	NORTH TRIPURA	697330	197975	28.4	0.3	76.8
101	REWA	1554987	193105	12.4	0.3	77.1
102	VIZIANAGARAM	2110943	190185	9.0	0.3	77.4
103	ALWAR	2296580	185048	8.1	0.3	77.7
104	EAST GARO HILLS	188830	182849	96.8	0.3	77.9
105	CUTTACK	5522659	182188	3.3	0.3	78.2
106	GUNTUR	4106999	181588	4.4	0.3	78.5
107	RAICHUR	2309887	180272	7.8	0.3	78.7
108	NALBARI	1016390	179641	17.7	0.3	79.0
109	DARJILING	1299919	179153	13.8	0.3	79.3
110	BIRBHUM	2555664	177501	6.9	0.3	79.5
111	LAKHIMPUR	751517	177156	23.6	0.3	79.8
112	HUGLI	4355230	176401	4.1	0.3	80.0
113	EAST GODAVARI	4541222	176083	3.9	0.3	80.3
114	SENAPATI	208406	175206	84.1	0.3	80.6
115	MALDAH	2637032	171326	6.5	0.3	80.8

116	NORTH 24 PARAGANAS	7281881	169831	2.3	0.3	81.1
117	TUMKUR	2305819	167632	7.3	0.2	81.3
118	BELLARY	1890092	166693	8.8	0.2	81.6
119	WARDHA	1067357	166391	15.6	0.2	81.8
120	CHURACHANDPUR	176184	164709	93.5	0.2	82.0
121	LOHARDAGA	288886	162964	56.4	0.2	82.3
122	GUNA	1310317	157426	12.0	0.2	82.5
123	BUNDI	770248	156001	20.3	0.2	82.8
124	AKOLA	2214271	155695	7.0	0.2	83.0
125	DEWAS	1033807	155493	15.0	0.2	83.2
126	KOLAR	2216889	153019	6.9	0.2	83.4
127	SIROHI	654029	153005	23.4	0.2	83.7
128	SONITPUR	1424287	152498	10.7	0.2	83.9
129	BANAS KANTHA	2162578	149406	6.9	0.2	84.1
130	MOKOKCHUNG	158374	146717	92.6	0.2	84.3
131	BHILWARA	1593128	143748	9.0	0.2	84.5
132	BONGAIGAON	807523	141542	17.5	0.2	84.7
133	SAGAR	1647736	139467	8.5	0.2	85.0
134	MON	149699	137944	92.1	0.2	85.2
135	SALEM	3896382	136126	3.5	0.2	85.4
136	THE DANGS	144091	135386	94.0	0.2	85.6
137	SRIKAKULAM	2321126	134067	5.8	0.2	85.8
138	SHIVPURI	1132977	127762	11.3	0.2	85.9
139	PURI	3590026	127347	3.5	0.2	86.1
140	RAISEN	876461	126254	14.4	0.2	86.3
141	NIZAMABAD	2037621	120716	5.9	0.2	86.5
142	DEOGHAR	933113	119085	12.8	0.2	86.7
143	TONK	975006	115948	11.9	0.2	86.8
144	GOALPARA	668138	115099	17.2	0.2	87.0
145	WAYANAD	672128	114969	17.1	0.2	87.2
146	JHALAWAR	956971	113834	11.9	0.2	87.3
147	CHAMBA	393286	111509	28.4	0.2	87.5
148	PARBHANI	2117035	111470	5.3	0.2	87.7
149	ANANTAPUR	3183814	111207	3.5	0.2	87.8
150	DAMOH	898125	111114	12.4	0.2	88.0
151	BHAGALPUR	3202471	110735	3.5	0.2	88.2
152	LOWER SUBANSIRI	155978	110609	70.9	0.2	88.3
153	BARPETA	1385659	110452	8.0	0.2	88.5
154	RANGAREDDI	2551966	109394	4.3	0.2	88.7
155	DADRA & NAGAR HAVELI	138477	109380	79.0	0.2	88.8

156	GULBARGA	2582169	106935	4.1	0.2	89.0
157	DAKSHIN KANNAD	2694264	106159	3.9	0.2	89.1
158	JORHAT	871206	105037	12.1	0.2	89.3
159	LUNGLEI	111415	105191	94.4	0.2	89.4
160	DHARWAD	3503150	105099	3.0	0.2	89.6
161	CHITTOOR	3261118	104938	3.2	0.2	89.8
162	BIDAR	1255799	104215	8.3	0.2	89.9
163	GREATER BOMBAY	9925891	103775	1.0	0.2	90.1
164	PANNA	687945	102520	14.9	0.2	90.2
165	MYSORE	3165018	102102	3.2	0.2	90.4
166	UKHRUL	109275	101878	93.2	0.2	90.5
167	KATIHAR	1825380	101792	5.6	0.2	90.7
168	NARSIMHAPUR	785496	101368	12.9	0.1	90.8
169	INDORE	1835915	100913	5.5	0.1	91.0
170	PRAKASAM	2759166	98854	3.6	0.1	91.1
171	NORTH CACHAR HILLS	150801	98834	65.5	0.1	91.3
172	MARIGAON	639682	98483	15.4	0.1	91.4
173	JALAUR	1142563	96324	8.4	0.1	91.5
174	PHEK	102156	96104	94.1	0.1	91.7
175	CHHIMTUIPUI	99876	95432	95.6	0.1	91.8
176	BULDANA	1886299	95389	5.1	0.1	92.0
177	MORENA	1710574	95216	5.6	0.1	92.1
178	MEDAK	2269800	95042	4.2	0.1	92.2
179	ZUNHEBOTO	96218	93398	97.1	0.1	92.4
180	KRISHNA	3698833	91767	2.5	0.1	92.5
181	NADIA	3852097	90525	2.4	0.1	92.7
182	NAINITAL	1540174	90020	5.8	0.1	92.8
183	KACHCHH	1262507	87723	6.9	0.1	92.9
184	SEHORE	841358	85643	10.2	0.1	93.0
185	GOLAGHAT	828096	84916	10.3	0.1	93.2
186	WEST GODAVARI	3517568	84648	2.4	0.1	93.3
187	BARMER	1435222	84232	5.9	0.1	93.4
188	DEHRADUN	1025679	84076	8.2	0.1	93.5
189	AURANGABAD	2213779	83502	3.8	0.1	93.7
190	TAMENGLONG	86278	83332	96.6	0.1	93.8
191	BELGAUM	3583606	83076	2.3	0.1	93.9
192	KARIMNAGAR	3037486	83017	2.7	0.1	94.0
193	DIBRUGARH	1042457	82920	8.0	0.1	94.2
194	PURNIA	1878885	82145	4.4	0.1	94.3
195	PALI	1486432	80265	5.4	0.1	94.4
196	WOKHA	82612	76536	92.6	0.1	94.5

197	MANDSAUR	1555208	74625	4.8	0.1	94.6
198	SHIMOGA	1909663	74106	3.9	0.1	94.7
199	MUNGER	3060027	70660	2.3	0.1	94.8
200	WEST SIANG	89936	70571	78.5	0.1	94.9
201	SOUTH 24 PARAGANAS	5715030	70499	1.2	0.1	95.0
202	NAGAON	1893171	69848	3.7	0.1	95.1
203	TIRAP	85508	68770	80.4	0.1	95.2
204	EAST SIANG	99643	68330	68.6	0.1	95.3
205	TIRUVANNAMALAI-SAMBUVARA	2042979	62067	3.0	0.1	95.4
206	MURSHIDABAD	4740149	61513	1.3	0.1	95.5
207	JODHPUR	2153483	60819	2.8	0.1	95.6
208	CHANDEL	71014	60729	85.5	0.1	95.7
209	SOUTH ARCOT	4878433	58009	1.2	0.1	95.8
210	CHENGALPATTU-MGR	4653593	57872	1.2	0.1	95.9
211	KURNOOL	2973024	56455	1.9	0.1	96.0
212	BANGALORE	4839162	53631	1.1	0.1	96.0
213	TINSUKIA	962298	51493	5.4	0.1	96.1
214	IDUKKI	1078066	50269	4.7	0.1	96.2
215	NORTH ARCOT-AMBEDKAR	3026432	49857	1.6	0.1	96.3
216	BANGALORE RURAL	1673194	49305	2.9	0.1	96.3
217	SIKAR	1842914	48887	2.7	0.1	96.4
218	SOLAPUR	3231057	48352	1.5	0.1	96.5
219	LAKSHADWEEP DISTRICT	51707	48163	93.1	0.1	96.5
220	DHARMAPURI	2428596	47684	2.0	0.1	96.6
221	CUDDAPAH	2267769	47414	2.1	0.1	96.7
222	ROHTAS	2900685	47076	1.6	0.1	96.8
223	CHHATARPUR	1158076	43482	3.8	0.1	96.8
224	EAST KAMENG	50395	43116	85.6	0.1	96.9
225	UPPER SUBANSIRI	50086	43034	85.9	0.1	96.9
226	VIDISHA	970388	42689	4.4	0.1	97.0
227	AHMADABAD	4301812	42574	0.9	0.1	97.1
228	BHOPAL	1351479	41205	3.0	0.1	97.1
229	KHEDA	3440897	41023	1.2	0.1	97.2
230	GWALIOR	1412610	40976	2.9	0.1	97.3
231	LOHIT	109706	40933	37.3	0.1	97.3
232	KODAGU	488455	40312	8.3	0.1	97.4

233	AJMER	1729207	39764	2.3	0.1	97.4
234	KINNAUR	71270	39609	55.6	0.1	97.5
235	BIJAPUR	2927990	39535	1.4	0.1	97.6
236	TIKAMGARH	940829	38850	4.1	0.1	97.6
237	BHARATPUR	1661584	38212	2.3	0.1	97.7
238	EAST DISTRICT	178452	37632	21.1	0.1	97.7
239	LATUR	1676641	37527	2.2	0.1	97.8
240	PALAKKAD	2382235	35465	1.5	0.1	97.8
241	KISHANGANJ	984107	34830	3.5	0.1	97.9
242	SIBSAGAR	907983	34496	3.8	0.1	97.9
243	DHOLPUR	749479	34429	4.6	0.1	98.0
244	IMPHAL	711261	33900	4.8	0.1	98.0
245	CHANGLANG	95530	33278	34.8	0.0	98.1
246	RAJGARH	992764	32775	3.3	0.0	98.1
247	DHUBRI	1332475	32260	2.4	0.0	98.2
248	PASHCHIM CHAMPARAN	2333666	31104	1.3	0.0	98.2
249	JHUNJHUNU	1582421	30528	1.9	0.0	98.3
250	WEST KAMENG	56421	29900	53.0	0.0	98.3
251	KASARAGOD	1071508	29283	2.7	0.0	98.4
252	UJJAIN	1383086	29160	2.1	0.0	98.4
253	HYDERABAD	3145939	28946	0.9	0.0	98.4
254	KHERI	2419234	28856	1.2	0.0	98.5
255	TIRUCHIRAPALLI	4138048	28302	0.7	0.0	98.5
256	JALNA	1364425	28300	2.1	0.0	98.6
257	CHIKMAGALUR	1017283	26534	2.6	0.0	98.6
258	COIMBATORE	3508374	26158	0.7	0.0	98.6
259	NILGIRI	710214	25048	3.5	0.0	98.7
260	NICOBARS	39208	24853	63.4	0.0	98.7
261	SHAJAPUR	1033248	24452	2.4	0.0	98.8
262	LAHUL AND SPITI	31294	24088	77.4	0.0	98.8
263	OSMANABAD	1276327	22463	1.8	0.0	98.8
264	TAWANG	28287	22238	78.6	0.0	98.9
265	ARARIA	1611638	20819	1.3	0.0	98.9
266	BID	1822072	20515	1.1	0.0	98.9
267	DIBANG VALLEY	43068	19572	45.4	0.0	98.9
268	WEST DISTRICT	98161	19297	19.7	0.0	99.0
269	PERIYAR	2320263	19194	0.8	0.0	99.0
270	GOPALGANJ	1704310	19167	1.1	0.0	99.0
271	SATARA	2451372	18342	0.7	0.0	99.1
272	PITHORAGARH	566408	18313	3.2	0.0	99.1
273	KANNUR	2251727	18243	0.8	0.0	99.1

274	KOTTAYAM	1828271	17996	1.0	0.0	99.1
275	NORTH DISTRICT	31240	17301	55.4	0.0	99.2
276	JAISALMER	344517	16697	4.8	0.0	99.2
277	SOUTH DISTRICT	98604	16671	16.9	0.0	99.2
278	HASSAN	1569684	16581	1.1	0.0	99.2
279	CACHAR	1215385	16563	1.4	0.0	99.3
280	THIRUVANANTHAPURAM	2946650	16181	0.5	0.0	99.3
281	GONDA	3573075	15227	0.4	0.0	99.3
282	RATNAGIRI	1544057	14847	1.0	0.0	99.3
283	KOLHAPUR	2989507	14789	0.5	0.0	99.4
284	COOCH BIHAR	2171145	13275	0.6	0.0	99.4
285	MADURAI	3449662	12737	0.4	0.0	99.4
286	SIWAN	2170971	12650	0.6	0.0	99.4
287	MANDYA	1644374	11936	0.7	0.0	99.4
288	DAMAN	62101	11598	18.7	0.0	99.4
289	JUNAGADH	2394859	11055	0.5	0.0	99.5
290	KULLU	302432	10914	3.6	0.0	99.5
291	MAHASANA	2937810	10907	0.4	0.0	99.5
292	SANGLI	2209488	10784	0.5	0.0	99.5
293	MALAPPURAM	3096330	10555	0.3	0.0	99.5
294	CHAMOLI	454871	10273	2.3	0.0	99.5
295	UTTAR KANNAD	1220260	10168	0.8	0.0	99.6
296	HOWRAH	3729644	10090	0.3	0.0	99.6
297	THANJAVUR	4531457	9812	0.2	0.0	99.6
298	BISHNUPUR	180773	9575	5.3	0.0	99.6
299	DINDIGUL ANNA	1760601	9511	0.5	0.0	99.6
300	BAHRAICH	2763750	9487	0.3	0.0	99.6
301	SURENDRA NAGAR	1208872	9481	0.8	0.0	99.6
302	MANDI	776372	9417	1.2	0.0	99.7
303	TIRUNELVELI – KATTABOMMAN	2501832	8975	0.4	0.0	99.7
304	GANGA NAGAR	2622777	8945	0.3	0.0	99.7
305	CALCUTTA	4399819	8593	0.2	0.0	99.7
306	MADHEPURA	1177706	8321	0.7	0.0	99.7
307	BILASPUR	295387	7983	2.7	0.0	99.7
308	MADRAS	3841396	7930	0.2	0.0	99.7
309	CHURU	1543211	7819	0.5	0.0	99.7
310	SAHARSA	2475254	7359	0.3	0.0	99.8
311	BHOJPUR	2880447	7282	0.3	0.0	99.8
312	JAMNAGAR	1563558	7154	0.5	0.0	99.8

313	PATHANAMTHITTA	1188332	6922	0.6	0.0	99.8
314	DATIA	396317	6780	1.7	0.0	99.8
315	SIRMAUR	379695	6113	1.6	0.0	99.8
316	GANDHI NAGAR	408992	5602	1.4	0.0	99.8
317	KOZHIKODE	2619941	5407	0.2	0.0	99.8
318	PATNA	3618211	5370	0.1	0.0	99.8
319	KANNIYAKUMARI	1600349	5223	0.3	0.0	99.8
320	ERNAKULAM	2817236	4941	0.2	0.0	99.8
321	NAGAUR	2144810	4796	0.2	0.0	99.8
322	RAJKOT	2514122	4695	0.2	0.0	99.9
323	SHIMLA	617404	4369	0.7	0.0	99.9
324	THRISSUR	2737311	4051	0.1	0.0	99.9
325	SINDHUDURG	832152	3893	0.5	0.0	99.9
326	KOLLAM	2407566	3884	0.2	0.0	99.9
327	BHAV NAGAR	2292026	3346	0.1	0.0	99.9
328	BHIND	1219000	3291	0.3	0.0	99.9
329	SARAN	2572980	3231	0.1	0.0	99.9
330	BIKANER	1211140	3195	0.3	0.0	99.9
331	CHIDAMBARANAR	1455920	3174	0.2	0.0	99.9
332	KAMARAJAR	1565037	2978	0.2	0.0	99.9
333	THOUBAL	293958	2844	1.0	0.0	99.9
334	ALAPPUZHA	2001217	2801	0.1	0.0	99.9
335	ALMORA	836617	2739	0.3	0.0	99.9
336	MAHARAJGANJ	1676378	2691	0.2	0.0	99.9
337	SOLAN	382268	2449	0.6	0.0	99.9
338	UNNAO	2200397	2375	0.1	0.0	99.9
339	UTTARKASHI	239709	2300	1.0	0.0	99.9
340	ALLAHABAD	4921313	2204	0.0	0.0	99.9
341	AMRELI	1252589	2037	0.2	0.0	99.9
342	HARDWAR	1124488	2026	0.2	0.0	99.9
343	ANDAMANS	241453	1917	0.8	0.0	99.9
344	BIJNOR	2454521	1875	0.1	0.0	99.9
345	KANGRA	1174072	1620	0.1	0.0	100.0
346	RAMANATHAPURAM	1144040	1570	0.1	0.0	100.0
347	GARHWAL	682535	1502	0.2	0.0	100.0
348	RAE BARELI	2322810	1480	0.1	0.0	100.0
349	GAYA	2664803	1468	0.1	0.0	100.0
350	KARIMGANJ	827063	1430	0.2	0.0	100.0
351	VAISHALI	2146065	1408	0.1	0.0	100.0
352	PILIBHIT	1283103	1324	0.1	0.0	100.0
353	PURBA CHAMPARAN	3043061	1278	0.0	0.0	100.0

354	NAWADA	1359694	1246	0.1	0.0	100.0
355	PASUMPON M. THEVAR	1078190	1198	0.1	0.0	100.0
356	MUZAFFARPUR	2953903	1156	0.0	0.0	100.0
357	LUCKNOW	2762801	1124	0.0	0.0	100.0
358	KANPUR NAGAR	2418487	1070	0.0	0.0	100.0
359	BEGUSARAI	1814773	902	0.0	0.0	100.0
360	PUDDUKKOTTAI	1327148	769	0.1	0.0	100.0
361	FARRUKHABAD	2440266	769	0.0	0.0	100.0
362	HAILAKANDI	449048	715	0.2	0.0	100.0
363	KANPUR DEHAT	2138317	677	0.0	0.0	100.0
364	TEHRI GARHWAL	580153	615	0.1	0.0	100.0
365	MADHUBANI	2832024	597	0.0	0.0	100.0
366	SAMASTIPUR	2716929	542	0.0	0.0	100.0
367	AURANGABAD	1539988	504	0.0	0.0	100.0
368	GORAKHPUR	3066002	491	0.0	0.0	100.0
369	BAREILLY	2834616	427	0.0	0.0	100.0
370	MORADABAD	4121035	411	0.0	0.0	100.0
371	GHAZIPUR	2416617	404	0.0	0.0	100.0
372	SITAMARHI	2391495	394	0.0	0.0	100.0
373	SHAHJEHANPUR	1987395	392	0.0	0.0	100.0
374	LALITPUR	752043	349	0.0	0.0	100.0
375	NALANDA	1997995	336	0.0	0.0	100.0
376	FATEHPUR	1899241	310	0.0	0.0	100.0
377	DEORIA	4440024	280	0.0	0.0	100.0
378	SITAPUR	2857009	279	0.0	0.0	100.0
379	AGRA	2751021	266	0.0	0.0	100.0
380	DARBHANGA	2510959	259	0.0	0.0	100.0
381	SHAHRANPUR	2309029	239	0.0	0.0	100.0
382	BARABANKI	2423136	239	0.0	0.0	100.0
383	JEHANABAD	1174900	238	0.0	0.0	100.0
384	SOUTH GOA	504989	226	0.0	0.0	100.0
385	HAMIRPUR	369128	223	0.1	0.0	100.0
386	AZAMGARH	3153885	210	0.0	0.0	100.0
387	JHANSI	1429698	187	0.0	0.0	100.0
388	SULTANPUR	2558970	184	0.0	0.0	100.0
389	BALLIA	2262273	173	0.0	0.0	100.0
390	BASTI	2738522	172	0.0	0.0	100.0
391	MATHURA	1931186	170	0.0	0.0	100.0
392	VARNASI	4860582	155	0.0	0.0	100.0
393	NORTH GOA	664804	150	0.0	0.0	100.0

394	GHAZIABAD	2703933	149	0.0	0.0	100.0
395	SONBHADRA	1075041	139	0.0	0.0	100.0
396	ALIGARH	3295982	127	0.0	0.0	100.0
397	DIU	39485	126	0.3	0.0	100.0
398	BULANDSHAHR	2849859	125	0.0	0.0	100.0
399	FIROZABAD	1533054	120	0.0	0.0	100.0
400	JAUNTOR	3214636	104	0.0	0.0	100.0
401	PRATAPGARH	2210700	90	0.0	0.0	100.0
402	MEERUT	3447912	79	0.0	0.0	100.0
403	ETAWAH	2124655	75	0.0	0.0	100.0
404	SIDDHARTH NAGAR	1707885	71	0.0	0.0	100.0
405	ETAH	2244998	69	0.0	0.0	100.0
406	HAMIRPUR	1466491	63	0.0	0.0	100.0
407	MIRZAPUR	1657139	59	0.0	0.0	100.0
408	UNA	378269	55	0.0	0.0	100.0
409	MUZAFFAR NAGAR	2842543	52	0.0	0.0	100.0
410	MAU	1445782	52	0.0	0.0	100.0
411	RAMPUR	1502141	51	0.0	0.0	100.0
412	BANDA	1862139	43	0.0	0.0	100.0
413	KHAGARIA	987227	35	0.0	0.0	100.0
414	HARDOI	2747082	34	0.0	0.0	100.0
415	BUDAUN	2448338	27	0.0	0.0	100.0
416	MAINPURI	1316746	11	0.0	0.0	100.0

Source : Census of India 1991

36 Districts with no ST population

Sl. NO.	State/District	Total Population
	HARYANA	16463648
1	AMBALA	1116878
2	YAMUNA NAGAR	821880
3	KURUKSHETRA	641943
4	KAITHAL	820685
5	KARNAL	885797
6	PANIPAT	833501
7	SONIPAT	754866
8	ROHTAK	1808606
9	FARIDABAD	1477240
10	GURGAON	1146090
11	REWARI	623301
12	MAHENDRAGARH	681869
13	BHIWANI	1139718
14	JIND	963104
15	HISAR	1844634
16	SIRSA	903536
	PUNJAB	20281969
17	GURDASPUR	1756732
18	AMRITSAR	2504560
19	FIROZPUR	1607817
20	LUDHIANA	2471594
21	JALANDHAR	2026787
22	KAPURTHALA	646647
23	HOSHIARPUR	1455028
24	RUPNAGAR	915603
25	PATIALA	1896242
26	SANGRUR	1710120
27	BATHINDA	1559963
28	FARIDKOT	1730876
29	JALAUN	1219377
30	FAIZABAD	2978484
	CHANDIGARH	642015
31	CHANDIGARH	642015
	DELHI	9420644
32	DELHI DISTRICT	9420644
	PONDICHEERY	807785
33	PONDICHEERY	608338
34	KARAIKAL	145703
35	MAHE	33447
36	YANAM	20297

LIST OF 40 DISTRICTS THAT ACCOUNT FOR 50% OF THE SCHEDULED TRIBE POPULATION

			Total population	ST population	ST population as % of District population	ST population as % of total ST population	Cumulative ST population
1	ORISSA	KORAPUT	3012546	1636079	54.3	2.4	2.4
2	MADHYA PRADESH	BASTAR	2271314	1529888	67.4	2.3	4.7
3	GUJARAT	PANCH MAHALS	2956456	1395050	47.2	2.1	6.7
4	GUJARAT	SURAT	3397900	1225080	36.1	1.8	8.5
5	GUJARAT	VALSAD	2173672	1181404	54.4	1.7	10.3
6	MADHYA PRADESH	SARGUJA	2082630	1117577	53.7	1.6	11.9
7	ORISSA	MAYURBHANJ	1884580	1090626	57.9	1.6	13.5
8	RAJASTHAN	UDAIPUR	2889301	1063071	36.8	1.6	15.1
9	MAHARASHTRA	DHULE	2535715	1036491	40.9	1.5	16.6
10	BIHAR	PASHCHIMI SINGHBHUM	1787955	978069	54.7	1.4	18.1
11	MADHYA PRADESH	JHABUA	1130405	968372	85.7	1.4	19.5
12	BIHAR	RANCHI	2214048	964422	43.6	1.4	20.9
13	MAHARASHTRA	THANE	5249126	951205	18.1	1.4	22.3
14	MADHYA PRADESH	WEST NIMAR	2028145	937710	46.2	1.4	23.7
15	MAHARASHTRA	NASHIK	3851352	931069	24.2	1.4	25.1
16	MADHYA PRADESH	BILASPUR	3793566	873741	23.0	1.3	26.4
17	RAJASTHAN	BANSWARA	1155600	849050	73.5	1.3	27.6
18	GUJARAT	VADODARA	3089610	821697	26.6	1.2	28.9
19	MADHYA PRADESH	RAIGARH	1722291	821477	47.7	1.2	30.1
20	BIHAR	GUMLA	1153976	816988	70.8	1.2	33.3
21	MADHYA PRADESH	SHAHDOL	1743869	807764	46.3	1.2	32.5
22	ORISSA	SUNDARGARH	1573617	798481	60.7	1.2	33.6
23	MADHYA PRADESH	MANDLA	1291263	785587	60.8	1.2	34.8
24	ORISSA	SAMBALPUR	2697153	740323	27.4	1.1	35.9
25	MADHYA PRADESH	DHAR	1367412	731272	53.5	1.1	37.0
26	MADHYA PRADESH	RAIPUR	3908042	714027	18.3	1.1	38.0
27	GUJARAT	BHARUCH	1546145	703956	45.5	1.0	39.1

28	WEST BENGAL	MEDINIPUR	8331912	689636	8.3	1.0	40.1
29	BIHAR	DUMKA	1495709	621484	41.6	0.9	41.0
30	ORISSA	KENDUJHAR	1337026	595184	44.5	0.9	41.9
31	WEST BENGAL	JALPAIGURI	2800543	589225	21.0	0.9	42.7
32	RAJASTHAN	DUNGARPUR	874549	575805	65.8	0.8	43.6
33	ANDHRA PRADESH	KHAMMAM	2215809	558958	25.2	0.8	44.4
34	MADHYA PRADESH	CHHINDWARA	1568702	540708	34.5	0.8	45.2
35	RAJASTHAN	JAIPUR	4722551	531652	11.3	0.8	46.0
36	MEGHALAYA	EAST KHASI HILLS	665218	521482	78.4	0.8	46.8
37	BIHAR	SAHIBGANJ	1301088	507321	39.0	0.7	47.5
38	ORISSA	KALAHANDI	1600385	495425	31.0	0.7	48.3
39	MADHYA PRADESH	JABALPUR	2649962	474466	17.9	0.7	49.0
40	ANDHRA PRADESH	VISAKHAPATANAM	3285092	468886	14.3	0.7	49.6

Source: Census of India 1991

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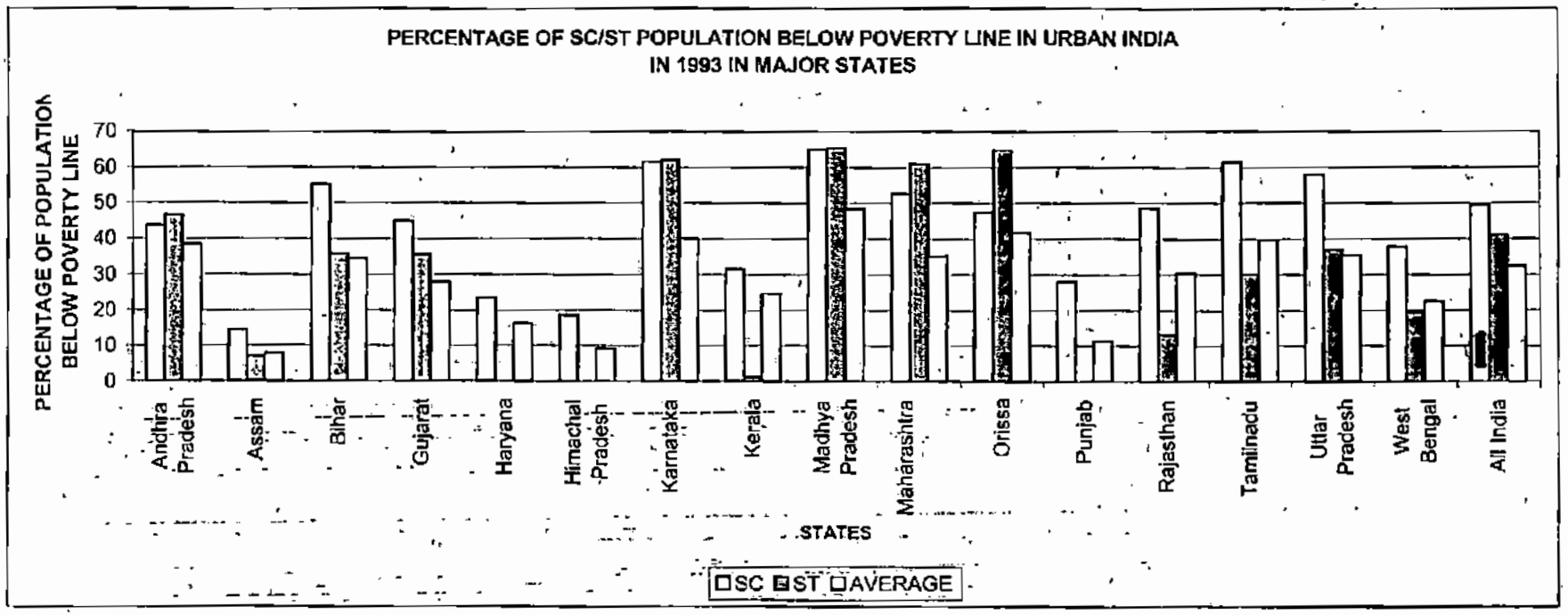


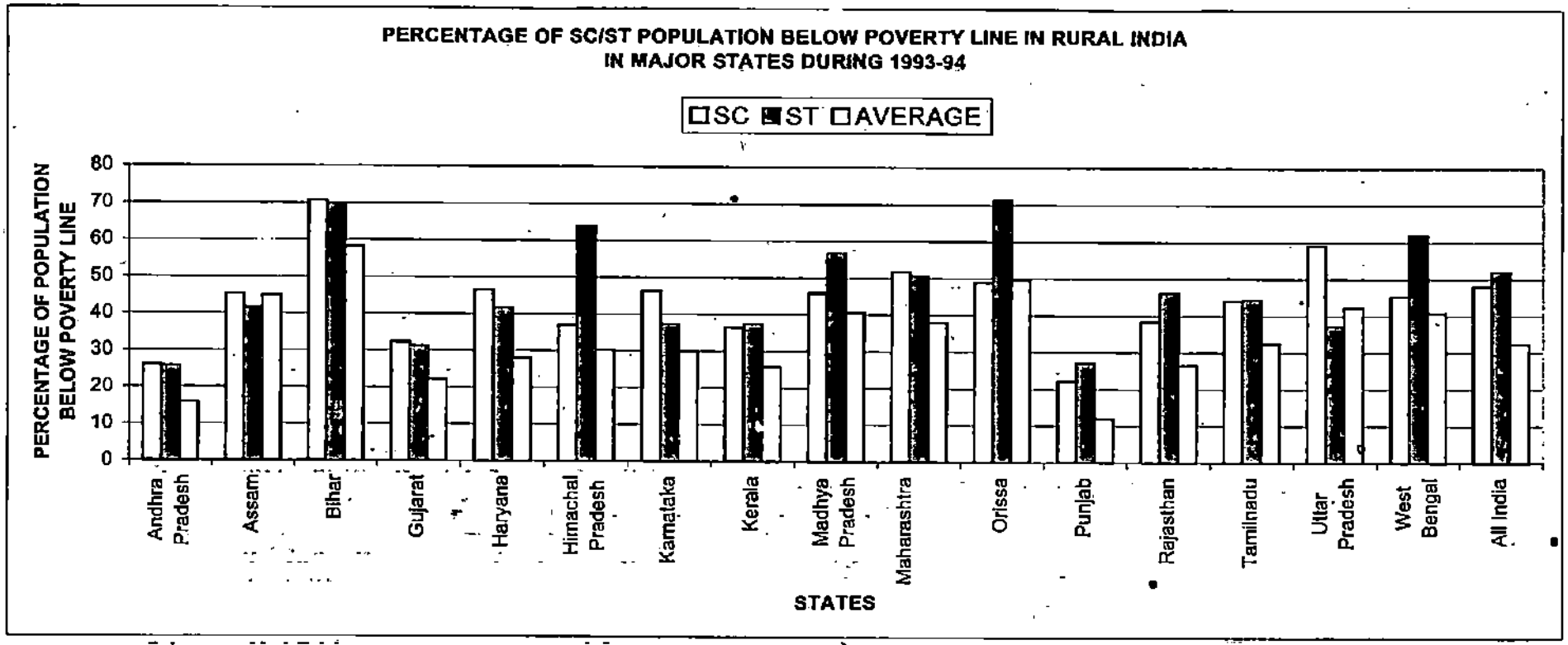
Source: Planning Commission of India.

Table to Appendix - XI

PERCENTAGE OF SC/ST POPULATION BELOW POVERTY LINE IN URBAN INDIA IN 1993 IN MAJOR STATES

S. No.	States	SC	ST	Average
1	Andhra Pradesh	43.82	46.68	38.33
2	Assam	14.34	7.11	7.73
3	Bihar	55.16	35.76	34.5
4	Gujarat	44.99	35.47	27.89
5	Haryana	23.58	0	16.38
6	Himachal Pradesh	18.52	0	9.18
7	Karnataka	61.59	62.05	40.14
8	Kerala	31.59	1.08	24.55
9	Madhya Pradesh	65	65.28	48.38
10	Maharashtra	52.56	61.06	35.15
11	Orissa	47.45	64.85	41.64
12	Punjab	27.96	0	11.35
13	Rajasthan	48.63	13.21	30.49
14	Tamil Nadu	61.5	30.08	39.77
15	Uttar Pradesh	58.02	36.89	35.39
16	West Bengal	37.73	19.41	22.41
	All India	49.48	41.14	32.36

Source: Planning Commission of India.



Source: Planning Commission of India

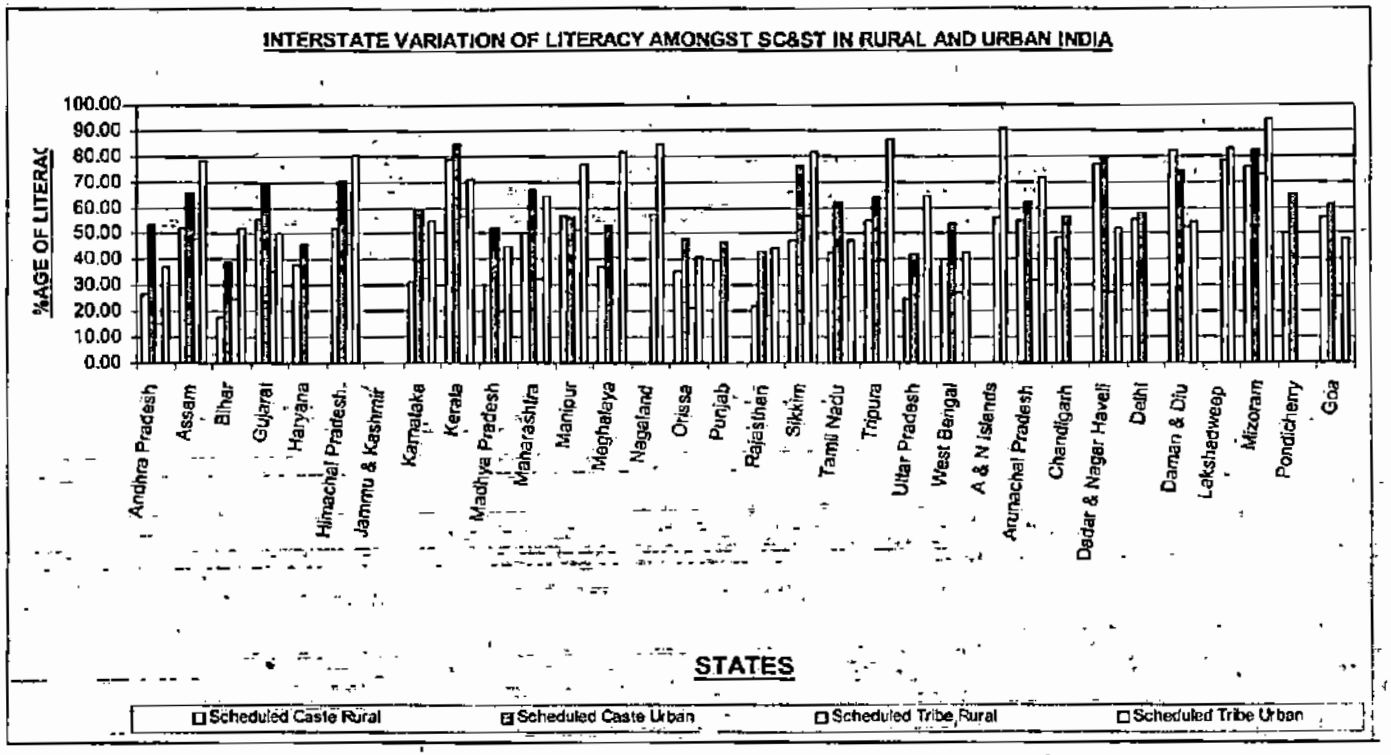
Table to Annexure XII

PERCENTAGE OF SC/ST POPULATION BELOW POVERTY LINE IN RURAL INDIA IN MAJOR STATES DURING 1993-94

		RURAL		
		SC	ST	AVERAGE
1	Andhra Pradesh	26.02	25.66	15.92
2	Assam	45.38	41.44	45.01
3	Bihar	70.66	69.75	58.21
4	Gujarat	32.26	31.2	22.18
5	Haryana	46.56	41.55	28.02
6	Himachal Pradesh	36.89	63.94	30.34
7	Karnataka	46.36	37.33	29.88
8	Kerala	36.43	37.34	25.76
9	Madhya Pradesh	45.83	56.69	40.64
10	Maharashtra	51.64	50.58	37.93
11	Orissa	48.95	71.26	49.72
12	Punjab	22.08	27	11.95
13	Rajasthan	38.38	46.23	26.46
14	Tamil Nadu	44.05	44.37	32.48
15	Uttar Pradesh	58.99	37.11	42.28
16	West Bengal	45.29	61.95	40.8
	All India	**48.11**	**51.94**	**32.27**

Source: Planning Commission

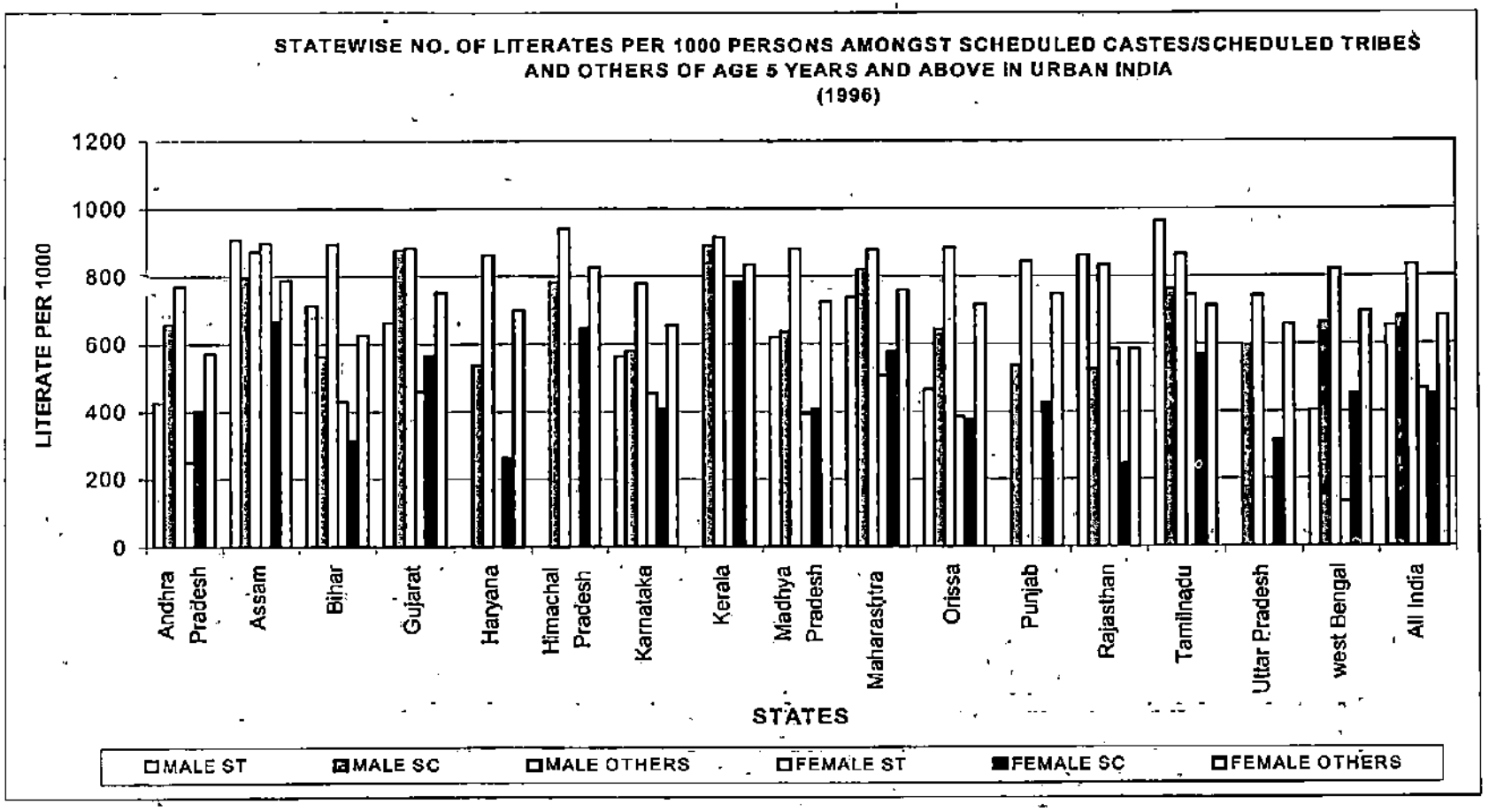
Appendix XIII



Source: Selected Educational Statistics : 1998-99

TABLE SHOWING INTER-STATE VARIATION OF LITERACY AMONGST SC/ST IN RURAL & URBAN INDIA

	STATES	Scheduled Caste		Scheduled Tribe	
		Rural	Urban	Rural	Urban
1	Andhra Pradesh	26.80	54.10	15.44	37.48
2	Assam	51.95	65.71	48.09	78.18
3	Bihar	17.49	39.23	24.80	52.28
4	Gujarat	55.59	70.06	35.21	50.32
5	Haryana	37.67	46.42	0.00	0.00
6	Himachal Pradesh	52.00	70.32	46.17	80.72
7	Jammu & Kashmir				
8	Karnataka	31.42	59.18	32.57	55.08
9	Kerala	78.55	84.47	56.71	71.16
10	Madhya Pradesh	30.22	52.26	20.33	44.68
11	Maharashtra	50.27	67.07	32.67	64.58
12	Manipur	56.69	56.22	51.44	77.07
13	Meghalaya	37.11	53.05	40.94	81.53
14	Nagaland	0.00	0.00	57.44	84.51
15	Orissa	35.45	47.80	21.29	40.89
16	Punjab	39.55	47.04	0.00	0.00
17	Rajasthan	22.06	43.35	18.20	44.50
18	Sikkim	47.53	76.58	56.81	81.79
19	Tamil Nadu	42.50	62.24	25.24	47.29
20	Tripura	55.24	64.06	39.52	86.27
21	Uttar Pradesh	24.76	42.30	33.81	64.34
22	West Bengal	39.98	53.98	26.95	42.53
23	A & N Islands	0.00	0.00	55.92	90.67
24	Arunachal Pradesh	55.29	61.99	32.14	71.68
25	Chandigarh	48.57	56.48	0.00	0.00
26	Dadar & Nagar Haveli	77.17	79.90	27.37	52.13
27	Delhi	55.50	57.86	0.00	0.00
28	Daman & Diu	82.22	74.29	52.43	54.64
29	Lakshadweep	0.00	0.00	77.94	82.67
30	Mizoram	75.76	82.30	72.93	94.26
31	Pondicherry	50.07	65.05	0.00	0.00
32	Goa	56.05	61.76	25.37	48.20



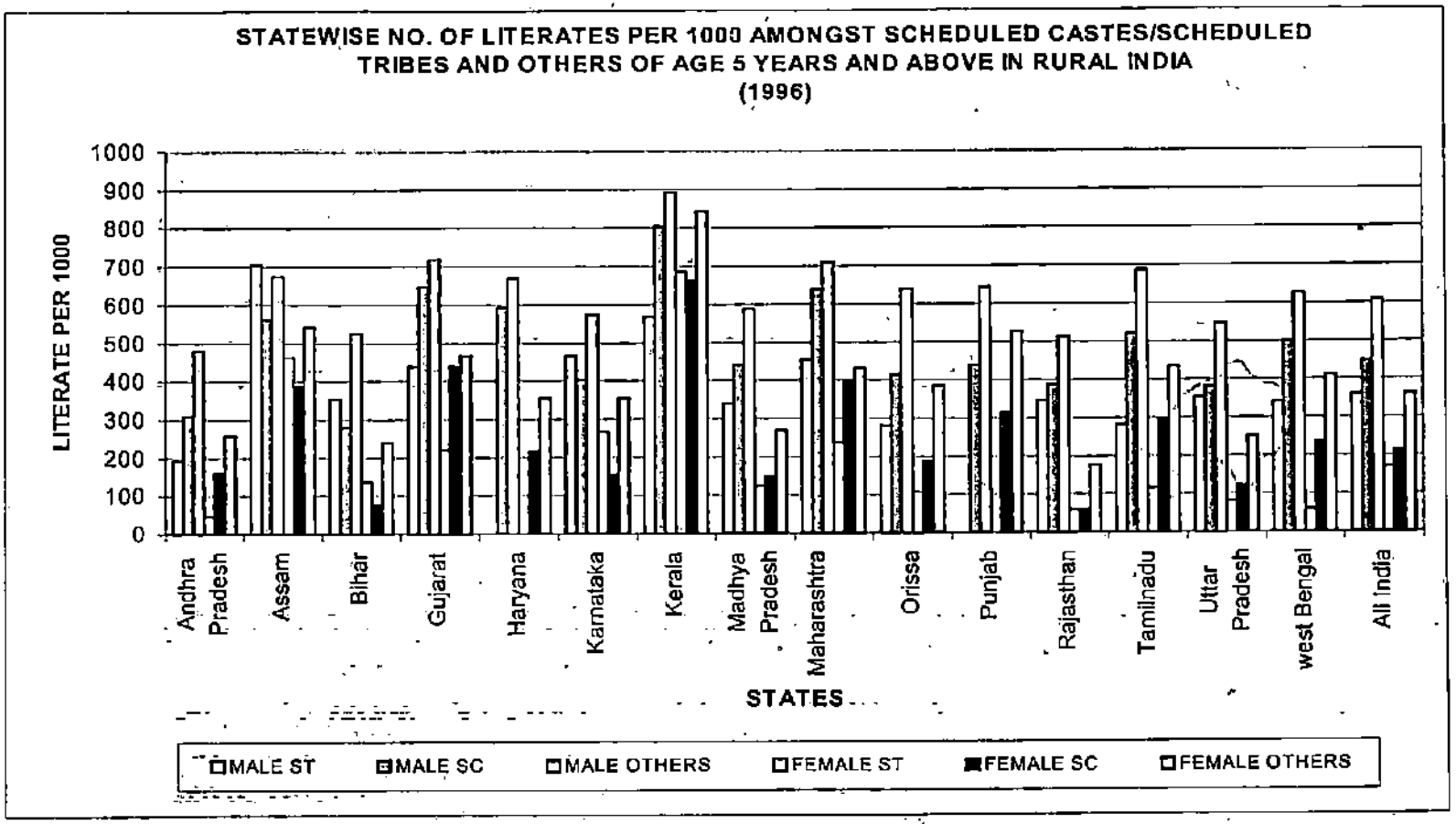
Source : Bureau of Adult Education

NUMBER OF LITERATES PER 1000 PERSONS OF AGE 5 YEARS AND ABOVE IN URBAN INDIA (1996)

	MALE			FEMALE		
	ST	SC	OTHERS	ST	SC	OTHERS
Andhra Pradesh	425	658	770	251	403	572
Assam	908	794	872	897	667	788
Bihar	715	563	896	430	314	625
Gujarat	665	877	883	459	566	752
Haryana	0	538	863	0	263	699
Himachal Pradesh	0	783	942	0	647	826
Karnataka	564	580	779	454	407	657
Kerala	0	891	916	0	785	834
Madhya Pradesh	622	636	882	395	407	725
Maharashtra	737	821	879	507	579	759
Orissa	465	643	885	384	376	718
Punjab	0	536	845	0	426	748
Rajasthan	862	525	832	585	247	585
Tamil Nadu	965	762	865	745	568	713
Uttar Pradesh	0	595	742	0	315	656
West Bengal	403	663	820	132	453	696
All India	653	679	832	467	450	682

Source : Bureau of Adult Education

Appendix –XV



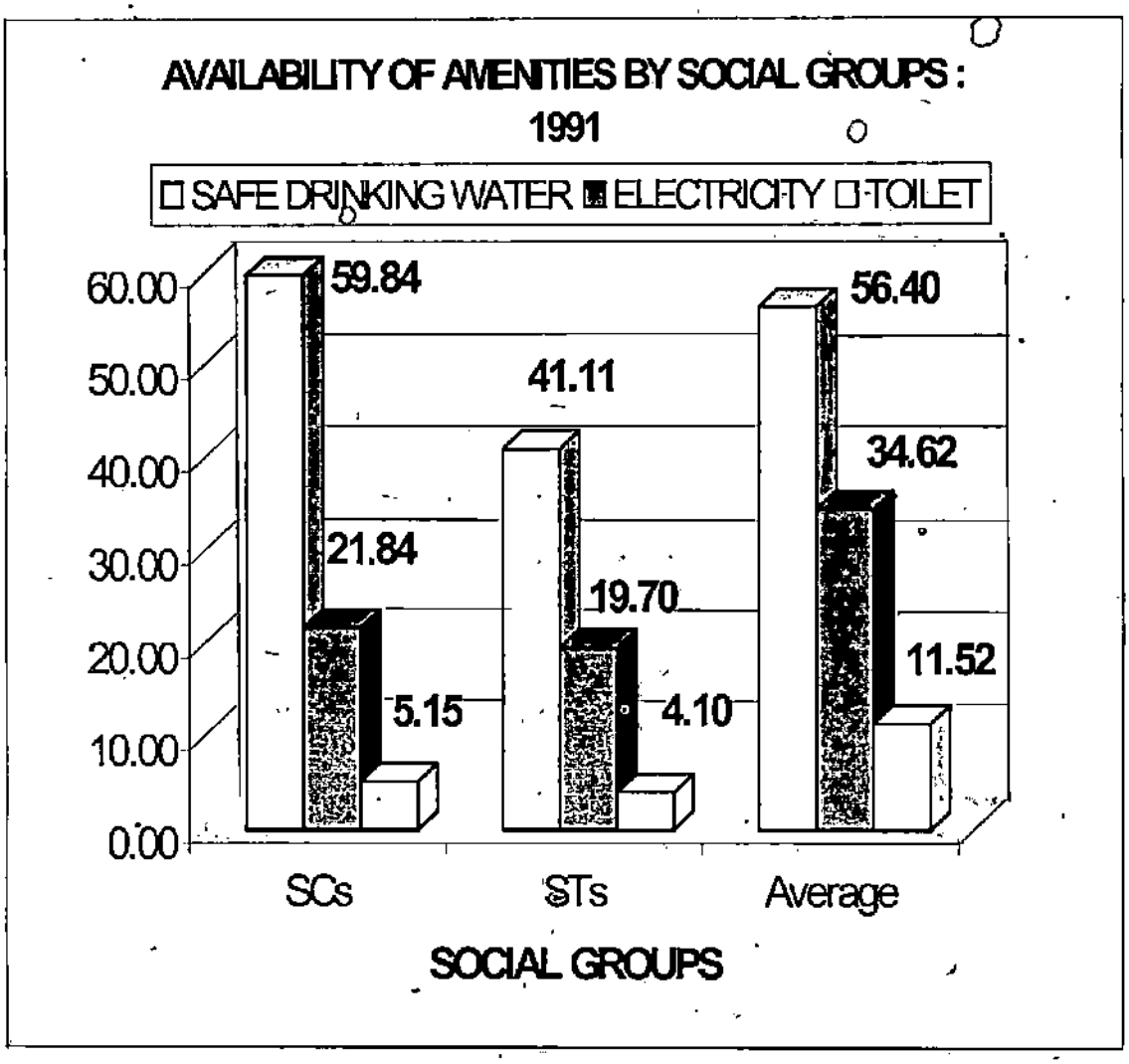
Source: Bureau of Adult Education

Table to Appendix – XV

NUMBER OF LITERATES PER 1000 PERSONS OF AGE 5 YEARS AND ABOVE IN RURAL INDIA

	MALE			FEMALE		
	ST	SC	OTHERS	ST	SC	OTHERS
Andhra Pradesh	193	308	479	46	160	258
Assam	706	562	675	462	385	542
Bihar	353	279	525	136	77	240
Gujarat	438	647	769	221	438	465
Haryana	0	593	669	0	215	355
Karnataka	465	405	574	268	156	354
Kerala	567	804	891	684	662	843
Madhya Pradesh	339	440	587	125	148	269
Maharashtra	454	639	710	237	394	431
Orissa	281	414	639	106	186	385
Punjab	0	438	644	0	316	528
Rajasthan	345	387	513	59	59	177
Tamilnadu	281	520	688	116	296	434
Uttar Pradesh	354	382	547	80	121	252
West Bengal	339	499	625	59	233	411
All India	361	448	608	170	211	360

Source : Bureau of Adult Education


AVAILABILITY OF AMENITIES BY SOCIAL GROUPS : 1991
SAFE DRINKING WATER
ELECTRICITY
TOILET
60.00
50.00
40.00
30.00
20.00
10.00
0.00
59.84
21.84
5.15
41.11
19.70
4.10
56.40
34.62
11.52
SCs
STs
Average
SOCIAL GROUPS

Appendix –

Monitoring of the Scheduled Caste and Scheduled Tribe Households at District level

- a draft survey instrument
- Sample size and methodology to be decided
- A rotation procedure to be included so that each year at least 10 per cent of the sample size will be new entrants and 10 per cent will be dropped from the 3rd year.
- Monitoring has be done by the District Magistrates
- Each District or group of districts will be covered by an accredited NGO who will oversee the data collection, compilation and analysis.
- The national level annual analytical reports can be repared by a professional institution such as the NCAER, IEG, Centre for Policy Research and so on.

APPENDIX XVIII

CHILD PROSTITUTION HIGH RISK AREAS IN INDIA

ANDHRA PRADESH
1. Adilabad
2. Cuddapah
3. Chittoor
4. Vijayanagaram
5. East Godawari
6. Kurnool

ASSAM
7. Gopalpara
8. Darrang

BIHAR
9. Dhanbad
10. Dumka
11. Hazaribagh
12. Gopalgunj
13. Siwan
14. Purnia
15. Sahebganj
16. Palamu

GOA
17. South Goa

GUJARAT
18. Panch Mahals
19. Sabar Kantha

HIMACHAL PRADESH
20. Shimla

KARNATAKA
20. Belgaum
21. Bellary
22. Bijapur
23. Hassan
24. Dharwar
25. Raichur
26. Tumkur

KERALA
27. Ernakulam
28. Palai

MADHYA PRADESH
29. Bilaspur
30. Bhind
31. Chhattarpur
32. Guna
33. Morena
34. Ratlam
35. Raisen
36. Rajanandgoan
37. Rewa
38. Saugar

MAHARASHTRA
39. Ahmednagar
40. Akola
41. Amrayati
42. Kolhapur
43. Nasik
44. Osmanabad
45. Ratnagiri
46. Sholapur
47. Sangli

ORISSA
48. Cuttack
49. Ganjam
50. Sambalpur
51. Koraput
52. Sundargarh

MEGHLAYA
53. Shillong (EGH)

RAJASTHAN
54. Alwar
55. Bharatpur
56. Bundi
57. Dhoulpur
58. Jaipur
59. Sawai Madhopur
60. Sirohi
61. Tonk
62. Udaipur

TAMIL NADU
63. Salem
64. South Arcot
65. Pudukuttai
66. Madurai

UTTAR PRADESH
67. Agra
68. Meerut
69. Nainital
70. Saharanpur
71. Tehri Garhwal
72. Uttar Kashi
73. Rae Bareli
74. Gorakhpur
75. Ferozabad
76. Aligarh
77. Varanasi

WEST BENGAL
78. Birbhum
79. Bankura
80. Purulia
81. Jalpaiguri
82. Midnapur
83. Nadia
84. Burdwan
85. Murshidabad

Delhi, Mumbai, Calcutta, Chennai

Prepared by Centre of Concern for Child Labour



NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

LITERACY IN THE CONTEXT OF THE CONSTITUTION OF INDIA

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating a public debate and eliciting public response.

September 26, 2001
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CONTENTS

	CHAPTERS	Pages
I.	Literacy : Its Scope and Dimensions	241
II.	Constitutional provisions.	244
III.	Historical Background and Review of Achievements	248
IV.	Into the Future.	260
V.	Promoting Literacy: Some Implementation Strategies	264
VI.	Issues for Consideration	269
VII.	Suggestions for Amending Provisions	271
	QUESTIONNAIRE	274
	APPENDIX – I	281
	APPENDIX – II	283

CHAPTER I

LITERACY: ITS SCOPE AND DIMENSIONS

1. In this Chapter, a general overview of the need for literacy and education is outlined to justify literacy being a part of Constitutional Provisions and guarantees. In addition to the simple definition as given in the Census, the broader dimensions of literacy in its relationship with Education and Societal Development are also mentioned. Role of literacy as a part of the Human Rights dialogue and also as an integral part of the Human Development index is also discussed.

1.1 Having given unto ourselves a written Constitution, the very preamble of which proclaims Equality of opportunity as an express intent, the concern for literacy as an important parameter is obvious.

Definition of Literacy

1.2 Literacy, as defined in Census operations, is the ability to read and write with understanding in any language. A person who can merely read but cannot write is not classified as literate. Any formal education or minimum educational standard is not necessary to be considered literate. Adopting these definitions, the literacy level of the country as a whole was only 29.45 per cent with male literacy at 39.45 per cent and female literacy at 18.69 per cent. As per the latest Census estimates (2001), the All-India figure has gone up to 65.38 per cent; About three-fourths of our menfolk (75.85 %) are literate whereas over half of our womenfolk (54.16 %) are also literate. As later discussed in this Paper, this should be regarded as no mean achievement, despite the fact that we have not met the Constitutional directives that we have set for ourselves.

Illiteracy – National and International Dimensions

1.3 The problems of illiteracy are not confined to India, but are also a malady in developed countries too. Daedalus, the journal of the American Academy of Arts and Sciences, devoted the Spring 1990 issue to study the problem of Literacy in America. The Journal quotes Joseph Murphy, Chancellor, City University of New York who stated: "There are as many as 60 million illiterate and semi-literate adults in America today. Because poverty and illiteracy go hand in hand, the poor are disenfranchised; cut off from the democratic process. Any account that does not discuss the political interests served by allowing a large proportion of the American people to remain disenfranchised does not touch the heart of the matter. Before the Civil War in the United States it was illegal to teach slaves to read, for reading was acknowledged, as the tool needed to understand the social, historical, behavioral and physical laws that controls the human condition. An apprehension of those forces invests human beings with the capacity to alter the conditions of their lives. It is not too far fetched to draw an analogy between slaves in the nineteenth century and illiterate Americans today." While this may be a strong statement, it reflects the concern on the prevailing levels of illiteracy and its consequent effects.

1.3.1 A leading German magazine 'Stern' points out that even in the United Kingdom, "One out of five adults in the land of William Shakespeare and Harry Potter is practically illiterate or has problems counting money in the purse." According to Daniel A. Wagner, Director, Literacy Research Center at the University of Pennsylvania, over one billion individuals worldwide, nearly 25% of today's youth and adults, can't read. Even fewer comprehend numeracy and far fewer have access to electronic superhighway. "Achieving a literate society in which adults can fully participate in the workplace, community, and family will be a major challenge for the world in the coming millenium".

1.3.2 Illiteracy is one of the major problems faced by the developing world, specially Africa and South-East Asia and has been identified as the major cause of socio-economic and ethnic conflicts that frequently surface in the region.

Need to go beyond Rudimentary Literacy

1.4 With the limited definition of *'literacy'* being adopted for enumeration purposes, there has been concern on the content of a Mass Literacy program. The focus of mass literacy efforts is in terms of basics – the mechanics of reading and attention to computation (addition, subtraction, multiplication and division) in mathematics. It is recognized that these basics are not rooted in the goals of higher-order thinking – conceptualizing, inferring, inventing, testing, hypothesis and thinking critically. It is true that these literacy programs do not have in mind, literacy practice that would promote capacities for independent reasoning, of the kind sought by Third World socially minded pedagogues like Paulo Friere or the leading edge of reformers, business leaders and cognitive psychologists. A candid analysis of illiteracy's political and cultural consequences throughout the population will necessitate in our seeking to move literacy expectations beyond a rudimentary ability to read, write and calculate. The recognition that *'literacy'* has to be situationally relevant has given rise to the concept of *'functional literacy'*, which has been referred to by the Second Education Commission.

1.4.1 The need to go into the broader aspect is for the purpose of determining the structure of the system. In devising the system, educational and psychological philosophies of Adler, Dewey, Witttgenstein, Chomsky and our own Mahatma Gandhi (in his basic education concept) and other experiences will come into play. Indeed, it is probably in recognition of this limited scope of literacy, that our Constitution makes a reference to education and educational opportunities and not to literacy.

Literacy and Human Rights.

1.5 Literacy is now part of the Human Rights Dialogue. Now most of the nations of the world have also accepted their obligation to provide at least free elementary education to their citizens. Article 26 of the Universal Declaration of Human Rights declares:

> *"Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and Professional education shall be generally available and higher education shall be equally accessible to all on the basis of merit".*

1.5.1 This Right is also repeated in the UN Declaration of the Rights of the Child which seeks to ensure *"Right to free and compulsory education at least in the elementary stages and education to promote general culture, abilities, judgment and sense of responsibility to become a useful member of society and opportunity to recreation, and play to attain the same purpose as of education".*

1.5.2 India has ratified the above, and these have thus the power of domestic laws. From the Human Rights perspective, constitutional guarantees arise automatically.

Literacy and Human Development.

1.6 Investment potential on human capital has now been recognized. Economists had long assumed that the main component of a country's productive wealth is physical assets ("produced assets"). But according to World Bank's assessment for 192 countries, physical capital on

average accounts only for 16% of total wealth. More important is natural wealth, which accounts for 20%. And more important still is human capital, which accounts for 64%. Literacy is now part of the Human Development Index. Government of India has also accepted this position; and one of the important components in the National Human Development initiative announced in the Union Budget 1999-2000 is education, forming also a component in the Prime Minister's 'Special Action Plan'.

1.6.1 By improving people's ability to acquire and use information, education deepens their understanding of themselves and the world, enriches their minds by broadening their experiences, and improves the choices they make as consumers, producers and citizens. Education strengthens their ability to meet their wants and those of their family by increasing their productivity and their potential to achieve a higher standard of living. By improving people's confidence and their ability to create and innovate, it multiplies their opportunities for personal and social achievement. Japan's rapid industrialization after the Meiji Restoration was fuelled by its aggressive accumulation of technical skills, which in turn was based on the already high level of literacy and a strong commitment to education, especially the training of engineers.

1.6.2 In the field of Development Economics, literacy holds an important place as a parameter to measure development. It has been recognized that the "Human Development Index" (HDI) developed by UN is a measure of the overall development of the country. One of the three components used in the calculation of HDI is "Literacy" as it is a cumulative measure of several factors that contribute to human development. As per UN Development Report, 2000, India's ranking in HDI is 128, with education index registering a low .55 due to a low adult literacy rate of 55.7 and combined primary, secondary and tertiary gross enrolment of 54. In their book, *"Development Reconsidered"*, Owens and Shaw have stated: "It is self-evident that literacy is a basic element of a nationwide knowledge system. The most important element of a literacy program is not the program itself, but the incentive to become and remain literate." When people are able to believe that they can improve their lives through their own efforts, when they realize that some newly created opportunity is denied to them by illiteracy, then they will learn how to read, write and count."

1.6.3 Education is thus viewed as an integral part of national development. Development is not only 'economic growth'; rather, it 'comprehended opportunities to all people for better life' with 'man as end of development and instrument'. Education and development are linked in a variety of ways. First, education, as stated earlier, is a human right, the exercise of which is essential for individual development and fulfillment. The capacity of an individual to contribute to societal development is made possible and enhanced by his or her development as an individual. In this light, education is also a basic need. It is also a means by which other needs, both collective and individual, are realized. Thus, education is the instrument by which the skills and productive capacities are developed and endowed. All these interrelationships of education and development are inseparable from the conception of educational policies. It is in the second order of 'action' that problems arise. The problems of illiteracy will not solve by itself in the flux of time. Without organized literacy action, illiteracy will continue to stagnate indefinitely along with the associated ills of poverty and underdevelopment. Experience has shown that determined literacy action is the exception and that more often, literacy campaigns are 'turned on' and 'turned off' in line with short-term policy changes. Hence the need for Constitutional guarantees. In the light of the discussions earlier, *Literacy* and *Education* have overlapping connotations both as an engine of socio-economic progress as well as for individual growth. An attempt at serious semantic distinction between is not followed here in the discussions.

Aid for Education by State

1.7 Concern for literacy arises from the clearly related question as to whether educational expansion has created the conditions for freer individual expression, for a more active participation in the body politic, for what Pericles called "sound judges of policy", and for greater

respect for human welfare and dignity. Many feel, as indeed the Constitution makers felt, that education is its own reward- i.e. the more one is educated, the greater is his possibility of developing these qualities. Thus, they believed that the future and hope of mankind lie in educational advancement and a Welfare State has to make suitable provision for the same. Education is valuable by itself for discovering "the treasure within", as has been mentioned by UNESCO.

1.7.1 As stated in the Constitution, the State has to set for itself a Welfare goal. It should, therefore, take upon itself all activities and steps to move towards this goal. Most major classical economists have argued by their extensive earlier writings the need for State provision, under the proposition that the private market would under provide education. E. G. West (1965), in a thought-provoking book on education, argues that a strong case can be made for State intervention in education (but not for direct State provision of education) on two counts, namely, the externality effects of education and the alleged incompetence or ignorance of parents. Advocates of State education in the past have usually rested their case predominantly on the two extra economic considerations of equality of opportunity and social cohesion.

CHAPTER II

CONSTITUTIONAL PROVISIONS

2. This Chapter sets out to list the provisions contained in the Constitution of India along with a mention of some of the decided cases, which have given a wide amplitude to such provisions. The amendments as affect education are mentioned. There are 16 Articles and other mentions in the Constitution and 4 specific amendments to advance the cause of education.

Education for Social transformation

2.1 The Indian Constitution has recognized the significance of education for social transformation. It is a document committed to social justice. The Preamble affirms a determination to secure liberty of thought, expression, belief, faith and worship and equality of status and opportunity and to promote amongst the people a feeling of fraternity, ensuring the dignity of the individual and the unity of the nation. Literacy forms the cornerstone for making the provision of equality of opportunity a reality. The objective specified in the Preamble contains the basic structure of the Constitution, which cannot be amended, and the preamble may be invoked to determine the ambit of Fundamental Rights and Directive Principles of State Policy. Judicial interpretation has brought alive many an Article of the Constitution, which if read literally may seem to be a colorless Article. Of relevance to literacy, for instance, is the wide interpretation given to the words 'personal; liberty'. In *Francis Coralie Mulin* v. *Administrator, Union Territory of Delhi* (1981), Justice Bhagwati observed:

> *"The fundamental right to life which is the most precious human right and which forms the arc of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. We think that the right to life includes right to live, with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about, mixing and co-mingling with fellow human beings."*

2.2 Again, the Supreme Court in its judgment in the case of Bandhua Mukti Morcha, etc. vs. Union of India (J.T. 1997 (5) SC 285) specifically referred to the earlier judgments made in this connection as under:

> *"In Maharashtra State Board of Secondary and Higher Education v. K.S. Gandhi JT 1991 (2) SC 296, right to education at the secondary stage was held to be a fundamental right. In J.P.Unnikrishnan V. State of Andhra Pradesh JT 1993 (1) SC 474, a constitution Bench had held education upto the age of 14 years to be a fundamental right.... It would be therefore incumbent upon the State to provide facilities and opportunity as enjoined under Article 39 (e) and (f) of the Constitution and to prevent exploitation of their childhood due to indigence and vagary."*

Specific Constitutional provisions.

2.3 The Table below gives the Constitutional provisions relating to Education and educational opportunity - the key vehicle for literacy:

Table 1
Constitutional Provisions

Part / Article	Provision
Preamble.	To secure to all its citizens EQUALITY of status and opportunity.
Fundamental Rights	
Article 12 Definition of "the State"	State aid, control and regulation so impregnating a private activity as to give it the color of "State action" (M.C.Mehta v.UOI)
Article 14: Equality before law	Equality before law invoked to regulate rules of admission (G.Beena v. A.P.University of Health Sc. AIR 1990 AP 252)
Article 19: Protection of certain rights regarding freedom of speech, etc.	Right to freedom of speech, which has been interpreted as a Right to Know (L.K.Koolwal v. State of Rajasthan AIR 1988 Raj. 2)
Article 21: Protection of life and personal liberty	Right to life ".....the fewer elegances of human civilisation, right to dignity, to health and healthy environ to clean water, to free education upto 14 years are parts of Right to Life under Article 21 (See Nalla Thampi, 1985; Francis Coralie, 1981, Mehta 1987, Wadhera, 1996, Unnikrishnan, 1993; Mahendra 1997, etc.". Right to livelihood: Is an integral facet of the right to life. Narendra Kumar v. State of Haryana, JT(1994) 2 SC 94. As Prof. D.D. Basu has annotated: "Articles 19 and 21 are not water-tight compartments. On the other hand, the expression of 'personal liberty' in Art. 21 is of the widest amplitude, covering a variety of rights of which some have been included in Art.19 and given additional protection. From A.Gopalan to Maneka the judicial exploration has completed its "trek from North Pole to the South Pole". The decision in Maneka's is being followed by the Supreme Court in subsequent cases.
Article 29: Protection of interests of minorities	Cultural and Educational Rights – protection of interests of Minorities. Although commonly Art. 29(1) is assumed to relate to minorities, its scope is not necessarily so confined, as it is available to "any section of citizens resident in the territory of India". This may well include the majority, as Ray, C.J. pointed out in Ahmedabad St.Xavier College Society v. State of Gujarat, AIR 1974 SC 1389.

Part / Article	Provision
Article 30(1): Right of minorities to establish and administer educational institutions	Right of minorities to establish and administer educational institutions. The right under this article is subject to the regulatory power of the state. This article is not a charter for maladministration Virendra Nath v. Delhi (1990) 2 SCC 307 This broad statement of the legal position is illustrated by and draws support from a host of decided cases beginning from Kerala Education Bill, In re. AIR 1958 SC 956 to St. Stephen's College v. University of Delhi. This Article does not come in the way of enactments for ensuring educational standards and maintaining excellence thereof.
Directive Principles of State Policy	
Article 39(f): Certain principles to be followed by the State	Certain principles of policy to be followed by the State. This Article has been described as having the object of securing a Welfare State and may be utilized for construing provisions as to the Fundamental Rights. (Keshavananda Bharati v. State of Kerala (1973) 4 SC 228.
Article 41: Right to work, to education and to public assistance in certain cases	Right to work, to education and to public assistance in certain cases. Court should so interpret an Act as to advance Art.41: Jacob v. Kerala Water Authority (1991) I SCC 28.
Art. 45: Provision for free and compulsory education for children	The State shall endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years.
Art. 46: Promotion of educational and economic interests of S.C., S.T. and other weaker sections.	The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.
Art.51A(h): Fundamental Duties	Fundamental duty to develop scientific temper, humanism and the spirit of enquiry and reform. Where the constitutionality of an Act is challenged, court may look at this Article to uphold it. Mohan v. Union of India (1992) Supp 1 SCC 594. It can be used for interpreting ambiguous statutes. Head Masters v.U.O.I AIR 1983 Cal. 448
Other provisions	
Articles 246 and 254: Subject-matter of laws made by Parliament and by the Legislatures of the States and inconsistency of laws	Concurrent list and inclusion of education thereunder. The Scheme of distribution of legislative powers under the Indian Constitution – such distribution being a necessary component of a federal political structure – raises interesting issues where co-existence of central and state Laws in a particular area gives rise to litigation. It is only where the legislation is a matter in the concurrent list that it would be relevant to apply the test of repugnancy.
Article 280: Finance Commission	Finance Commission can suggest measures to augment The Consolidated Fund to supplement the resource of the Panchayat in the State as also of the Municipalities.
Article 337: Special provision with respect to educational grants for the benefit of Anglo-Indian community.	During the first three financial years after the commencement of this Constitution, the same grants, if any, shall be made by the Union and by each State for the benefit of the Anglo-Indian community in respect of education as were made in the financial year ending on the thirty-first day of March, 1948. During every succeeding period of three years, the grants may be less by ten percent than those of the immediately preceding period of three years: Provided that at the end of ten years from the commencement of this Constitution, such grants, to the extent to which they are a special

Part / Article	Provision
	concession to the Anglo-Indian community, shall cease: Provided further that no educational institution shall be entitled to receive any grant under this article unless at least forty per cent of the annual admissions therein are made available to members of communities other than the Anglo-Indian community.
Part XVII: Official language	This whole Part deals with language, an inherent part of Literacy with a specific mention in Art. 350A for facilities for instruction in mother-tongue at primary stage.

There have been specific amendments to the Constitution affecting education, as can be seen in 42nd, 73rd, 74th and 83rd Amendment Acts. These amendments pertain to provisions to enable education being included in the Concurrent List, devolution of powers to local bodies and making elementary education a Fundamental Right formally (from its present status of Directive Principles though this has been ruled as such through judicial interpretation even otherwise).

Equality of educational opportunity

2.4 Since *'Equality of Opportunity"* is a basic feature of the Constitution, being a part of the Preamble itself, judicial interpretation has been sought on the different facets of this principle of equality of educational opportunity. For many, egalitarianism in education is seen as a powerful force for the achievement of a just, more equitable society through its contribution to greater social mobility, the 'breaking of any connection between the distribution of education and distribution of personal income' (Blaug). Yet the *"equality of education"* concept can be given a variety of interpretations, each leading to different policy outcomes. In particular, *"equality of education"* may concern equality of access to education, equality of educational treatment or equality of ultimate educational performance. Our Courts have wrestled with this problem in the face of affirmative action or what is known as 'positive discrimination' in favour of the deprived sections while at the same time preserving the needs of quality of education and fair play. The argument in this regard is somewhat on the following lines: "The liberal goal of providing education according to each individual's capacity or aptitude (rather than his socio-economic background) is unhelpful because the criteria used for identifying aptitudes, or 'intelligence' are themselves correlated with the social background. Hence society must adopt special methods to compensate for the deficiencies of the environment in which children grow and which account largely for their unequal educational performance; this would take the form of a national policy of 'positive discrimination' in favour of the underprivileged. The Constitutional provisions have come in very useful to resolve what are essentially political and ideological objectives and the policy conflict of parental free-choice versus educational equality (should education be available in accordance with parental willingness to pay or in relation to capacity to learn?), to avoid bringing about a marked decline in educational standards.

Litigation and education

2.5 The huge volume of litigation and the mass of decided cases interpreting constitutional provisions are thus a sufficient testimony to the usefulness of constitutional provision in this vital field. The pronouncements of the Courts have been on varied subjects, affecting the quality and quantity of educational services not only encompassing service and management equities, but also such academic questions as medium of instruction access and autonomy of institutions. That the Government has sought to bring forward amendments also shows its imperative to continue to use this document to pursue this welfare objective. In fact, the sheer load of litigation may be proving a bane in one sense, negating the very purpose for which such Constitutional provisions are sought. It has also been lamented that follow-up action on Constitutional Amendments had either not taken place, or slow in implementation.

Education and Judiciary

2.6 True, economic transformation is the primary function of the Executive and the Legislature. But where Justice is the end product and its content has socio-economic components, the Constitution, which is the nidus of all Power, commands the judges to catalyze and control, monitor and mandate by writs, orders and direction – vide Arts. 32 and 226- so that they may bear true faith and allegiance to the Constitution and say that 'thy will shall be done'. The interventions of the judiciary from time to time upholding the responsibilities of the State in the all-important educational endeavors, have been positive in providing directions.

CHAPTER III

HISTORICAL BACKGROUND AND REVIEW OF ACHIEVEMENTS

3. In this Chapter, a general review of the progress in universalization of literacy including its socio-political and economic dimensions is given. The need for compulsory elementary education and free education at that level and the urgency thereof so as not to carry the burden into the 21st century is emphasized. Though a substantial progress has been achieved in the field of literacy, the basic Constitutional provision of universalization of elementary education, to have been achieved by 1960, is still eluding us; even by 2000, only 90% is targeted to be achieved.

3.1 For the purpose of this Consultation Paper, this Review will be confined to two specific aspects, viz.

(1) *Literacy*, as this has a direct link with the concept of Welfare State enshrined in our Constitution and

(2) *Universalization of Elementary Education* which has been spelt out as a specific Directive Principle of State Policy, and which provision has been interpreted to be of the nature of a Fundamental Right, and later has been incorporated as such also.

3.2 There are several published papers on the subject critically reviewing the progress that we have made in the area of education. As a matter of fact, over the last five decades, a separate sub-discipline in Economics, *Economics of Education* has developed and there is already published material, which deals at length and in depth the various issues involved. A mass of statistical data is also available in the Census and regular Returns filed by the various State Education Departments (compiled and published by the Ministry of Human Resources Development, Government of India) and in the various in-depth studies conducted from time to time. These make the task of review relatively simple, as reliable data are available.

Census 2001

3.3 The major advantages of the census data are that they are based on complete enumeration and are, therefore, more reliable than projections and estimates. Further, they provide an opportunity to observe trends over a period of time and draw meaningful conclusions to facilitate planning. Some of the salient features of the current Census data are given in Table 2. The latest census data on literacy as compared with the 1991 data is given in Appendix I. As stated earlier, a little above three-fourths of our male population have been found to be literate and a little above half of our female population have also been found to be literate as per this Census report.

Table 2

Census 2001

Population of India : A little over 1,027,000,000. This figure represents one-sixth of the population of the entire planet.
Growth rate of Population: has fallen by 2.52 per cent over the previous decade
Literacy Rate: At All India level: 65.38 % overall; male literacy : 75.96 % Female literacy : 54.28%. This represents an increase in overall literacy per centage by 13.75% from last Census. The corresponding increases in Male and Female literacy are: 11.83 % and 14.99 %.
Sex Ratio: Has gone up to 933 from the earlier Census figure of 927

The increase of 13.75% in literacy rate in the last one decade, marks a recognition of the combined efforts in the field of elementary education and adult education through the total literacy campaigns.

3.3.1 These figures are interesting in another sense as they represent crossing of another threshold in the Development field. Literacy and economic development may not be directly linked as many studies in the Developing World would indicate. To quote Owens and Shaw: *"Literacy has suffered by being treated by the advocates of universal literacy as a kind of panacea for whatever they conceive to be the ailments of an undeveloped country. However, marginal people see no reason to be literate. Literacy does not provide access if people are not organized to participate in development. For this reason, there appears to be little relationship between literacy and economic growth. When the Age of Development began, the rate of literacy in the Philippines and some Latin countries was considerably higher than in Taiwan and Korea and is still much higher than in Egypt or Comilla county of Bangladesh. Argentina and Chile combine exceptionally high literacy rates, by Third World standards, with a very low economic growth rates."* Having stated this, the point remains that there is, however, a threshold requirement. A distinguished economist, Dr. Malcolm Adiseshiah states: *"There is however, a threshold of somewhere around fifty per cent of the population being literate for Development to take place as no country has ever achieved an industrial growth with a literacy rate below fifty per cent...If we want the National Development portrayed in our Draft Plan, we must reach the minimum Adult Education threshold."*

Apart from the overall literacy figures, even distribution of these literacy figures, show that all the States excepting for Bihar (which also only falls marginally below at 47.27) have achieved this threshold. Even in Bihar, the male literacy figure is above the 50 per cent figure. In a macro sense, this achievement is encouraging.

3.3.2 The other statistic regarding the fall on population growth is also significant and relevant for our purpose as it will mean lesser provision necessary to be made in the Plan budget for new enrolments, lesser in the sense of incremental addition required for school teachers, etc. While quantitative expansion in specific areas at least in the elementary section may still be necessary, its rate will now be less with the control of population increases and more Plan funds can now be diverted to other areas of necessity within the elementary education budget.

Article 45

3.4 The provision in article 45 is:
"The state shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years".

3.4.1 It is 40 years since the deadline expired, and we are still to achieve it. Admittedly there has been failure in this front, and the revised target is now 2000. In the document **Education For All**, the Department's own statement on the subject (as expressed through the NIEPA document) is as under:

> "A review of the progress of basic education shows that goals and targets were fixed in the past on the basis of an inadequate understanding of the significance of education. These targets did not take into account the problem of availability of resources, and the conflicting claims of social and economic planning. When the Constitution directed the State to endeavour, within a period of ten years, to provide free and compulsory education to all children till 14 years of age (Article 45), it was expressing an ideal to which the whole nation was expected to commit itself. In the event, however, this commitment and the resources, which go with it, were not forthcoming. The Education Commission (1964-66) indicated targets in a similar time frame and it also made similar assumptions regarding national commitment and the availability of resources. By 1986, the experience of planning more than three and a half decades had amply highlighted the diversity and complexity of the problems the country had been facing in achieving the goal of basic education for all. Notwithstanding this, the Parliament, while approving the National Policy on Education in 1986, chose to approve the following formulation of the target: "It shall be ensured that all children who attain the age of 11 years by 1990 will have had five years of schooling or its equivalent though the non-formal stream. Likewise, by 1995, all children will be provided free and compulsory education upto14 years of age." Interestingly, here again the timeframe of roughly a decade was chosen. It became apparent very soon that the targets set for 1900 would not be achieved. It appears that in setting such high targets, the Parliament, like the Constituent Assembly, was reiterating its commitment to the ideal of education for all and was expressing its firm belief that education is a basic right that cannot be denied to anybody. If right from the beginning, it is apparent that the goals are unrealistic and unachievable, they do not lead to the kind of motivation and resource mobilization required. The right approach therefore, is to set realistic targets – realistic not to be defined as easily achievable, but as achievable, with conceivable maximum input of meticulous planning and resources – financial as well as human. We shall therefore proceed to propose realistic targets that we believe can be achieved by the year 200."

3.4.2 The new slogans are:

> Primary Education is a basic need
> For every child, no matter what caste or creed,
> Every child we must carefully nourish
> So that our country may progress and flourish
> From illiteracy to literacy – Education for all by the year 2000

3.4.3 The National EFA goal statements may be seen below:

NATIONAL EFA GOAL STATEMENTS
The goals for Education For All in India Constitute:

1. *Expansion of early childhood care and development activities*, especially for poor, disadvantaged and disabled children, through a multi-pronged effort involving families, communities and appropriate institutions.
2. *Universalization of Elementary Education (UEE)*, viewed as a complete program of:
   (a) Access to Elementary Education to all children upto 14 years of age.
   (b) Universal participation till they complete their elementary stage through formal or non-formal education programs.
   (c) Universal achievement of at least minimum levels of learning.
3. *Drastic reduction in illiteracy*, particularly in the 15 to 35 age group, bringing the literacy level in this age group to at least 80 % in each gender and for each identified disadvantaged group, besides ensuring that the levels of the three R's are relevant to the living and working conditions of the people.
4. *Provision of opportunities* to maintain, use and upgrade education and, provision of facilities for development of skills to all persons who are functionally literate and those who have received primary education through formal and non-formal channels.
5. *Creation of necessary structures*, and the setting in motion of processes which could empower women and make education an instrument of women's equality.
6. *Improving the contents and process* of education to relate it better to the empowerment, people's culture and with their living and working conditions thereby enhancing their ability to learn and cope with the problems of livelihood and environment.

Historical background

3.5 India has a long tradition of organized education. As a historian has put it, *"There is no other country where the love of learning had so early an origin or has exercised so lasting and powerful an influence."* However, educational effort in the country has come a long way from this traditional position in its definition, coverage as well as impact. The current educational system in the country operates in an altogether different context from the classical past. The country's commitment to the provision of education for all and its endeavor to achieve this goal in a speedy fashion has to be seen in this complex milieu within which the educational system is currently functioning.

3.5.1 As the veteran educationist Shri J.P.Naik put it: "The Indian Society, especially the Hindu Society has been extremely inegalitarian, and this (provision of equality of educational opportunity) is the one value on the basis of which the society can be humanized and strengthened. In fact, the issue is so crucial that the Indian society cannot even hope to survive except on the basis of an egalitarian reorganization". Between 1813 and 1921, the British administrators laid the foundations of the modern educational system. The principal positive contribution of the British administrators to equality was to give all citizens open access to educational institutions maintained from or supported by public funds. For instance, the worst difficulties were perhaps encountered when the problem of educating the "untouchable" castes came up.

3.5.2 The first test case arose in 1856 when a boy from an untouchable caste applied for admission to the government school at Dharwar. He was refused admission on the ground that it would result in the withdrawal of all the caste Hindu children from the school and thus in the closure of the school itself. But the decision was sharply criticized by the Governor General of India as well as by the Court of Directors in the East India Company and a clear policy was laid down that no untouchable child should be refused admission to a government school even if it meant the closure of the school (Report of the Indian Education Commission, 1882). The British

administrators thus established, firmly and unequivocally, the right of every child irrespective of caste, sex or traditional taboos, to seek admission to all schools supported or aided by public funds. The British administrators refused to accept the principle of compulsory elementary education. The Indian nationalist thought, however, was firmly of the view that the provision of equality of educational opportunity must include a certain minimum general education to be provided to all children on a free and compulsory basis. A demand that four years of compulsory education (which would ensure effective literacy) should be provided to all children was put forward, for the first time before the Indian Education Commission by the Grand Old Man of India, Dadabhai Naoroji in 1881. Gopal Krishna Gokhale who moved a resolution on the subject in the Central Legislative Assembly in 1910 and again took the proposal *vide* a bill in 1912, neither of which achieved their objective. At this stage, it is illuminating to read the then announced Indian Educational Policy,
1913. It begins as under:

> "His Most Gracious Imperial Majesty the King Emperor, in replying to the address of the Calcutta University on the 6th January 1912, said: -
> *"It is my wish that there may be spread over the land a network of schools and colleges from which will go forth loyal and manly and useful citizens, able to hold their own in industries and agriculture and all the vocations in life. And it is my wish too, that the homes of my Indian subjects may be brightened and their labour sweetened by the spread of knowledge with all that follows in its train, a higher level of thought, comfort and of health. It is through education that my wish will be fulfilled, and the cause of education in India will ever be very close to my heart."*

The Government of India, have decided, with the approval of the Secretary of State, to assist Local Governments, by means of large grants from imperial revenues as funds become available', to extend comprehensive systems of education in the several provinces. Each province has its own educational system, which has grown up under local conditions and become familiar to the people as a part of their general well being. In view of the diverse social conditions in India there cannot in practice be one set of regulations and one rate of progress for the whole of India. Even within provinces there is scope for greater variety in types if institutions that exists today. The Government of India have no desire to deprive Local Governments of interest and initiative in education. But it is important at intervals to review educational policy in India as a whole. Principles, bearing on education in its wider aspects and under modern conditions and conceptions, on orientalia and on the special needs of the domiciled community, were discussed at three important conferences of experts and representative non-officials held within the last two years. These principles are the basis of accepted policy. How far they can at any time find local application must be determined with reference to local conditions.

3.5.3 On the question compulsory and free elementary education, the Policy stated:

"10. The propositions that illiteracy must be broken down and that primary education has, in the present circumstances of India, a predominant claim upon the public funds, represent accepted policy no longer open to discussion. For financial and administrative reasons of decisive weight, the Government of India have refused to recognize the principle of compulsory education, but they desire the widest possible extension of primary education on a voluntary basis. As regards free elementary education, the time has not yet arrived when it is practicable to dispense wholly with fees without injustice to the many villages, which are waiting for the provision of schools. The fees derived from those pupils who can pay them are now devoted to the maintenance and expansion of primary education, and a total remission of fees would involve to a certain extent a more prolonged postponement of the provision of schools in villages without them. In some provinces, elementary education is already free and in the majority of provinces, liberal provision is already made for giving free elementary instruction to those boys whose parents cannot afford to pay fees. Local Governments have been requested to extend the application of the principle of free elementary education amongst the poorer and more backward sections of the population. Further than this it is not possible at present to go."

3.5.4 The public demand for compulsory primary education continued however to grow, and between 1918 and 1931 compulsory education laws were passed for most parts of the country by the newly elected State legislatures in which Indians were in majority. In 1937, Mahatma Gandhi put forward his scheme of Basic Education under which education of seven or eight years duration was to be provided for all children and its content was to be revolutionized by building it round a socially useful productive craft. As a result of all these efforts, the idea that it was the duty of the state to provide free and compulsory education to all children till they reached the age of 14 years was nationally accepted as an important aspect of the overall effort to provide equality of opportunity. Under the wise leadership of Sir John Sargent, the then educational adviser to the Government of India, these ideas were accepted by the British administrators and the Post-war Plan of educational development in India (1944) known popularly as the Sargent Plan, put forward proposals to provide free and compulsory basic education to all children in the age group 6-14 over a period of 40 years. (1944-1984). The nationalist opinion did not accept this long period, and a committee under the chairmanship of B.G.Kher proposed that this goal could and should be achieved in a period of 16 years (1944-1960). It was this recommendation that was eventually incorporated in the Constitution as a Directive Principle of State Policy. It was thus not a mere statement of an ideal, but a well-thought out enunciation of a policy, which is yet to be implemented though a substantial component was sought to be achieved by 2000 under the Education for All plan.

Review of achievements – elementary school stage

3.6 It is a very healthy administrative practice of the Education Department to publish annually a variety of information on different aspects of education through its Educational Statistics. Even a routine analysis of the variety of information that the government collects in the application for administering the programs, is an eye-opener. While preparing the document Education For All, the Ministry of Human Resource Development has brought out a compendium of relevant statistics, culled out from the annual statements regularly sent by the State Governments. The accompanying Box gives the decadal progress in enrolment, which shows a growing curve.

Table 3

Progress in Universalization of Elementary Education Enrolment

Gross Enrolment Ratios #

(per cent)

Year	Boys		Girls		Total	
	I – V Primary*	VI– VIII Upper Primary**	I – V Primary	VI– VIII Upper Primary	I – V Primary	VI– VIII Upper Primary
1950-51	60.6	20.6	24.8	4.6	42.6	12.7
1960-61	82.6	33.2	41.4	11.3	62.4	22.5
1970-71	92.6	46.5	59.1	20.8	76.	34.2
1980-81	95.8	54.3	64.1	28.6	80.5	41.9
1990-91	115.3	73.4	86.0	46.1	101.0	60.1
1998-99	100.9	65.3	82.9	49.1	92.1	57.6

*Primary I – V Age Group 6 –11 years

** Upper Primary VI – VIII Age Group 11 – 14 years

Gross Enrolment Ratio (GER) is defined as the per centage of the enrolment in classes I-V and VI VIII and/or I-VIII to the estimated child population in the age groups 6-11 years and 11-14 and/or 6-14 years respectively. Enrolment in these stages include under-age and over-age children. Hence the total per centage may be more than 100% in some cases.

Table 4

Drop out Rates at Elementary and Middle Stages ##

	1960-61	1970-71	1980-81	1990-91	1992-93	1997-98*
Classes I-V						
Boys	61.7	64.5	56.2	40.1	43.83	38.23
Girls	70.9	70.9	62.5	46.0	46.67	41.34
Total	64.9	67.0	58.7	42.6	45.01	39.58
Classes I-VIII						
Boys	75.0	74.6	68.0	59.1	58.23	50.72
Girls	85.0	83.4	79.4	65.1	65.21	58.61
Total	78.3	77.9	72.7	60.9	61.10	54.14

Rate of Drop has been defined as per centage of the number of children to total enrolment, dropping out of the school education system in a particular year.

3.6.1 A core curriculum is emphasized at the elementary school level. This is a carefully planned curriculum that in content it compares favourably with those adopted in a number of other countries. A common core can help in overcoming discrepancies between the educational opportunities of urban and rural people, and that of men and women, but it cannot eliminate those difficulties unless literacy rates improve, greater participation occurs in school and other changes take place in society.

3.6.2 In addition to the regular statistical return system, which is regularly compiled and published under the heading Education in India each academic year (There are normally 16 Tables. These statistics are also followed by 5 or 6 illustrations), there are also two expert institutions under the aegis of the Ministry of Human Resource Development, viz. National Council of Educational Research and Training (NCERT) and National Institute of Educational Planning and Administration (NIEPA) which carry out regular research and surveys, and in-depth analyses.

3.6.3 NCERT has been conducting regular educational surveys and the report of the Sixth Educational Survey was published in 1995. Highlights of the findings of this survey are:

Sixth All India Education Survey
(Conducted by the NCERT)

Main Outcomes of the Survey

1. 94 per cent of the Rural Population is served within 1.0 kilometers by Primary Stage
2. 85 per cent of the Rural Population is served within 3.0 kilometers by Upper Primary Stage.
3. Of the Total 8,22,486 schools in the country, 5,70,455 and 1.62,805 are Primary and Upper Primary Schools respectively.
4. Of the total 15,39,06,057 pupils enrolled in all the schools, 9,70,29,235 and 5,40,71,058 are children enrolled in Primary grades (Grades I –V) and Upper Primary (Grades VI – VIII) stages respectively.
5. Of the total 41,97,555 teachers, 16,23,379 and 11,29,747 teachers are employed in Primary and Upper Primary Schools.
6. 84 per cent of the primary and 89 per cent of the Upper Primary Schools have pucca and partly pucca buildings.

3.6.4 Similarly, NIEPA had carried out a research study on the regional dimension of educational development based on Fourth All India Educational Survey data. (Similar comprehensive analysis of the data of the later surveys has also been made). In the survey, the following attributes of schooling are analyzed:

- Accessibility,
- Availability,
- Quantity,
- Quality,
- Inter-connectivity
- Equity, and
- Utility.

In that study (School Education in India, Regional Dimension), it was found that in spite of the progress in the quantitative expansion of education and the apparent narrowing gaps between different social groups, inequities within the educational system of the country continue to be quite sharp. The variations one observes in the regional distributions (Inter-State variations) have already been highlighted.

Inequities get complicated in the case of Scheduled Caste and Scheduled Tribes women in the rural areas of the backward regions. The literacy rate among this group in the 1991 Census was only 16 %. This was followed by SC Rural Male (19.45 %), SC Urban Female (42.25 %). If arranged as an inverse pyramid, the Non-scheduled Urban populations (both Male and Female) are on the top. Presenting the literacy level of different components of the population brings out the nature of this multi-level system of inequities. Similar study of subsequent surveys and 2001 Census might bring out a better picture, though even after the improved statistics, the pyramidal structure has not undergone any significant change in terms of reduction of inequities in any large measure.

3.6.5 The causes for educational deprivation in India have been analyzed in detail. The Indian Social Institute, in a program of research on schooling, (E.P.W of July, 1998) identified three obstacles against universal elementary education. They are -

- Inadequate parental motivation,
- Poverty (resulting in the shaping of parental motivation in favour of education of their male offspring, thus implanting gender inequality in the formative years of life) and
- Low quality of schooling.

The author concludes: "Therefore, there does appear to exist (more and more) a case for compulsory education, provided that (1) it is understood to include compulsion on the state to provide adequate schooling facilities; and (2) top-down measures which concentrate on punitive action against parents, are avoided."

3.6.6 The review of the Government's efforts in the direction of universalization of elementary education through school system, shows up both its gains and shortcomings. Gains lay in the direction of quantitative expansion, and shortcomings have been in the direction of quality and equity as between different sections of the populace. But the biggest shortcoming has been as the educationist J.P.Naik put it: *"it was a wrong policy that we did not place adequate emphasis on direct programs of adult education to liquidate mass illiteracy".* A review of the educational scene cannot therefore be complete without reviewing the progress on this front.

Adult Education – Historical background and review of achievements.

3.7 Eradication of illiteracy has been one of the major national concerns of the Government of India since independence. During the first Five Year Plan, the program of Social Education, inclusive of literacy, was introduced as part of the Community Development Program (1952).

3.7.1 Efforts of varied types were made by the States for the spread of literacy. Among these, the Gram Shikshan Mohim initiated in Satara District of Maharashtra in 1959 was one of the successful mass campaigns. It aimed at completing literacy work village-by-village within a short period of 3 to 6 months, through the honorary services of primary teachers and middle-school and high school students, supported by the entire community. It achieved a good deal of success but suffered from the lack of follow-up due to financial constraints and some of its good work was lost as a consequence. In spite of these varied initiatives the program of adult literacy did not make much headway.

3.7.2 The topic was dealt at length by the Kothari Commission (1964-66) which emphasized the importance of spreading literacy as fast as possible. The Commission also observed that *"literacy if it is to be worthwhile, must be functional".* It suggested the following measures:

- Expansion of universal schooling of five-year duration for the age group 6 - 11.
- Provision of part-time education for those children of age group 11 - 14 who had either missed schooling or dropped out of school prematurely.
- Provision of part-time general and vocational education to the younger adults of age group 15 – 30.
- Use of mass media as a powerful tool of environment building for literacy.
- Setting up of libraries.
- Need for follow up program.
- Active role of universities and voluntary organisation at the State and district levels.

3.7.3 The National Policy on Education in 1968 not only endorsed the recommendations of the Education Commission but also reiterated the significance of universal literacy and developing adult and continuing education as matters of priority. While the formal elementary education program was supplemented by a Non-formal Education system, it was also decided to undertake Adult Literacy programs culminating in the Total Literacy mission approach.

3.7.4 A multi-pronged approach of universalization of elementary education and universal adult literacy has been adopted for achieving total literacy. The National Policy on Education

(1986) has given an unqualified priority to the following three programs for eradication of illiteracy, particularly among women:-

(a) Universalization of elementary education and universal retention of children upto 14 years of age.

(b) A systematic program of non-formal education in the educationally backward states.

(c) The National Literacy Mission which aims at making 100 million adults literate by 1997.

The major thrust of these programs is on promotion of literacy among women, members belonging to Scheduled Castes and Scheduled Tribes particularly in the rural areas.

3.7.5 The Adult Education Program consists of three components: basic literacy (including numeracy), functionality and civic awareness. The program covers different schemes so that finally it aims at helping learners achieve a 'reasonable degree of self-reliance in literacy and functionality and better appreciation of the scope and value of science. The list of the various projects may be seen at Appendix II.

3.7.6 Of course, even before Independence, there were adult education programs. Mahatma Gandhi had education as one of his constructive programs, and as a mass campaign had through his movement, tried to make districts completely literate. Some success was also achieved. For instance Surat District, in erstwhile Bombay Presidency had been totally literate, but again relapsed into illiteracy for lack of follow-up. There were efforts at spreading by the Baroda Rulers, supplemented by a live library movement. Here again lack of follow-up and sustained efforts caused a relapse into illiteracy among the vulnerable sections. There were voluntary agencies working in the field. Some agencies as the Karnataka Adult Education Council, Gujarat Social Education Committee and Bombay City Social Education Committee has had large programs extending to the whole state or a metropolitan city. Literacy House of Lucknow did commendable work in this field. It came into existence in 1953 when its founder, Mrs. Welthy H. Fisher established it in small verandah at Allahabad, with a view to eradicate illiteracy and promote education in India. It was shifted to Lucknow in 1956.

3.7.7 The University Grants Commission, at its meeting held in 5th May 1971, considered the general pattern of development and assistance towards adult education in the university and agreed that "assistance to universities for program of adult education be made on a sharing basis of 75:25 and that the Commission's assistance to university would not exceed Rs. 3 lakhs for the Fourth Plan period." Departments of Continuing Education took up the work of "University goes to Masses". The slogan "Each One, Teach One" caught the imagination of not only the students, but also a large number of educated individuals, and it looked like these programs will meet a major success. However, like most enthusiastically launched programs, they also fell by the wayside. A Farmers Training and Functional literacy project was launched in 1968-69, coordinating the activities of Ministries of Education, Agriculture and Information & Broadcasting. The Central Advisory Board of Education in its November 1975 meeting asked that the exclusive emphasis on formal system of education should be given up and a large element of non-formal education should be introduced within the system.

3.7.8 In one sense, though the Non-formal education system was launched with its own set of objectives, the main purpose was to tackle the problem of dropouts from the formal system. The dropout from the formal system continues to hover around 50% and have not shown any great variation in the last four decades (Dropout rate ranging in Grades I-IV from 64.0 in 1960-61, to 67 in 70-71, to 58.7 in 1980-81 to 44.3 in 1990-91. The dropout rate in Grades V-VIII ranged from 74.3 to 63.4 during these decades). It is not difficult to guess the collective identities of the

victims, children who fail to survive at school. They are children of landless agricultural labourers and subsistence peasants. Caste-wise, a substantial proportion of them belongs to the Scheduled Castes that have been granted special rights including reservation in higher education and representative bodies, in the Constitution. The situation of children belonging to many of the Scheduled Tribes is worse, especially in the central Indian belt. Forest-dwelling tribal communities have had to bear the brunt of State initiatives in dam construction, development of tourism with the help of game sanctuaries and mining. Apart from such destabilizing experiences, bias against tribal cultures and languages also makes the school curriculum and the teacher a deterrent for the advancement of tribal education. There are about 40 million rural artisans in India. For them, the current standard school curriculum is trivial, and in a sense irrelevant and demeaning. No wonder, one realizes in a rather simple, unscientific way, these children stop coming to school early. Finally, the child residing in a slum, living in conditions of uncertainly and violence is always a likely case of early withdrawal or elimination.

3.7.9 In keeping with recent trends in the international literacy movement, the emphasis of mass literacy programs in India shifted from 'literacy' to 'adult education' through the intermediate phases of 'functional literacy' and 'non-formal education' during the last fifty years. The Policy Statement of the present program highlights the development of functional competencies and awareness of the adult learners as two of the three equally important components of the National Adult Education Program (1978). The third component is obviously literacy. Our Universities had also been roped into this activity.

3.7.10 The National Adult Education Program (NAEP) was inaugurated on October 2, 1978. In a statement in the Parliament on April 5, 1977, the Union Education Minister declared that "along with universalization of elementary education, highest priority in educational planning would be accorded to adult education." The objective of the NAEP is "to organise adult education programs, with literacy as an indispensable component, for approximately 100 million illiterate persons in the age-group 15-35 with a view to providing them with skills for self-directed learning leading to self-reliant and active role in their own development and in the development of their environment.". In concrete terms, three R's, social awareness and functionality are the three basic components of the NAEP. In spite of careful planning before the launch of this program (it had envisaged a phased program), the Sardar Patel Institute of Social and Economic Research, after a survey carried out in the initial flush of enthusiasm, observed about the progress of the program in a progressive state like Gujarat: "On the whole, while the NAEP in Gujarat was generally found to be addressed to the target groups kept in view under the NAEP and it was found to have some other commendable aspects, all things considered, its achievement in terms of spread of literacy is rather modest, and more so in terms of social awareness and functionality". The report had gone on to say: "The more crucial aspects like the content of education, pedagogy, etc. can be probed into only if longer time is available, or ideally, on an ongoing basis. It is these aspects which have contributed most to the continuing stagnation of even the spread of literacy in the country. This study is not sufficient to indicate whether breakthrough in these areas is being made, and whether the adult education program is assuming the character of a Mass Movement as would be desirable and is clearly the intent of NAEP" (1979).

3.7.11 Then came the National Literacy Mission (NLM). For a short while during the era of the high profile technology missions, some attention was given to issues like immunization, safe drinking water and literacy along with talk of people's participation and social audit of these programs. In 1989, the district-based Total Literacy Campaigns (TLC) emerged as a program strategy for the National Literacy Mission against this background. While it was correctly envisaged that the initial social mobilization for a time-bound campaign provides the inspiration to spark for a mass participation of people, volunteering their time and energy for a cause like literacy, the follow-up program was not worked out clearly. However, admitting and recognizing the many flaws and failures of the 'campaign approach', even as early as1994, NLM continued with the same TLC strategy and tried to bolster it with better monitoring, internal evaluation and presently with a revival effort through what is called 'Operation Restoration'. Reviewing the

functioning of these programs, Avik Ghosh concludes: *"The present focus of NLM on literacy has to shift, and similarly the mission-mode-time-bound thrust of NLM should give way to a more durable and sustained program of adult education that responds to the needs of adults as individuals and also as members of the disadvantaged groups".* The Total Literacy Campaigns, initially at least, helped in fostering a participatory approach in dealing with this issue, though here again, the problem of sustaining the momentum has remained. In the budget for 1999-2000, allocation for the Rural Functional Literacy Project does not find a special mention. The overall allocation to adult education has, however, been increased by about 40%.

3.7.12 Unless it be in the context of revolutionary social transformation, the lack of spectacular success in a program like Adult Education and of sustaining its momentum is understandable. It is after all a far distant cousin in terms of financial outlays to the formal system (In the budget of 1999-2000, the total allocation of resources (both Plan and non-plan) for the four programs of Elementary Education, Operation Black board, Non-formal education and Adult Education was respectively, 3037, 400, 350 and 113.4 crores respectively). Further, there is the very real problem of pedagogy. For instance, as Prof. Jalaluddin (1986) says: "While 1652 mother tongues have been identified in the recent censuses in India, only 15 major literary languages have been accorded political status under the Eighth Schedule of the Indian Constitution. Then there is the problem of script. In the context of a nationwide adult literacy and education program, the question of the acquisition of more than one writing system or even script by linguistic minorities becomes an important area of language planning. The term biliteracy is used in this context in India." Further in countries like India which have a long tradition of transmission of ideas and wisdom orally, such individual and societal transformations through a mass literacy campaign, are rather a form of renewal in nature than being additive or extensive". There is also the problem continued sustenance of the campaign approach. There are some hopeful signs of ICT-supported services being used to bridge the gulf. Some collaborative partnership of the Government of India and non-governmental agencies in partnership with International Organizations and private sector has been mooted and the results of such collaborative efforts may perhaps show a way.

3.7.13 And yet, the importance of this component cannot be gainsaid. *"In our country, numerous persons enter adulthood without proper education and consequently their self-confidence is shaky. In a fast-changing environment of economic and cultural change, they will continue to be edged out unless their capacities are actively consolidated and improved so as to encounter the world outside on equal terms".* This program can be in the nature of a Sunset program (referred to later in this Paper); but till then, i.e. literacy becomes self-sustaining fact with self-arising demand for its very usefulness and need for a fuller life, no Government should be allowed to ignore this aspect.

Need for community support to supplement Government effort.

3.8 It is perhaps wise to reminisce on the "Education For All" document which says:

> *"It will be against the spirit of the Constitution to allow elementary education to suffer from inadequacy of resources. As far as funding elementary education and literacy programs is concerned, it should be viewed in the framework of the Constitution. It is not just the Department of Education, but all the government departments, which should be made to allocate substantial resources for elementary education, as no sector can develop significantly with illiterate masses. In fact, the whole nation should feel responsible for the development of education in the country."*

In the system of central planning we are used to in this country, only the resources required from the government or public sector agencies are taken into account. However, for an activity like education, there are considerable costs borne by the children and parents. These costs are not included in the financial implications presented, except for the provision of incentives like books

and uniforms to the weaker sections. The Constitution has directed that education for children in primary and upper primary levels of education should be free. This has been so far taken in practice, to mean that schools should not charge any fees. The cost incurred by parents for education of their children has been ignored and has not been considered as a violation of the directive of free education. In view of the paucity of resources, it may be pragmatic to continue this approach and let the parents bear costs of this nature, while underscoring that ideally these costs should be borne by public funds.

3.8.1 We may also have to move from the concept of exclusive responsibility of the government for education to shared responsibility between the government and the community. This would not be difficult, keeping in view the tradition in India of community support to education from ancient times. This will be also consistent with the general approach of decentralization, community involvement and people's participation. For safeguarding democracy and strengthening the foundations of the integrated nation, it is necessary not to compromise with the requirements of these basic needs in education. It should be noted that without adequate resources, financial, physical and human, our target of *Education For All* will remain unachieved even by the turn of the century. If we have to enter the twenty-first century without the burden of the unfulfilled goals originally proposed by the Constitution makers of India, substantial resources should be allocated to elementary and adult education programs.

CHAPTER IV

INTO THE FUTURE

4. The emerging trends are discussed in this Chapter. The need to go into a learning mode as also conditions for creating capabilities in the education system to meet the needs of knowledge growth, communication expansion, reinforcement of cultural roots is indicated. Changing needs of Educational Technology and entry of computers and Integration of Information and Communication Technology demand new structures, which the system should be able to assimilate. Renewal of education also calls for provision for regular reviews, which reckons also changing scenarios and developments in emerging technologies.

4.1 In a UNESCO publication, "*Education in Asia and the Pacific*", Raja Roy Singh has rightly written:

> "The dynamics of education and its role in each society in development and transformation make it essential that education continuously renews itself in order to prepare for a future rather than for obsolescence. This renewal process derives from a variety of sources which include: the growth of human knowledge, which is the basic component of education; the heritage of collective experience and values which education transmits to the new generations; the means and methods of communication by which knowledge and values are transmitted and the new values and aspirations which the human spirit adds to the collective experience and wisdom of the past or by which the heritage of the past is reinterpreted and reassessed."

Change from teaching to learning process

4.2 The books *Learning to Be* (UNESCO 1972) and *The Learning Society* (Hutchins, 1962) are pointers to the future directions that educational process will have to take. Now learning process is replacing the teaching process. Nobody teaches any one, but men learn from each other. In other words, all are learners. The aim of education is not to fit people into a system but to help them develop their human powers. (Hutchins 1968). The new developments in the field of

learning have been due to the significant and path-breaking contributions by many scientists: Rogers (1969) by emphasizing the importance of nurturing self-direction and fulfillment; Bruner (1966) by stressing the importance of autonomy, self-reward and discovery as the main way of learning; and Friere (1972) by his emphasis on conscientization as the main goal of education. The shift in emphasis can be seen from coping behavior to expressive behavior (using the terminology by Bruner) or from prescriptive behavior to liberating behavior (using the terminology by Friere) or from direct influence to indirect influence using the concept developed by Flanders (1970)

4.2.1 Three distinct global developments that may affect future of education are:

1. *Knowledge Growth.* The speed with which the growth of knowledge is now taking place, its range and sweep, are epitomized in the expansion of knowledge in science and technology. It is estimated that in the period 600 BC to AD 1700, the body of scientific knowledge doubled every 1000 years; from the beginning of industrialization until the early twentieth century, the doubling period accelerated to about 200 years; and now in many scientific fields, knowledge is doubling every 15 years or so. Moreover, the lag between a discovery in a fundamental science and its technological application has narrowed remarkably. This enormous growth in the volume and application of knowledge impacts on every aspect of modern life. Parallel to the rapid growth of knowledge is the increasing velocity with which knowledge is being circulated. New configurations in the fields of knowledge are emerging and are tending to efface to some extent at least, the old established demarcation lines between the natural sciences and the social and human sciences. Cross over points are emerging between the major fields of human activity. Another direction of advance is the aggregation of different components of traditional disciplines into new integrated fields. The most practical conclusion that we draw on education planning is, therefore, that the options open to learners in regard to fields of study should not be closed too early.

2. *Education and Communication.* In perhaps no other fields has there been such a profound revolution as in communications and informatics. The communication technologies have multiplied and became more and more powerful. The development in computer technology will soon affect every individual. Telecommunications and data processing have already increased dramatically the volume of information readily available as well as its accessibility. Integration of information and communication technologies is a new challenge before the educational administrators. This calls for -

   - a need for research and development in the information and communication technology;
   - creation of scientific and technological capacity to crucially use these technologies which represent a power of unlimited possibilities;
   - discrimination and selectivity arising from information overload. There is also an increasing danger of the deliberate manipulation of information such that the models of reality that people learn from the media are either incomplete or distorted. In curriculum development, that which is omitted may be as important as that which is included.

3. *Education and culture.* The other source of educational renewal is the cultural heritage reflected in the whole range of expressions, which give meaning and worth to the society's being. The need for a reaffirmation of cultural identity is more urgent today because of the tendency towards uniformity and homogeneity generated by economic and material forces and the mass media. Next only to the family, the school is the most important institution for the transmission of cultural values. Role of education, an

indispensable role, is to be a medium in which the various new influences are assimilated in the cultural stream. Education has a vital role in promoting the processes by which scientific and technological knowledge is assimilated in the fabric of national life without detriment to the people's values. There is a 'cultural' dimension in every subject taught in the schools. This needs to be brought out in the methods of instruction.

4.2.2 The tools and techniques available for pedagogy and androloggy are also undergoing a major change. *Educational Technology* is the new addition to the armamentarium of pedagogy in the future. The phrase 'Educational Technology' was defined by the National Council of Educational Technology (UK) as the development, application, evaluation of systems, techniques and aids to improve the process of human learning. It has a wider connotation than simply the use of electromechanical and other aids in teaching. It places as much stress on educational ideas as on educational inventions. It can only be of value if it is really integrated into the entire system. There are two approaches – hardware and software - in educational technology. The hardware approach is based on the application of engineering principles for developing electromechanical equipment like motion pictures, tape recorders, teaching machines, computers, videotape, closed circuit television, etc. The second approach, i.e. software approach uses the principle of psychology for behavior modification purposes. There are two trends or directions of educational technology: towards mass instructional technology and towards technology designed for individual instruction. Mass transmission technology capable of making educational messages is available to millions of children and adults. Television is the most obvious example of mass instructional technology. Teaching machines are examples of individual instructional technology.

Distance learning

4.3 Distance learning, an aspect of use of Educational Technology, can thus transform traditional learning. Learning at one's own pace and at his convenience will get stressed. Attending formal classroom instruction puts severe stress both on the learner and the Society. The former has to schedule his activities in the structured requirements of a formal classroom, which for a person already working may be difficult. The latter has to grapple with difficult-to-find resources to provide for the escalating costs of education. Distance education overcomes these hurdles. Use of satellites is rapidly changing the concept of conventional education. Students need no longer be limited by lack of access, shortage of teachers or interference from work.

Computers

4.4 Entry of computers in the Educational Field can be stated to have caused a paradigm shift in the field of technology so much so that we cannot afford to be left out of computer literacy in any future plans for education. With computers, the technological revolution can be stated to have come into the classroom. Technology is an enabling tool. It facilitates the process of writing so that students and teachers alike can interact with the text in useful ways that are difficult with paper and pencil. Experience at MS Swaminathan Research Foundation as well as in many villages in Pondicherry and Madhya Pradesh have demonstrated that a high level of formal education is not necessary to gain operational computer literacy, and as a functional education tool, it is valuable.

Computers across the Curriculum

The term 'Computer literacy' covers aspects both of learning about the computers and of learning with, from and through the computers. It involves consideration of the application of the computers in the educational settings and the society at large. The Computer is a general-purpose tool and can be effectively used in a large number of activities in the teaching-learning process. Some of the common programs are:

1. Computer Assisted Instruction (CAI): In this mode, the Computer acts as a teacher teaching new skills or concepts or providing practice for learners.
2. Computer Based Learning (CBL) or Computer Assisted Learning (CAL) which could be assisted for a variety of purposes such as Simulations and Modeling, Instructional Games, Information Handling, Demonstrations, etc.
3. Computer Managed Learning (CML) where the Computer serves as a tool to help in the management of student learning.

The changing methods of storing information now mean that computer literacy becomes a fundamental component of literacy itself. Commonly included in the objectives of computer literacy are:

(a) An awareness of Information Technology and how it affects day-to-day living.
(b) An understanding about the importance of information to aid decision-making processes.
(c) An understanding of Man: Machine interaction so that the tool can be used effectively.

Integration of Information and Communication Technologies

4.5 Integration of Information and Communication Technologies (ICT) with school needs serious consideration. Teachers, educators, curriculum developers, evaluators and others will have to redefine their roles to tackle ICT rich environment and harness its full potential for the benefit of learners. Information media are bringing about dramatic changes and are facilitating the communication of information between instructor and learner. These media have also produced a basic easing of spatio-temporal limitations and creation of new learning spaces based on information networks. These may call for structural changes. Our politico-administrative structures should be interpreted flexibly enough not to obstruct these winds of change.

Renewal and periodic reforms:

(a) International experience

4.6 A reference has been made in the beginning of this section for the need for renewal process. Updating is very essential in educational processes. In this field, both individuals and nations have been known to slide down unless a conscious effort is taken to keep 'awareness' at the best pitch. Knowledge expands and values undergo a change taking subsequent experience into account. As the noted American analyst David Halberstam says in 'The Next Century': "National security was no longer an index of weaponry (essentially a missile and tank count), if it ever really was, but a broad array of factors reflecting the general state of national well being. It included the ability of a country to house its people, to feed them, to educate them, to provide them with opportunities in keeping with their desires and education, and to instill in them trust and optimism that their lives were going to be valued and fruitful." According to him, though the 20th century was an American century, the next century was no more theirs. It was possible to make 20th century an American century because of its concern for 'humane' values and

democratization. Ensuring cultural and ethical values while at the same time adopting 3 R's is a challenge that has to be adequately tackled.

4.6.1 Concerned with maintaining its economic and social initiatives without losing sight of the various cultural accumulations and traditions, the Japanese Government decided to adopt the following five concrete measures for educational reform: (I) the development of life-long structures; (ii) the diversification and reform of institutions of higher education; (iii) the enrichment and reform of elementary and secondary education; (iv) reforms for coping with internationalization, (v) reforms for coping with the information age and (vi) the reform of educational administration and finance. Similar studies for reforms have been undertaken in other countries too. And if Japan has been cited as an example, it is to point out the need for the reforms even in the best of circumstances.

(b) National experience

4.6.2 For the future, in our case, of particular reference is the need to focus on the core and permanent aspects of education so that Constitutional guarantees can ensure that the most important aspects are not lost sight of. Our Indian experience has also been spelt out in many a fora. J.P.Naik identified the causes for our failure in the field of primary education: (a) We have made no attempt to introduce those radical structural changes in the formal system of elementary education. (b)Exclusive reliance on full-time formal education has an inherent bias in favour of classes and a built-in unsuitability for the education of the masses. (c) There is a general view that standards in education have continually and alarmingly deteriorated in the last few years, which may be only partially true. (d) There should be an early end to the dual system which we now run at all stages under which the classes have access to a small group of high quality elite institutions while the masses are compelled to study in public institutions of poor quality. Krishna Kumar (1998) lists three additional tendencies discernible in the current scenario in education: the first is related to the drastic reduction in the number of children who proceed beyond the primary and secondary stages; the second, the preponderance of higher education, with the culturally dominant and economically stronger sections of society using the state's resources to consolidate their hold on the state apparatus; and third, the inherent divisiveness in the system which protects class interests.

4.6.3 Thus the causes for apparent failure of universalisation of primary education are many; the overall picture is a mixture of light and shade. Standards have definitely improved in certain sectors. The number of good institutions and of first-rate students have considerably increased at all stages. There has been a steady improvement in average qualifications and remuneration of teachers and some improvements in curricula and teaching material. But there has also been an immense increase in such negative factors as the rapid increase in sub-standard institutions, deterioration in facilities and conditions of work and service in large number of schools and colleges, of the breakdown of the examination system through large-scale practice of unfair means. The list can be enlarged to cover different aspects. To maintain social cohesion, is an aim of education as also the purpose of our Constitution. Hence also the need for vigil on this front.

CHAPTER V

PROMOTING LITERACY: SOME IMPLEMENTATION STRATEGIES

5. In this Chapter, a possible Model for achieving the goals of universisalization of literacy and primary education in the country is suggested, where the main theme is decentralization and development of a Systems Model to facilitate mobility and life-long learning and education.

Our goals and targets

5.1 It has already been mentioned that the constitutional goal of universalization of elementary education directed in Article 45 has long since expired. In the approach paper to the Tenth Plan, the non-achievement in this field has been accepted, and the revised target year to achieve universal access to primary education has been pushed to 2007. Similarly, the targets for progress in literacy has now been fixed at 72% by 2007 and 80% by 2012. In view of the progress already achieved, these targets are not unrealistic. Nevertheless there is need for readiness to accept modifications and changes and even new structures to achieve the goal, instead of merely relying on the existing scheme of things, alone. Fresh initiatives will be necessary. As far back as 1966, the Second Education Commission observed: *"It is no longer desirable to undertake educational reforms in piecemeal fashion, without a concept of the totality of the goals and modes of the educational process. To find out how to reshape its component parts, one must have a vision of the future. This search for practical alternatives are parts of a genuine strategy of innovation seems to us to be one of the primary tasks of any educational undertaking.".*

5.1.1 In one sense, it is true that the education system has undergone many types of changes and experiments. Many a new thought and idea has been tried out and implemented at some point of time and in some part of the country. The various Departments of Education of the Universities all over the country have been deliberating over the various facets of the problem and the treatises submitted for the M.Ed. and Ph.D courses are a veritable storehouse of ideas. Then, there are the various Centres of Advanced Studies which can distill the various ideas and have also been rendering advisory services. The number of enquiry commissions, whether it be the Royal Commissions, or Commissions appointed thereafter headed by Indians of eminence, are not insignificant. As instances of the latter, the reports of the Radhakrishnan Commission or the Kothari Commission have been truly incisive and have been given due consideration and even acceptance. Gunnar Myrdal said it all when he wrote: *"In India, in particular, there has been much honest and penetrating discussion of the problems, though little action. The excellent Report of the Education Commission, 1966, is outspoken; the educational system 'is tending to widen the gulf between the classes and the masses.'* The Commission's observation: *'Indian education needs a drastic reconstruction, almost a revolution.. This calls for determined and large scale action. Tinkering with the existing situation, and moving forward with faltering steps and lack of faith can make things worse than before'* is quite relevant in this context.

Purpose of Education – some views

5.2 True enough, education is a 'vast, shapeless and vexatious subject'. In a country of continental proportions, with its different communities and people with different socio-economic backgrounds, and literally living in different centuries in terms of thought, the aims of education can be at variance with the thoughts of experts in the field. And even among the latter, there are different perceptions. A few quotes from some of the Experts are interesting.

> "One reason for the 'chaos' in education is the burgeoning of new opportunities and aspirations for hundreds of millions who had so long been denied all education and were living at a level of tragic deprivation. Education is the key to help us in the transition process to the Age of Science and Ahimsa, and therefore, education, which does not value and promote excellence is, in the end, 'a waste of effort and resources'. To support excellence is not to oppose the concept of equality of opportunity." (Dr. D.S. Kothari)
>
> "The theory of education is summed up in its being able to instill in a person "knowledge, skill, equipoise, understanding and gentleness, as these values are connected with the faculties of *man and his soul*". (Dr. V.K.Gokak)

"The basic issues are: how education can meet the variability of man, how it can design education to aid evolution rather than retard it. How does education discover what a child is good at and encourage it? How can children develop sensitivity to others and to their environment? How early do we begin language education? How do we weave manual skills and linguistic skills so as to develop proper attitudes to science and technology, not merely to glorify science but to make it understandable to children and adolescents, to convey to them both the positive and negative aspects of technology and science." "We keep on forgetting simple things: it is easier to learn a language at the age of four rather than at forty; it is happier for children to work together than against each other; it is wiser that children are given opportunities on occasions to find out for themselves what they like and what they are good at than to prematurely 'guide' them into narrow grooves. As to 'what they like' and 'what they are good at', it is important to remember that the two are not synonymous and we can be misled. A child, too, can mislead himself or herself, because of the visible as well as indirect power of suggestion of family, friends and school teachers. Another forgotten element or rather often disregarded aspect is the need to acquire technical or manual skills, not from a Thoreausque moral point of view but from a basic anthropological understanding of the connection that exist between the movements of the fingers, particularly the opposable thumb and the association centres of the brain. We often work so that we can think." (Dr. B.D. Nag Chaudhri)

"The principal goal of education is to create men who are capable of doing new things, not simply of repeating what other generations have done- men, who are creative, inventive and discoverers. The second goal of education is to form minds, which can be critical, can verify, and not accept everything they are offered. The great danger today is of slogans, collective opinions, and ready-made trends of thought. We have to be able to resist individually, to criticize, to distinguish between what is proven and what is not". (Jean Piaget)

Some experiences in the past

5.3 There is a need for a core curriculum to bring nearly all pupils above a certain threshold of learning, for thereafter all subsequent learning is made easier. But then, there is also the concern for democratization of primary education. As a UNESCO publication puts it: "A primary school that fails to achieve certain minimum and useful objectives, that fails to meet the people's needs, that fails to interest either the children or their parents, will inevitably end up by losing in one way or the other".

In efforts to bring in certain integration, even well-planned curriculum contents have to be toned down. In Gujarat, for instance, after the introduction of the new education policy after the acceptance of the Kothari Commission Report, because of the end-of-term certificate or diploma, the final examination content had to be toned down and alternative subjects had to be offered. Instead of New Mathematics, Commercial Arithmetic and instead of New Science, Everyday needs of health and hygiene, were allowed. In that very State a battle royal was waged on the introduction of English at the V Standard or VIII Standard. The battle was both political and legal. Then there is the different perception of what the 'average' rural lad or lass needs. We have thus in both Gujarat and Maharashtra, parallel streams of the normal school system and the basic and post-basic schools. At the secondary the plethora of examination bodies in addition to the different State Secondary Examination Boards is part of the same malady of what is perceived as the purpose of education. Even the medium of instruction whether it should be mother tongue only at the primary education level has been a matter of many an academic and legal disputes.

5.3.1 In such an environment, innovative experiments could be inhibited because of the competing and variant expectations. At the same time, what it portends is the fact that in our

country, there could perhaps be no one solution. In a multilingual and multicultural environment where the people also live in varying socio-economic background and in different centuries even in the realm of thinking patterns, one pattern is certainly not the answer. The problems of universalisation of education are also even otherwise real.

Some causes of concern

5.4 In the special issue of the International Yearbook of Education on "Primary Education on the threshold of the twenty-first century" (International Bureau of Education, UNESCO, Geneva, 1986), Ramamoorthi identified the following as the main problems, difficulties and obstacles to the universalisation of primary education in most of the developing countries:

1. A lack of financial resources coupled with the escalating cost of education.
2. A high rate of population growth in relation to the available limited resources
3. Deteriorating and inadequate physical facilities for education, such as an inadequate number of school buildings, essential scholastic and other educational materials
4. An inadequate supply of trained teachers,
5. Inhibitory cultural attitudes in these countries' communities, particularly bias against the education of girls and the physically and mentally handicapped. It should be pointed out that economic constraints tend to entrench these inhibitory attitudes.
6. High drop-out rates in primary schools
7. Unattractive terms of service for teachers.

5.4.1 Thanks to sustained efforts taken by Government of India both in the field of education and Family Welfare, the problems are no more insurmountable, as can be seen from the positive trends in the Census and Educational Survey reports. While the problems of resources will continue to plague us, the problem of community involvement has to be more constructively thought out. Centralized governments and administrations will have to move towards a pronounced form of decentralization of primary education.

5.4.2 As stated earlier, there have been innovations and changes made in the system. Instances are many where the State Government have handed over Government Schools to private education trusts for management along with required funds. In Maharashtra and Gujarat, many a Sarvajanik Sikshan Society has come up to take up such responsibility. Similarly there have been technical schools and participating schools also. Why these efforts did not yield expected results is a matter of study. However, the fact that an experiment failed at one point of time or at a particular surrounding, may not be a bar to try it again at another point of time or place. While it is true that what is right in theory may always be right in practice, it is definitely true that what is wrong in theory can never be right in practice. Within that parameter, experimentation will have to go on and decentralization is a key to this process of experimentation.

5.4.3 The comments expressed by Dr. Adiseshiah are relevant:

> "First, we need to commit ourselves whole-heartedly to the principle of decentralized planning as against the tradition of centralization that we have built up, and then face its implications which, *inter alia*, include questions of (1) whether block-level educational planning can be developed without all planning – agricultural, rural development, health, housing, etc. being planned at the Block level (Can there be an island of purity in an ocean of impurity?) (2) whether the poorly equipped rural school with the various rural power networks that control even this low-level educational unit is capable of planning its content, learning methods and timing'. How can we avoid local control of education becoming another bonanza for the elite urban schools? What does this involve in the way of strengthening the rural school infrastructure?"

Functional Literacy through Modern Information Technology

5.5. Specially in the area of Adult Education, the concept of functional literacy has been discussed earlier. Conventional methods of education involving mastering a script, learning words and sentences, etc., that have no direct relationship to everyday life such learners, have to give place a learning that is directly relevant to them. The Education Division of the Tata Consultancy Services claims to have evolved a system where the learners are exposed to a set of words and pictures that have a direct relevance to them. A set of about 500 words or so form the vocabulary, and by repeated exposure of these words and pictures, the learners become familiar with them and learn to recognize them. This knowledge enables them to even read newspapers and magazines and activates an interest in the learner to know more. If necessary, they can then join a formal education program. Video projections and large computer screens aid such learning process.

A Systems Model proposed

5.6. Can the present model with its structured hierarchy of time-dependant learning levels, single point entry, isolation from society and the marketplace, outdated learning content, irrelevant evaluation techniques and class-biased survival be replaced or at least be supplemented by a Systems Model? The latter model will need the following action steps:

1. Launching the *non-formal education sub-system* for the two priority groups- school drop-outs in the age group 6-14 years, and working adult illiterates in the age group 15-40 years, involving devising functional curricula, producing learning materials, mobilizing teaching resources from trained teachers as well as progressive farmers, engineers, musicians, dramatists and sportsmen, and using existing buildings, laboratories and workshops for running the concentrated courses.
2. Reorganizing the existing *formal education sub-system* into multiple-entry and exit points at its different levels, so that students could enter, leave and reenter the school and university system at any one of several points to answer the call of work in the home, farm, factory or office, continue their education through organized non-formal programs and reenter the school or university at appropriate points when they so desire in order to acquire further learning skills. The launching of the non-formal education system and the reorganization of the formal system will help the system serve the majority now excluded.
3. Establishing the relationship between the two sub-systems involving crossover points and the feed-in and feed-out provisions and the nexus between their educational content, methods and technologies of teaching and learning.
4. Vocationalizing the second level through a system of diversified learning experiences in higher secondary schools and technical schools so that such work-based education is freely available to all up to the age of 15 or 16 years in school and out of school and becomes the constructive skill forming a terminal point for 80 per cent of the full-time students entering the school stream.

Can Educational Funding Become Participatory ?

5.7 Earlier a question has been raised whether the State should be the only funding agency for promoting literacy and education programs. NGOs and Corporate Institutions should be encouraged to take interest in such programs. Most of the NGOs are, however, dependent only on government funding for their activities, and funding them for this activity will be only an indirect government support. With large business houses expressing interest in Welfare measures, at least in the geographical regions in which they operate, they can be encouraged to contribute to such causes. Local Institutions like Panchayats and Gram Sabhas should also be encouaged to

take interest in these activities by impressing on them the fact that an educational community is innovative, peace-loving and involved in community affairs.

Such experimentation will have to continue and hence the need for flexibility, periodic review and autonomy and the host of other institutional safeguards spelt out in the concluding sections.

CHAPTER VI

ISSUES FOR CONSIDERATION

6. In this Chapter, some issues arising from the foregoing discussions, which should find a way as constitutional or legal provisions into our educational structures, are discussed. The need for consensus, application of sunset laws to avoid obsolescence, special considerations and structures because of the altruistic nature of the pursuit etc are some of the directions indicated.

Universalization of Education: Need for Consensus

6.1 Fortunately for us, there is a general consensus about universalization of elementary education as our credo. This issue has to be beyond politics – in fact, the whole basis for access to educational opportunities at all levels has to be a non-party matter and discussion of its aspects should be beyond party politics an cut across party lines. All major political parties have put it high on their agenda. It is also a positive factor that successive governments have expressed their priority for education. This has now been made an important component of National Human Development Initiative (NHDI) and also the Prime Minister's Special Action Plan. In a situation when the need for strong political commitment is being increasingly felt, these proclaimed intentions of the government are certainly welcome, and help to keep the momentum alive.

6.1.1 When education has had a strong and consistent political commitment in the State, the tangible achievements it can mark, is indeed remarkable. As far back as 1819, the ruler of Travancore in south Kerala called for the State to meet the cost of education. Facilities were provided for everyone to have access to education either free or at a small nominal cost. The State continued to make progress and Universal Literacy was achieved in 1991. The State continues to top the literacy chart even in the Census 2001. The case is cited to indicate the importance of enlightened leadership with progressive views to achieve goals.

Educational Opportunity as a Fundamental Right

6.2 Education is a value in itself and is the bedrock on which any edifice of equality of opportunity can be erected. It opens the road to progress and literacy is a measure of human development. It is easier to plan for sound economic development and a stable political system in an educated society. There is, therefore, every reason to canvass for Right to Education being incorporated as a Fundamental Right.

Learning process is complex and demanding

6.3 The learning process is not only complex but also demanding. Aldous Huxley wrote,

> *"There is no substitute for correct knowledge, and in the process of acquiring that knowledge there is no substitute for concentration and prolonged practice. Except for the unusually gifted, learning must ever be hard work. Unfortunately there are many professional educationists who seem to think that children should*

never be required to work hard. Whenever educational methods are based on this assumption, children will not in fact acquire much knowledge; and if the methods are followed for a generation or two, the society, which tolerates them, will find itself in full decline. We are human because, at a very early stage in the history of our species, our ancestors discovered a way of preserving and disseminating the results of experience".

Cicero told the unvarnished truth in saying that "those who have no knowledge of what has gone before them must, for ever, remain children". There is no denying the fact that the histories of our developments in many fields have to be properly projected. But this should not take away the requirements of discipline involved in the learning process. What is required is ensuring irreversibility and giving a sense of perspective by not distorting history. Planning the contents of curriculum for the young mind that gets easily swayed by 'what is taught' rather than 'what is desirable to teach", is probably more difficult. The commitment of the various political parties on universalization of elementary education must also converge into a consensus on content and dissemination.

Application of Sunset laws

6.4 Sunset is one of the most refreshing and significant legislative concepts borrowed from the American history. The idea of self-retiring government programs embodied in the concept of Sunset has generated widespread among people who have been worrying about the continued growth of government, unending expansion of bureaucracy and insufficient accountability and consequent irresponsibility in government spending. This also serves as an accountability tool. Most of the contemporary proposals for Sunset legislation encompass the principle of economy in government spending, a definite course of action to ensure adherence to that principle and an imagery of the fading away of programs that were useful in the past, but no longer useful or relevant. Against the backdrop of parliamentary control over expenditure in India, the principle of Sunset assumes particular relevance and importance.

However, the principle of Sunset Legislation has a special significance where time targets for some activities have been prescribed. The withdrawal from the statute books of laws and provisions, which have become obsolete or have acquired the nature of anachronisms, is equally important. A proper sunset legislation will certainly supply the action forcing mechanism to compel the legislature to make an evaluation of programs and give it an unprecedented amount of power to effect changes in specific expenditure items. The concept of sunset legislation, where the sun sets on the law after a duration has to be invoked regularly and in full awareness. Our Constitution makers had prescribed time limits for a number of provisions. These time limits have been treated rather lightly or extended to suit the convenience of governance. In matters of education, these sunset laws should be adhered to, and the degree of accountability to the people's forum absolute. Can we say as to whether this holds true for our constitutional provision or for that matter our administrative and legislative fiats in the field of education? Does our Constitution have a provision to analyze such extension of the sunset laws through the means of a different microscope? Is such a differential treatment called for?

Autonomy

6.5 Once education is considered bedrock as stated above, do we have Constitutional guarantees to ensure that the sanctity for the schemes and the financial outlay is honored? For instance, judiciary is considered such a non-political organ, and we have Constitutional guarantees to ensure its autonomy by way of such provisions as being a charge on the Consolidated Fund, etc. Does education merit such a consideration at some level at least?

Continuous review and periodical reforms

6.6 If renewal, reform and rethinking are fundamental to the process of education, can the Constitution ensure that these take place and are not subject to the whims and fancies, or become matters of lower priority, because it may involve ruffling of some feathers?

Lack of ambiguity in policy formulation

6.7 Is it necessary to make certain provisions unambiguous at least in matters of education, as not to be dependent on judicial activism? Today part of the gains in education has to be related to the widest amplitude given to Art. 21, which had to travel a full circle from the days of Gopalan to Maneka Gandhi, as pointed out in D.D. Basu's commentaries? One amendment has already been brought, for instance. Can we expect a Constitutional amendment to accelerate 'the demand for accountability in the system of education, particularly from its bureaucracy?'

Flexible institutional structures.

6.8 Are the structural changes required in the field of education hampered by treating educational structures at par with industrial or commercial structures? When profit or commercial gain is not the motive and there could be other partners in the process whose interests are to be protected, can a different yardstick be applied, which is different from the industrial or commercial enterprises which normally follows the principle of what the traffic can bear, when structural changes are necessary? Can there not be other structures specific to educational institutions to protect the interests of other stakeholders, and to ensure a certain degree of autonomy and insulation from political buffeting?

The above are some specific issues that have emerged from the foregoing discussions, answers to some of which will have to be found in the suggestions for changes indicated later.

CHAPTER VII

SUGGESTIONS FOR AMENDING PROVISIONS

7. In this Chapter, seven illustrative areas are indicated with possible amendments therein. These are areas of high priority taking into consideration the arguments elaborated in the previous Chapters.

7.1 This Consultation Paper is not intended to be a treatise on educational policy or its implementation as such. The foregoing discussion has been to aid in the search for the usefulness of the Constitutional provisions in advancing the cause of education. There is no doubt that the interpretations given by the Supreme Court and other courts, have given a wider amplitude to the provisions as to specifically advance the cause of education, They have helped in doing away with discriminatory provisions, and also have covered wide areas as medium of instruction, etc. to ensure that the cause of education has not suffered.

7.2 The goal of reaching education to one and all has also been served by these provisions. Some further suggestions have been offered in this Chapter to advance the cause of education, which is a value in itself. These suggestions are illustrative and not comprehensive. A comprehensive list will require a wider discussion, and it is with the awareness of this shortcoming that these suggestions have been offered.

(1) Preamble itself could be enlarged to secure to us a learning society so that the fruits of Enlightenment reach one and all without fear, favour or discrimination. Enlarging the Preamble can give it the nature of a basic feature as not to be easily tampered with. Acts of Philistinism such as burning of libraries, destroying ancient monuments or some other similar acts, should never occur, and if such tendencies or administrative fiats come to be passed, it should be possible to obtain mandamus against it. In a multilingual and racial society such as ours, with a multitude of dialects, to some people or community, preservation or even enrichment of them may not appear to be worthwhile. The State has some bounden duties to preserve and guard cultures. If some efforts were forthcoming, such efforts should not be prevented.

(2) With the vast changes taking place in the world of knowledge and communication, it might be worthwhile to incorporate a new right, as Right to Knowledge. Its practical implication will be for the State to set up libraries or information centres accessible to one and all which will themselves be fountains of knowledge to be dipped into at will. A model of a typical Knowledge Centre for Information Management has been developed for the Union Territory of Pondicherry. In a collaborative project between International Literacy Institute and Indira Gandhi National Open University entitled, Bridges to the Future Initiative (BFI), there is a mention of medium-term development of Community Learning and Technology Centres (CLTC). With the coming of a digital age, these may be the new versions of libraries-cum-community access centres. This can serve as a model. The Right to Knowledge is broader than the Right to Know which has already been derived from the existing Fundamental Rights

(3) The existing Directive principle contained in Article 45 or the amended provision as contained in the 83rd Amendment Bill needs spelling out. The free and compulsory education concept should not be whittled down on some grounds of economic liberalization. In the arguments for education being able to pay for itself, it is forgotten that there is already a levy of education cess on the citizens, which goes to finance education. Whether education fees to be paid by the recipient or a general education cess paid according to capacity of the citizen to bear his general responsibility for the cause of education is a better way is not considered in the argument for privatizing education. It has been reported that the Soviet Union has gone to eliminate education as an obligation of the State (EPW May 1998); such a situation should not come so easily by in our country. The provision of a fundamental right should not overlook the State responsibility to create demand.

(4) In the field of education, sunset laws should be in operation, so that obsolescence is at a minimum and anachronisms are removed. Sheer inertia has continued some of the earlier practices. Reservations in admissions were initially meant for a purpose and for a specific time period; these have continued for some reason or the other. Such laws should be subject to strict reviews. As Dr. Malcolm Adiseshiah has stated: "The present model with its structured hierarchy of time-dependent learning levels; single-point entry isolation from society and marketplace and outdated learning content, irrelevant evaluation techniques and class-biased survival must be replaced by a Systems Model".

(5) There is a strong case for ensuring autonomy for the education budget. Some sanctity should be attached to the core provision, and such factors as the teacher's salaries being charge on Consolidated Fund of States could be considered. In a study of elementary education in Gujarat, The Indian Institute of Management had made one such recommendation to protect the salaries of elementary school teachers and their budget. In fact, there is a case for a special provision in the Constitution for protecting the service condition of teachers, as in the case of Civil Servants as contained in Articles 311 and 312. There should be also a provision to ensure their political neutrality as in the case of civil servants, and the fact that most of the teachers are paid through State or through

instrumentalities of State, having been funded mostly from State funds (the so-called own contribution coming from the students' fee for which the management have no claim to call it as their own). In Germany, all teachers are paid directly from State funds. A similar provision for recruitment through a Public Service Commission, but differently constituted to contain peers, could also be considered. In short, the kind of autonomy granted to judicial Institutions could be extended to teachers and teaching institutions. Their pay and conditions of service should be separately decided, as the consideration is not what the traffic can bear. "If education is to function as a liberating force, obviously it should be independent of other kinds of organized power. The most organized kind of power in modern societies is that of the State. It is, therefore, of crucial importance that education be free from government control. This does not mean that government should give money and sit back. Government has certainly a role apart from that of Santa Claus. It has to function as an operational critic of education as of all other institutions in the society. That is, once the norms are accepted by society by any reasonable process, government's major responsibility should be to see that these norms are observed." (A.B. Shah)

(6) There is need for a regular Education Commission like a Finance Commission, reporting to Parliament to review and update the systems. A Constitutional Provision similar to that Finance Commission can be considered. It is interesting to look back and note that the 1913 Government of India Policy had envisaged such a regular study. In his article 'Towards an Education for the 21st Century', Prem Kripal stated, "National authorities should reshape their educational system on two parallel lines: (I) internal reforms and continued improvements of existing educational systems; and (ii) search for innovative forms, for alternatives and fresh resources". The Education Commission had rightly remarked: "It is no longer desirable to undertake educational reforms in piecemeal fashion, without a concept of the totality of the goals and modes of the educational process. To find out how to reshape its component parts, one must have a vision of the whole. We must think clearly in exploring new paths for the future. This search for practical alternatives aspects of a genuine strategy of innovation seems to us to be one of the primary tasks of any educational undertaking"

(7) There is need to insulate the educational bodies from needless litigation, when structural changes become necessary. There is already a legislation to distinguish the teaching staff from 'industrial labour', though the amended legislation has not yet been put into effect. The needs of the times and the international pace, call for flexibility in structures, which should not be hampered because of misplaced importance claimed by interests of a section of the stakeholders. Different nature of rules of association should be recognized so that teachers' unions do not function like other labour unions with their right to strike.

7.3 Suitable provisions can be made in the Preamble as well as in Parts III, IV, XII and XIV of the Constitution or even as fresh parts therein.

These suggestions for amendments have been made, as these are areas considered of immense importance to preserve the integrity of educational policies.

QUESTIONNAIRE
ON
LITERACY IN THE CONTEXT OF THE CONSTITUTION OF INDIA

A. Issues of General Policy

The capacity of a person to contribute to societal development is made possible and enhanced by his or her development as individual. In this light, education is a basic need. It is also a means by which other needs, both collective and individual, are realized. Thus education is the instrument by which the skills and productive capacities are developed and endowed. Essentially it is argued that a strong case can be made for state intervention in education on two counts, namely, the externality effects of education and the alleged incompetence or ignorance of parents. Advocates of state education in the past have rested their case predominantly on economic considerations of equality of opportunity and social cohesion.

1. Do you share the view that ideally, the State should provide for education?
   Yes ☐ No ☐

2. Do you agree that in any case, primary education should be compulsory and free?
   Yes ☐ No ☐

3. Do you also agree that if it is an item of priority, a state can progressively enlarge the areas of free education, e.g. free education for girls at all stages of education?
   Yes ☐ No ☐

4. Would you agree that instead of charging fees for individual students, a general education cess on all is a more equitable form of financing education?
   Yes ☐ No ☐

5. (a) Do you agree that there could be compulsion from the State in this field?
   Yes ☐ No ☐

   (b) If so, what should be the nature of penalties?

   (Not more than 200 words)

   (c) Should it extend to denial of vote without a minimum certificate of learning?
   Yes ☐ No ☐

B. One of the main problems in the area of education was identified as lack of financial resources coupled with escalating cost of education. In the document "Education for All", it has been stated that "In fact, the whole nation should feel responsible for the development of education in the country."

6. In view of the above, what are the ways, in your opinion, the larger community can assume this responsibility?

(Not more than 200 words)

7. Do you think some of the NGOs and Public Service Organizations are serving this purpose well?

Yes ☐ No ☐

8. What is your perception of the role of the private sector in the field of education?

(Not more than 200 words)

9. What are the areas of responsibility in which they should be involved?

(i) Providing additional finds
(ii) Providing administrative expertise, and
(iii) Take over responsibility in particular aspects.
(iv) All the above

(i) ☐ (ii) ☐ (iii) ☐ (iv) ☐

10. Can there be a sort of joint sector to manage education, pluralist in nature, where different interests are represented?

Yes ☐ No ☐

C. Constitutional Provisions

Judicial interpretation has brought alive many an Article of the Constitution, which, if read literally, may seem to be a colorless Article. For instance, judicial interpretation has been sought on the different facets of the principle of equality of opportunity. Our Courts have wrestled with this problem in the face of affirmative action or what is known as 'positive discrimination' in favour of the deprived sections. The Constitutional provisions have come in very useful to resolve what are essentially political and ideological objectives and the policy conflict of parental free-choice versus educational opportunity. The pronouncements of the Courts have been on varied subjects, affecting the quality and quantity of education services not only encompassing service and management equities but also such academic questions as medium of instruction, access and autonomy of institutions.

11. Should education be available in accordance with parental willingness to pay or in relation to capacity to learn?

Willingness to pay ☐ Capacity to learn ☐

12. Do you welcome the acts of judicial activism in general?

Yes ☐ No ☐

13. Do you consider that the current position has arisen because the provisions in the Constitution are not explicit enough, thus giving scope for a plethora of litigation?

Yes ☐ No ☐

14. Would you suggest that the provisions of the Constitution should be more explicit and clear-cut, so as not to give scope for encroachment on executive or legislative domain?

Yes ☐ No ☐

D. Constitutional Amendments and their relevance

There has been specific amendments to the Constitution affecting education, as can be seen in 42nd, 73rd, 74th Amendment Acts, and 83rd Amendment Bill. These amendments pertain to provisions to enable education, being in the Concurrent List, devolution of powers to local bodies and making elementary education a Fundamental Right. It has also been lamented that follow-up action on Constitutional Amendments had either not taken place or slow in implementation.

15. Do you consider that the amendments to the Constitution were necessary?

Yes ☐ No ☐

16. If yes, please comment upon the measures to be taken to ensure proper follow-up action.

(Not more than 200 words)

E. Implementation

Article 45 of the Constitution provides that the State shall endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

It is 40 years since the deadline as provided in the said article has expired, and we are still to achieve the goal mentioned therein. Admittedly there has been failure in this front and the target dates are being revised from time to time. The following reasons are frequently cited as reasons for this.

17. Please indicate where does the principal cause of failure lie?

(a) Lack of facilities at the doorstep.

(b) Failure to create demand for education resulting in indifferent parental motivation

(c) Irrelevance of the educational package

(d) Insufficient care to link early childhood care

(e) Education at the school resulting in negative characteristics resulting in alienation of the children from their families because of the needs of the system and peer pressure.

(f) None of the above.

(a) ☐ (b) ☐ (c) ☐ (d) ☐ (e) ☐ (f) ☐

(g) If you have any other cause to suggest, please give details:-

(Not more than 200 words)

18. (a) Do you agree that there should be an early end to the dual system which we now run at all stages under which the classes have access to a small group of high quality elite institutions while the masses are compelled to study in public institutions of poor quality?

Yes ☐ No ☐

(b) If yes, what steps do you suggest to accomplish equality?

(Not more than 200 words)

F. The Consultation Paper refers to several statements that "it was a wrong policy that we did not place adequate emphasis on programs of adult education to liquidate mass illiteracy". Adult illiteracy is still a major problem in achieving "total literacy".

19. Regarding this:

(a) do you think that 'adult education' should have been included in the Directive Principles of State Policy?

Yes ☐ No ☐

(b) should, in your opinion, a participatory approach be adopted to achieve better results in this field, as the persons to study are older and can understand the need?

Yes ☐ No ☐

(c) does adult education need a different pedagogical approach?

Yes ☐ No ☐

G. Other Issues

20. The Dynamics of education and its role in each society in development and transformation make it essential that education continuously renews itself in order to prepare for a future rather than for obsolescence. This renewal process drives from a variety of sources which include: the growth of human knowledge which is the basic component of education; the heritage of collective experience and values which education transmits to the new generations; the means and methods of communication by which knowledge and values are transmitted and the new values and aspirations which the human spirit adds to the collective experience and wisdom of the past or by which the heritage of the past is reinterpreted and reassessed. The whole basis for access to educational opportunities at all levels has to be a non-party matter and

discussion of its aspects should be beyond party politics and cut across party lines. The commitment of the various political parties on universalisation of elementary education must also converge into a consensus on content and dissemination.

(a) What, in your perception, is the best process to secure consensus?

(Not more than 200 words)

(b) Should implementation aspect of universalisation of elementary education is a matter to be spelt out the parameters in a document in the Constitution itself, so that the consensus obtained is justiciable?

Yes ☐ No ☐

(c) Should 'heritage' be a matter of instruction, or should it be a matter of discovery by the individual by applying of learning methods?

Matter of instruction ☐ Matter of discovery ☐

(d) What, in your opinion, should be the agency for School Text Books and how can that Agency be insulated from non-academic pressures?

(Not more than 200 words)

21. (a) Should we have Constitutional guarantees to ensure that the sanctity for the financial outlays and the schemes therefor is honoured?

Yes ☐ No ☐

(b) If renewal, reform and rethinking are fundamental to the process of education, should the Constitution ensure that these take place and are not subject to whims and fancies of the powers that be or become matters of lower priority?

Yes ☐ No ☐

22. What, in your opinion, can be the structures specific to educational institutions to protect the interests of all the stakeholders, and to ensure a certain degree of autonomy and insulation from political buffetting?

(Not more than 200 words)

23. Do you agree to the suggestion that all teachers should be declared as civil servants, with their salaries coming from the State?

Yes ☐ No ☐

24. Should the selection of teachers, in your opinion, be on considerations of merit alone, where equity is not a consideration and the principle of 'affirmative action' will not apply in this matter?

Yes ☐ No ☐

25. On the other side of the coin, in the name of autonomy, do you perceive that the teacher community should be protected by the State?

Yes ☐ No ☐

H. Proposed Amendments to the Constitution

26. In Chapter VII of the Paper, seven illustrative areas are indicated for amendments. The amendments suggested include, enlargement of the Preamble, a new Fundamental Right for Right to Knowledge, etc. Please give your reaction/comments/suggestions on each of these suggestions.

(a) Preamble could be enlarged to secure to us a learning society so that the fruits of Enlightenment reach one and all without fear, favour or discrimination.

(Not more than 200 words)

(b) With the vast changes taking place in the world of knowledge and communication, it might be worthwhile to incorporate a new Fundamental Right, namely, Right to Knowledge. The Right to Knowledge is broader than the Right to Know which has already been derived from the existing Fundamental Rights

(Not more than 200 words)

(c) The existing Directive Principle contained in Article 45 or the amended provision as contained in the Constitution 83rd Amendment Bill needs to be more explicit and spelling out.

(Not more than 200 words)

(d) In the field of education, sunset laws should be in operation, so that obsolescence is at a minimum and anachronisms are removed, with such laws subject to strict reviews.

(Not more than 200 words)

(e) There is a strong case for ensuring autonomy for the education budget with a provision for educational expenditure being charge on Consolidated Fund of States.

(Not more than 200 words)

(f) There is need for a regular Education Commission like a Finance Commission, reporting to Parliament to review and update the systems.

(Not more than 200 words)

(g) There is need to insulate the educational bodies from needless litigation, when structural changes become necessary.

(Not more than 200 words)

24. Do you have any other suggestion to make on the issues discussed in the Consultation Paper? If so, please give details:-

(Not more than 200 words)

APPENDIX I
(See para 3.3)

#	STATE	LITERACY RATE (2001 Census) (In %)			LITERACY RATE (1991 Census)	CHANGE IN LITERACY RATE (1991 -2001)
		PERSONS	MALES	FEMALES		
	ALL INDIA	65.38	75.96	54.28	51.63	13.75
1.	Andaman & Nicobar Is.*	81.18	86.07	75.29	73.02	8.17
2.	Andhra Pradesh	61.11	70.85	51.17	44.09	17.02
3.	Arunachal Pradesh	54.74	64.07	44.24	41.59	13.15
4.	Assam	64.28	71.93	56.03	52.89	11.52
5.	Bihar	47.53	60.32	33.57	37.49	10.04
6.	Chandigargh*	81.76	85.65	76.65	77.81	3.94
7.	Chhatisgarh	65.18	77.86	52.40	42.91	22.27
8.	Dadra & Nagar Haveli*	60.03	73.32	42.99	40.71	19.33
9.	Daman & Diu*	81.09	88.40	70.37	71.20	9.89
10.	Delhi*	81.82	87.37	75.00	75.29	6.53
11.	Goa	82.32	88.88	75.51	75.51	6.81
12.	Gujarat	69.97	80.50	58.60	61.29	8.68
13.	Haryana	68.59	79.25	56.31	55.85	12.74
14.	Himachal Pradesh	77.13	86.02	68.08	63.86	13.27
15.	Jammu & Kashmir	54.46	65.75	41.82	NA	NA
16.	Jharkhand	54.13	67.94	39.38	41.39	12.74
17.	Karnataka	67.04	76.29	57.45	56.04	11.00
18.	Kerala	90.92	94.20	87.86	89.81	1.11
19.	Lakshadweep *	87.52	93.15	81.56	81.78	5.74
20.	Madhya Pradesh	64.11	76.80	50.28	44.67	19.41
21.	Maharashtra	77.27	86.27	67.51	64.87	12.39
22.	Manipur	68.87	77.87	59.70	59.89	8.97
23.	Meghalaya	63.31	66.14	60.41	49.10	14.21
24.	Mizoram	88.49	90.69	86.13	82.27	6.22
25.	Nagaland	67.11	71.77	61.92	61.65	5.45
26.	Orissa	63.61	75.95	50.97	49.09	14.52
27.	Pondicherry*	81.49	88.89	74.13	74.74	6.74

1207 LJ&CA/2002—19A.

#	STATE	LITERACY RATE (2001 Census) (in %)			LITERACY RATE (1991 Census)	CHANGE IN LITERACY RATE (1991-2001)
		PERSONS	MALES	FEMALES		
28.	Punjab	69.95	75.63	63.55	58.51	11.45
29.	Rajasthan	61.03	76.46	44.34	38.55	22.48
30.	Sikkim	69.68	76.73	61.46	56.94	12.81
31.	Tamil Nadu	73.47	82.33	64.55	62.66	10.81
32.	Tripura	73.66	81.47	65.41	60.44	13.22
33.	Uttar Pradesh	57.36	70.23	42.98	40.71	16.65
34.	Uttaranchal	72.28	84.01	60.28	57.75	14.53
35.	West Bengal	69.22	77.58	60.22	57.70	11.52

Notes:-

1. The population of India includes the estimated population of entire Kachchh district, Morvi, Maliya-Miyana and Wankaner talukas of Rajkot district, Jodiya taluka of Jamanagar district of Gujarat State and entire Kinnaur district of Himachal Pradesh where population enumeration of Census of India 2001 could not be conducted due to natural calamity.

2. Figures shown against Population in the age-group 0-6 and Literates do not include the figures of entire Kachchh district, Morvi, Maliya-Miyana and Wankaner talukas of Rajkot district, Jodiya taluka of Jamanagar district and entire Kinnaur district of Himachal Pradesh where population enumeration of Census of India 2001 could not be conducted due to natural calamity.

3. Figures shown against Himachal Pradesh have been arrived at after including the estimated figures of entire Kinnaur district of Himachal Pradesh where the population enumeration of Census of India 2001 could not be conducted due to natural calamity.

(Source: *Provisional Population Totals: India*. Census of India 2001, Paper 1 of 2001)

APPENDIX II
(See para 3.7.5)

Current Literacy Programs

1. **Rural Functional Literacy Project (RFLP)**: Adult Education Centres are set up by RFLP in all the States and Union Territories. They are fully funded by the Central Government although the State Governments and Union Territory Administrations are responsible for its implementation.
2. **State Adult Education Program (SAEP)**: Funded fully by the State Governments, this program aims at strengthening ongoing Adult Education Programs and expanding its coverage to ensure that the programs reach women and other underprivileged groups.
3. **Adult Education through Voluntary Agencies**: A Central Scheme of Assistance to Voluntary Agencies exists to facilitate the participation of Voluntary Agencies. The Government of India provides financial grants to Voluntary Agencies on program basis.
4. **Involvement of students and youth in Adult Education Programs.** The University Grants Commission provides 100 per cent financial assistance to colleges and universities to support their active involvement in literary and adult education activities. Specifically, 50,000 adult education centres are expected to be organized under this program. Simultaneously with the adult education program, the college and university students will be engaged in spreading universal primary education among non-school-going children.
5. **Nehru Yuvak Kendras**: This non-student youth organization has been developing training programs to educate young people according to their identified felt needs.
6. **Non-Formal Education for Women and Girls**: This project puts special emphasis on improving women's socio-economic status by ensuring their participation in development programs in addition to efforts for family planning and promotion of welfare of children. This program is a joint effort of the Government of India and UNICEF.
7. **Shramik Vidyapeeths**: This program has been established and ever since funded by the Government of India with the aim to provide integrated education to urban and individual workers and their families in order to raise their productivity and enrich their present life.
8. **Central Board for Workers Education** : This program aims at providing literacy to unskilled and semi-skilled persons as well as raising their awareness and functionality. Its special feature is to meet the recognized needs of the workers with a specially matched program.
9. **Functional Literacy for Adult Women** : Started in the International Year of Women, under the sponsorship of the Government of India, this program covers health and hygiene, food and nutrition, home management and child care, education, and vocational and occupational skills.
10. **Incentives Awards Scheme for Female Adult Literacy** : designed to promote literacy among 15-35 year old women, this scheme presents awards to adult education centres (at the district, and Union Territory levels). At the State level, the awards are intended for equipments of various kinds as well as training facilities.
11. **Post-Literacy and Follow-up Program** : The program has been in operation since 1984-1985. The Directorate of Adult Education has developed broad guidelines for the preparation of neo-literate materials for the State Governments and State Resource Centres. Prototype neo-literate materials have also been produced.

The listed activities reflect India's determination to make the entire population literate by involving the other Government agencies related to development as well Universities and Voluntary Organization in literary activities. The responsibility for planning and financing these activities, however, rests with the Central and State Governments.



NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

SOCIAL SECURITY AND EMPLOYMENT

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating a public debate and eliciting public response.

September 26, 2001
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Advisory Panel

on

Promoting Literacy; generating employment; ensuring Social Security; alleviation of poverty

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CONTENTS

Chapters		Pages
I.	Social Security and Constitution	293
II.	Poverty in the Eyes of the Constitution	295
III.	Employment in the Eyes of the Constitution	324
IV.	Livelihood Opportunities	328
V.	A Strategic Plan for 80 Million Jobs	337
VI.	A Better Deal for the Very Poor	349
VII.	Report of "The Task Force of the Planning Commission on Employment Opportunities"	357
	Questionnaire	359
	Models for the Development of Sustainable Livelihoods	366
	Annexure	368

CHAPTER I

SOCIAL SECURITY AND CONSTITUTION

1.1 Introduction and Scope of the Study

The mark of all civilizations is the respect they accord to human dignity and freedom. Human development is a process of enhancing human capabilities – to expand choices and opportunities so that each person can lead a life of respect and value. The three essential capabilities for people are –

(i) to lead a long and healthy life (life expectancy at birth);
(ii) to be knowledgeable (educational attainment reflected in adult literacy which is reflected by the combined gross primary, secondary and tertiary enrolment ratio); and
(iii) to have access to resources needed for a decent standard of living (reflected through GDP per capita. Income enters the HDI as a proxy for a decent standard of living and as a surrogate for all human choices not reflected in the other two dimensions.).

1.1.1 Human development is essential for realizing human rights, and human rights are essential for full human development. Human Rights and human development share a common vision and common purpose – to secure the freedom, wellbeing and dignity of all people everywhere. To secure:

- Freedom from discrimination – by gender, race ethnicity, national origin or religion
- Freedom from want – to enjoy a decent standard of living
- Freedom to develop and realize one's human potential
- Freedom from fear – to threats to personal security, from torture, arbitrary arrest and other violent acts
- Freedom from injustice and violations of the rule of law
- Freedom of thought and speech and to participate in decision making and form associations
- Freedom for decent work – without exploitation

1.1.2 A decent standard of living, adequate nutrition, health care, education, decent work, and protection against calamities are not just development goals, they are also human rights. Poverty eradication is only a development goal – it is a central challenge to human rights. But the realm of human development extends further; they include the following needed for being creative and productive and for enjoying self-respect, empowerment and a sense of belonging to a community

- security
- sustainability
- guaranteed human rights

1.1.3 The term "Social Security" is all encompassing and has wide connotation. Its dimensions are largely subjective, though in some cases objective criteria can be defined. It includes:

1. Alleviation of Poverty including Elimination of hunger and deprivation
2. Economic and Income Security
3. Food and Nutritional Security
4. Social equity including gender dimensions
5. Reaching the unreached
6. Empowerment of people at various levels including the individual and community, and elimination of voicelessness.

1.1.4 The Constitution of India, through the various articles of Fundamental Rights and Directive Principles of State Policy, has provided for 'social security' both directly and through implied provisions. Many of these areas are discussed in other Consultation Papers. This paper will specifically focus on Poverty Alleviation and Access to Food by providing for Income Security through Employment.

1.2 Right to work as a Fundamental Right

The Commission has proposed a constitutional obligation on the State to provide to the citizens **"Rural Wage Labour"** as a means of livelihood for a minimum of 80 days in a year as a Fundamental Right and has proposed the introduction of a new article namely, article 21B, in the Constitution.

1.2.1 Some explanation is necessary why the Commission proposes to introduce this idea of constitutional guarantee for Rural Wage Employment. Article 41 (in Part IV relating to Directive Principles of State Policy) already provides that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 41, though not justiciable is nevertheless fundamental in the governance of the country. The performance of the State in discharge of this Constitutional duty has not been commensurate with the needs of society. Between 1950 to 1973, population below the poverty line remained consistently at 53%. With the explosion of population, the levels of poverty in terms of numbers reached unacceptable levels. It is only between 1973 and 1988 and thereafter, in the 1990s that there was a significant reduction in the percentage of population below the poverty line. That figure at present is estimated at 26%. However, in terms of numbers, 26% of billion population is significantly higher than the 53% below the poverty line in the fifties to seventies.

1.2.2 There is significant potential for employment-generation (and asset building such as afforestation, desilting of tanks, rain water harvesting, check-dams etc.) in rural India; though, however, some development-economists are pessimistic of the potential for employment generation in the agricultural sector. They point out that while employment generation in the rural sector was 2.04% during 1983-1988, it came down to 0.98% during 1994-2000. This perception involves the inevitability of increased rural de-population.

1.2.3 A large and significant potential still exists for rural employment as a source of livelihood. The mandate of article 41 has remained unfulfilled is obvious from the slow pace of reduction of poverty levels. Education, health, social-security and means of livelihood. These are not to be seen as the ultimate outcome of development; but are in themselves crucial to the process of development itself. If even the minimum expectations of people from a liberal democracy remain unfulfilled, the very survival of democracy will be imperiled.

1.2.4 Guaranteeing rural wage labour as a poverty alleviation measure has been achieved with some degree of success in several States by Employment Guarantee schemes, particularly in the State of Maharashtra. The choices of delivery systems for poverty alleviation programmes through employment guarantees are either the executive sponsored schemes or statutory. The case for making them constitutional rights through the Bill of Rights is a debatable issue.

1.2.5 Much of the criticism against including economic rights in the Bill of Rights is centered around heightened role of the Judiciary which an entrenched justiciable Bill of Rights implies. Criticism is rooted in democratic theory that such a thing shifts power from the executive branch to the judicial branch and away from the elected legislatures and places the power at the hands of 'unelected, unaccountable, unrepresentative and elite group' of judges.

1.2.6 It is argued that the adjudicative process on economic rights involves the court in the task of allocating of society's resources and infringes principle of separation of powers, essential to a democracy, giving at the same time the 'third branch of government the ultimate power over the purse'.

1.2.7 But these arguments, overlook the emerging importance, in any liberal formulation of rights, of the recognition of livelihood and individuals well-being as legitimate concerns of Bill of Rights.

> "At *the international level,"* says an author[1] *"the official policy position, reflected in all of the major international human rights instruments , is that the two sets of rights – civil and political, on the one hand, and economic, social and cultural, on the other –*

[1] Bills of Rights in Comparative Perspective by Mac Darrow and Philip Alston p. 502-503

are indivisible, interdependent and interrelated. But this theoretical consensus evaporates, or at least shrinks dramatically and with remarkable speed, as soon as we move to the practical translation of these international standards into bills of rights".

"... It must suffice here to add several elements which respond directly to the comments cited above. First, we should be clear that we are speaking of minimum standards of a basic core of rights and not of anything as grandiose or vague as Beatty's right to 'wholesome and cultured living'.[3] Access to life-sustaining water, adequate housing to enable life to go on, a primary education, essential medical services, and food sufficient to make a right to life meaningful, are hardly so exotic or beyond the reach of the sort of societies in issue here as to make minimum guarantees unrealistic. Secondly, while justiciability is often important, it is by no means the only way in which a bill of rights might foresee the realization of these rights. Thirdly, the old distinctions between costly and cost-free rights or between positive and negative rights, which underpin so much of these critiques, have by now been shown to be too simplistic to be hopeful, even in relation to American constitutional law.[4]

1.2.8 As to the apprehensions of the likely expansion of the judicial role, it is observed that there are limitations inherent in the nature of the rights itself. It is observed :

"Finally, courts have many options open to them in order to avoid getting too directly involved in budgetary matters. The role of the court would normally be limited to directing the executive to propose concrete but affordable measures which would address the problem identified." (emphasis supplied).

1.2.9 Such a minimal right to a means of livelihood, through mechanism of Rural Manual wage employment for say 80 days' in an year as an enforceable right does not seem too unrealistic an ideal. For such an opportunity for work for 80 days in a year needs no further justification. Indeed the Supreme court has declared the right to livelihood an emanation of the Right to Life. If the State had evinced adequate and active concern under article 41, the minimal expectations of people would have been re-quieted and the need for the present proposal would have been obviated. But things are otherwise.

CHAPTER II

POVERTY IN THE EYES OF THE CONSTITUTION

2. Poverty and chronic deprivation have long been a tragic aspect of human society. Poverty, however, is neither natural nor inevitable. In modern economics, large-scale poverty imposes an enormous economic loss, wasting the talents and energies of hundreds of millions of man and women, diverted from socially productive activities that could create wealth for society to the struggle for mere survival.

2.1 Poverty : its scope and dimensions

Poverty is defined as the inability of an individual to secure a normative minimum level of living. A normative minimum was defined for the first time by an official working group as amount of consumer expenditure of Rs.20 per capita per month at 1960-61 all-India prices (and Rs.25 for urban

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[3] As Inoue's work demonstrates, taking such a phrase out of its context in the Japanese Constitution is potentially quite misleading. See n. 171 above.

[4] For the most recent analysis along these lines see Holmes and Sunstein, the Cost of Rights: Why Liberty Depends on Taxes (1999).

areas). The minimum excluded expenditure on health and education, which are to be provided by the state as per the Indian Constitution [PPD 1962]. This is the amount considered enough to get food to meet minimum energy requirements for an active and healthy life and also minimum, clothing and shelter.

2.1.1 Corresponding to this all-India norm, Bardhan (1970) used Rs. 15 per capita per month at all-India rural prices as relevant for the rural sector. Dandekar and Rath, (1971), with reference to a calorie norm of 2250 calories per capita per day, arrived at the same poverty line for rural India. Till recently most of the studies on rural poverty were based on estimates made with reference to this norm of Rs.15 per capita per month at 1960-61 all-India rural prices. The Planning Commission Task Force on "Projection of Minimum Needs and Effective consumption Demand' defined the poor as *"those whose per capita consumption expenditure lies below the midpoint of the monthly per capita expenditure class having a daily calorie intake of 2,400 in rural areas and 2,100 in urban areas"* [PPD 1981:81]. The poverty lines corresponding to these norms were worked out with reference to the NSS data for the year 1973-74. The poverty line turned out to be Rs.49.09 per capita per month at 1973-74 prices for rural India. The Expert Group [PPD 1993] has also recommended this poverty line.

2.1.2 The poverty line has to be updated to account for changes in prices since the consumer expenditure data are at current prices. The updating is generally done using deflators based on market prices. The Expert Group [PPD 1993] has recommended as price index obtained as a weighted average (to account for the relative importance of different items of consumption) of subgroup price indices of consumer price index for agricultural labourers (CPIAL) for rural all-India. The procedure outlined above involves the implicit assumption that the data set provides a reliable estimate of the underlying consumer expenditure distribution and that the institutional and behavioural parameters governing the choice of poverty line remain the same. The validity of this assumption is conditional on the fulfillment of the following:

(i) The items consumed by a household are recorded as its own consumption by the investigator.
(ii) The times of consumption are reported correctly by all the households.
(iii) The survey methodology remains the same over the years.
(iv) Each item of consumption is valued uniformly at market retail prices across households so that a simple consumption weighted index of market retail prices would capture the impact of inflation for the household.
(v) The transaction costs of obtaining items of consumption are similar (a) across households at a point of time, and (b) for a given household over a period of time.
(vi) Techniques of production and efficiency with respect to calorie utilization remain the same. In other words, the minimum calorie norm remains invariant with respect to the structural developments in the economy like improvements in methods of production and in medical and health facilities.

2.1.3 A comprehensive All India consumer expenditure survey is undertaken roughly every five years which also forms the basis for estimating the level of poverty with community. Comparable estimates based on consistent methodology are data sets are available until 1993-94.

2.1.4 Per capita net national product at 1993-94 prices vary from Rs.3,687 in 1950-57 to Rs.10,204 in 1999-2000 registering an increase of 277%. Average annual growth rate of net national product at 93-94 prices has increased from 3.6% to 6.7% in eighth plan. (Please see Table 1 below)

TABLE 1

Five year Plans	Year	Net National Products	Net per capita Product
First plan	1951-1956	3.6	1.8
Second plan	1956-1961	4.1	2.0
Third plan	1961-1966	2.5	0.2
Forth plan	1969-1974	3.3	1.0
Fifth plan	1974-1979	5.0	2.7
Sixth plan	1980-1985	5.3	3.1
Seventh plan	1985-1990	5.9	3.7
Eighth plan	1992-1997	6.7	4.6

2.1.5 The estimated magnitude of poverty remains fairly high until 1970s; the proportion of people below the poverty time has declined since years 1980. The 55th round of the household consumer expenditure Survey (July 99-June 2000) indicate significant decline in poverty to 26% (This estimate may not be strictly comparable to the earlier estimation because of some changes in the methodology of data collection).

TABLE 2
Poverty Estimates

Year	Percent		
	All India	Rural	Urban
1973-1974	54.9	56.4	49.0
1977-1978	51.3	53.1	45.2
1983	44.5	45.7	40.6
1987-1988	38.9	39.1	38.2
1993-1994	36.0	37.3	32.4
1999-2000 (300)	26.1	27.1	23.6
75	23.1	24.0	21.6

2.1.6 It has long been believed that economic growth is the specific remedy for the ills of poverty. Some economists argue that for a country like India, 7 to 8 per cent rate of growth per year over a period of 15 years can help in solving the problem of poverty. This is the famous '**trickle down theory of development'**. The argument is that a good growth rate over a reasonable time frame can have a trickle down effect, down to the lowest layers of poverty. Our own experience in this country as well as many others in the world show that this is not necessarily correct as discussed later on in this paper.

2.1.7 Nobel Prize laureate Amartya Sen in his interesting article *"Hunger and Public Action"* (1989) has analyzed the causes of famines and observed cases in which people starved to death in spite of food availability - because they had no "entitlement".

> *"What we can eat depends on what food we are able to acquire. The mere presence of food in the economy, or in the market, does not entitle a person to consume it. In each social structure, given the prevailing legal, political and economic arrangements, a person can establish command over some alternative commodity bundles ... [i.e.] this person's entitlements. A person's entitlements depend on what she owns initially and what she can acquire through exchange. For example, a wage labourer owns her labour power, and by exchanging that for a wage ... she acquires some money, which she can exchange for some commodity bundle or other...."*

The above definition of "Poverty" is based entirely on economic criteria. Income is no doubt a very important factor in determining poverty but poverty has many other important dimensions. Probably Dr. Amartya Sen's definition of poverty is the most appropriate and acceptable one, which is that **poverty, is the deprivation of basic capabilities.** Dr. Sen argues that every person should have the substantive freedom to lead the kind of life he has reasons to value. Inadequate income is one of the principal reasons for a person's capability deprivation. Sen distinguishes the standard income-based poverty approach from his proposed 'capability perspective' because capabilities are seen as *intrinsically* important whereas income is *instrumentally* significant. In order to eradicate poverty some thing more than income is necessary and that is the opportunity to develop one's basic capabilities which include opportunities for education, health care, sanitation, nutrition, clean drinking water, housing, etc.

2.1.8 Human Poverty Index Developed by UNDP is based on the following factors:

- People not expected to survive 40 years
- Adult illiteracy
- Not having access to water

- Not having access to health services
- Not having access to sanitation
- Proportion of under weight children

On this score, India ranks 58th among the developing countries.

2.2 Poverty and the Constitution

"Poverty" as a term has not found a place in any Part of the Constitution except in the 73rd and 74th amendments relating to Panchayats and Municipalities. There were, however, many articles under Fundamental Rights (Justiciable) and Directive Principles (non-Justiciable) if translated into action properly should have taken care of the poverty issues we are now debating. Right to life of article 21 of the Constitution implies many rights such as dignity, health, environment, clean water, free education and shelter. Article 47, one of the important Directive Principles, states that raising the level of nutrition and standard of living and improvement of public health are primary duties of the State. Synergy and convergence of the three components of article 47 is crucial for eliminating poverty as we are defining now.

Article 39 sets out policy principles to be followed by the state. They include:

(a) That the citizen, men, women equally have the rights to adequate means of livelihood.
(b) That the ownership and control of the material resources of the community are so distributed as best to subserve the common good.
(c) That the operations of the economic system does not result in the concentration of wealth and means of production to the common detriment.
(d) That there is equal pay for equal work for both men and women.
(e) That the health and strength of workers, men and women and the tender of age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
(f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Though "Poverty" issues are not explicitly discussed in the Constitution, the directive principles are meant to eliminate "Poverty" in any form. Raising the level of "nutrition", "standard of living", and "improvement of public health" are the primary duties of the State according to Constitutional mandate. All these are inter-related and require simultaneous attention.

2.2.1 These objectives were sought to be achieved through economic growth and with some modest distribution objectives along with economic growth in the five-year Plans. The following Section is a critical review of the rural development policies and poverty in India.

2.3 A Critical Review of the Rural Development Policies and Poverty in India

Alleviation of poverty has been one of the major concerns of India's planners and policymakers since Independence. Before Independence, poverty was largely attributed to the exploitation of the Indian economy by the British, coupled with the feudal mode of agricultural production. Therefore, the people from various social groups and classes joined the freedom movement with the hope that political independence would also bring freedom from hunger, malnutrition, illiteracy, etc. After achieving Independence, the Government was thus under obligation to overcome poverty by enabling the poor to participate in democracy and development as equal partners.

2.3.1 Towards this end, a series of measures have been undertaken. These include land reforms, infrastructure development, technological change, economic diversification and direct anti-poverty programs like IRDP, NREP, JRY, EAS, DWCRA, TRYSEM and MNP.

2.3.2 Despite various favourable factors like the attainment of Independence, abolition of feudalism and achievement of self-reliance in foodgrains production due to Green Revolution, the problem of

rural poverty remained as acute as ever before. As seen from various surveys, though on a proportional basis, there has been a reduction in rural poverty, in absolute numbers, the number of poor people has increased over the years. The visible decline in the incidence of poverty after 1983-84 then could be largely attributed to factors not mentioned above, or the cumulative effects of various factors including those mentioned. A clear understanding of the reasons for the failure of anti-poverty strategies even after five decades of planned efforts will enable us to suggest alternative ones to eradicate absolute rural poverty at least by the year 2020. To begin with, it would be useful to study the nature and extent of rural poverty in various regions of the country so that location-specific measures could be indicated.

2.3.3 An examination of the regional dimension of the rural poverty would indicate that nearly 48 per cent of the rural poor live in three States of Bihar, Uttar Pradesh and Madhya Pradesh, and the percentage of poverty has increased over the years. The poverty ratio declined more sharply in States like West Bengal, Tamil Nadu, Orissa, Kerala and Andhra Pradesh. In the agriculturally developed State of Haryana, the poverty ratio increased substantially and in Punjab, it declined only marginally. In the States of West Bengal, Tamil Nadu, Orissa, Kerala and Andhra Pradesh, the rural poverty ratio declined by 22.2 per cent, 21.5 per cent, 17.8 per cent, 13.2 per cent and 10.6 per cent respectively. It is true that Punjab continues to have a relatively lower incidence of rural poverty as compared to West Bengal, Tamil Nadu, Kerala, Andhra Pradesh and Orissa. But there has been virtually no change in the poverty scene in Punjab while the other states witnessed decline in the poverty ratio in recent years.

2.3.4 Detailed analysis by economic experts indicates that agricultural development may be a necessary, but not a sufficient condition for eradication of rural poverty. In the States of Punjab and Haryana, the poverty ratio was low at the dawn of Independence and remains low normally because of relatively higher levels of agricultural productivity and output growth. But, there is no significant decline in the poverty ratio in Punjab over time and there is an upward trend in rural poverty in Haryana in recent years, which indicates the limitation of the agricultural growth as such to contain rural poverty. But in West Bengal, the rapid agricultural growth in recent years, which was induced mainly by, land reforms, irrigation and credit has helped to reduce rural poverty substantially. Besides, other factors like growth of non-farm employment and PDS also contributed to poverty reduction.

2.3.5 During 1983-84 to 1993-94, West Bengal achieved the highest annual growth rate of agricultural output (about 5.4 per cent), followed by Rajasthan (5.0), Haryana (4.7), Madhya Pradesh (4.7), Tamil Nadu (4.6), Punjab (3.9) and Karnataka (3.9) respectively. In fact, the growth rates of agricultural output at relatively higher level of per-capita agricultural income in Punjab and Haryana should have contributed to poverty reduction significantly, but they did not. Conversely, the high growth rate of agricultural output at relatively lower level of per capita agricultural income in West Bengal could reduce poverty substantially because the growth process is more broad -based in which small and marginal farmers and share croppers also participate due to land reforms and other institutional changes. But the average real wage rate of farm labour in West Bengal increased only by 1.5 per cent, and the absolute daily wage rate in both Punjab and Haryana are higher than that in West Bengal. In fact, at the high wage rate and with 243 days of average annual employment, no agricultural labourer in Punjab should be below the poverty line. But as the NSS data indicates nearly 61 per cent of agricultural labour households in Punjab and 39 per cent in Haryana are poor. It certainly indicates that there are labourers who get less number of days of employment and also relatively lesser wages in certain areas of these States than the average wages and employment in the State and that they are poor. However, in most other States, the average wages are so low that even at full employment level, they will be forced to stay poor.

2.3.6 Orissa is another interesting case. During 1983-93, the rural poverty ratio declined by 21.5 per cent. This was the second highest decline in the poverty ratio in the country. But agricultural output growth was as low as 1.1 per cent and in fact, per capita agricultural income at constant prices declined. Also the state has not passed through any progressive land reforms. The poor people's access to PDS also is negligible. Then what made the poverty ratio to decline? In Orissa the growth of real agricultural wage rate (4.6 per cent per annum) both the absolute level and annual growth rate of per capita government expenditure on IRDP and Rural employment programs were one of the highest in the country. Most other States, which witnessed a modest decline in poverty, had also, modest growth of agricultural output and wages and no substantial redistributive land reforms. Further, it

could also be seen that in several States including Bihar, Haryana, Madhya Pradesh, Orissa, Punjab and Uttar Pradesh, the PDS coverage in rural areas is very low. Besides, in the States of Bihar, Karnataka, Madhya Pradesh, Orissa, Punjab and Uttar Pradesh, the non-poor households lifted comparatively more PDS than the poor households. During 1987-88 to 1993-94, several States including Andhra Pradesh, Assam, Haryana, Jammu & Kashmir, Kerala, Madhya Pradesh, Orissa, Rajasthan and Tamil Nadu witnessed a decline in the proportion of rural workers engaged in the organised manufacturing sector. It is only in West Bengal that there was a significant rise in the proportion of workers in the organised manufacturing sector. Undoubtedly, this sector has relatively higher wage rates, which tend to reduce poverty.

2.3.7 On the basis of the available data, it is possible to infer that agricultural growth cannot always be relied upon as a major strategy for poverty alleviation under all situations. What is important is that the growth process has to be more broad based involving the participation of small and marginal farmers, tenants and agricultural labourers through various institutional reforms.

2.3.8 Factors like (i) growth in real wages, (ii) growth of real employment in the organised non-farm sector, (iii) poor people's increased access to land (iv) increased access to subsidised food and (v) increased expenditure on IRDP and employment programs under some situations help reduce rural poverty. In fact, there cannot be a single planning strategy for poverty alleviation. It has to be location specific, depending on the need and objectives situation of each region.

2.4 Anti-Poverty Programs of the Government

The various programs and schemes, thus evolved impinging on rural poor can be classified as follows:

a) Household oriented programs of income generation, through assets	ExIRDP, TRYSEM, DWCRA, Land Reforms
b) Programs of income transfer through Employment and infra-structure development	NREP, RLE GP, JRY, EAS, MWS, LAY
c) Programs for special areas to counter endemic poverty caused by hostile agro- climatic condition and degeneration of the eco- system	DPAP/DDP, RPDS, Wasteland Development, Micro watershed development (Natural Resource Management)
d) Programs designed to ensure access to basic amenities	MNP, (BMS Human Development)
e) Welfare Measures to compensate the poor for their inadequate access to growth.	Social Security, PDS

A more detailed listing of these programs along with its broad objectives and components as well as the achievements in brief are given in **Appendix I.**

2.5 Proliferation of anti-poverty programs

These strategies and policies adopted two approaches, one focusing on the overall economic development (through percolation/Trickle Down/ Spread Effect) and another poverty alleviation (direct intervention). Though these approaches reinforce each other, there was no effort to integrate them. IRDP continues to be a program for the improvement of the rural poor without any overall plan or conception of total development of the villages within a block. In fact, the Sixth Plan had categorically stated: "IRDP has been conceived essentially as an anti-poverty, poverty program", and by giving it the name IRDP, the overall development was considered critical. This, however, did not happen and the integration with other PAPS was not achieved. In fact, Hanumantha Rao (1992) states that "the

failure to integrate the poverty alleviation objective with the overall development strategy resulted in the proliferation of poverty alleviation programs (PAPS) leading to inefficient use of a large chunk of resources on account of weak linkages with growth, low potential for sustained employment generation and inefficient impact on social development and protection of environment." However, the policy planners counter the argument on proliferation. Poverty has to be understood in a desegregated nature with a view to providing opportunities for different groups. The design of the PAPS, therefore, is deliberate. They further caution that any suggestion to merge the already available schemes could be used as a ploy to reduce the budgetary resource support under rural development which is far less compared to other ministries.

2.5.1 It was widely prescribed that public policies that accelerate economic growth will lead to a 'trickle down' and 'spread' effect benefiting the poor. In fact, this prescription remained the dominant ideology of development. By the early 1970s an increasing concern about poverty developed due to 'apparent failure of the trickle down strategy'. Despite some impressive achievement in aggregate terms, the process of economic growth in many developing countries appeared to bypass the poor. In some cases it even worsened their condition.

2.5.2 Two competing approaches for poverty alleviation evolved during this period. First, Redistribution With Growth Approach (RWG) aimed at increasing the productivity, incomes and output of the low income groups to improve their welfare. The strategies under RWG included – (i) Maximising the growth of GNP; (ii) Redirecting investments to poverty groups; (iii) Redistributing income or consumption to poverty groups and; (iv) transferring the existing assets to poverty groups. The second approach was most favoured because as Prof Vyas states, 'It did not disturb the social and political equilibrium and suited the convenience of all. Such an approach did not threaten the strategy of development nor the structural relationship in Society". The Second approach - the Basic Human Needs Approach (BHN) involved targeting and addressing the core basic needs of the poor i.e., food, housing and health. Unfortunately, the BHN approach gained importance very late. Let us now examine the performance of certain crucial segments of economy and strategies, which were to contribute to poverty reduction.

2.5.3 IRDP, which is considered a focal instrument of change in rural areas has, as various studies revealed, produced positive but small results. The ability of IRDP to make a long-term impact has always been limited. Though IRDP has created employment in agriculture, it has not been able to diversify the rural economy to any significant extent as the trades/ activities selected by IRDP beneficiaries are not productive ones, nor are focused on building 'permanent' assets. On the other hand, the wage employment programs, which use the surplus labour in the developmental process, are considered a sound PAP strategy. JRY is a tremendous improvement over all the past employment programs. But like the earlier programs, it too suffered from the isolation from core planning process, poor coordination with other PAPS at various levels and also meagre resources. As a result neither the short-term nor the long-term gains have been significant. Though the positive lessons learnt from the Employment Guarantee Scheme were sought to be replicated through a nation-wide Employment Assurance Scheme since 1993, the outcome indicates yawning gaps in achieving the desired results of reducing the severity of poverty. Employment generation programs are able to provide only about 10-15 days employment in a year. At best, these programs seem to be 'reliefs' measure rather than a sustainable effort, as funds available to tackle the problem are meagre.

2.3.4 The adoption of a uniform strategy, rigidity of the program and standardisation of the operation and procedure have imposed a severe limitation on the effectiveness of the PAPS. Location-specific schemes and preference to the marginally poor have higher chances of success. The acutely poor need a longer duration of assistance. Self-employment schemes particularly, TRYSEM, have a limited measure of success in backward areas, as neither the training and skills needed to operate such programs were available, nor sufficient funds available for providing motivation to the unemployed youth. Also, in some areas, the number of people trained for particular vocations were far above the employment and resource potential of the area. The program was not linked to any manpower needs study. Pravin Visaria of the Institute of Economic Growth, Delhi, in his study "Unemployment among youth in India" comments about the TRYSEM program: "TRYSEM is perhaps the largest scheme launched by the Government of India to address the problem of training the rural youth for employment. However, relative to the needs for training of rural youth, its role has been rather modest. Overall, almost 42 per cent of the trained persons reported themselves to be "incapable" of taking up independent activity as a self-employed person. However, there were marked

inter-state differences in the percentage of trainees reporting incapability for self-employment; the percentage was much higher (60 or more) in Kerala, Bihar and Uttar Pradesh, and much lower in Andhra Pradesh, Assam, Gujarat, Haryana, Madhya Pradesh, Maharashtra and Orissa. The main reported reason for the incapacity to take up self-employment was "lack of funds" (reported by two-thirds), whereas only one-fifth reported "inadequate training" as the reason. According to a rough estimate, the number of rural youth aged 15-24 and in the labour force in India had increased by about 5 to 6 million between April 1, 1992 and April 1, 1997. In effect, therefore, the TRYSEM trainees during the Eighth Plan period formed only about 25 to 30 per cent of the net additions to the youth labour force over the period. Of course, we have focused on the age group 15-24, whereas the TRYSEM is open to persons up to the age of 35. The difficulties in proper reporting of ages raise serious problems in sharper targeting; and the shortcomings in the functioning of TRYSEM need to be eliminated, partly by involving the technically better-trained persons available in the various districts or elsewhere as trainers. The Draft Ninth Plan has described the TRYSEM program as "the weak link in the overall strategy for self-employment"; and has proposed to make training "an integral component" of the Intensive Rural Development Program (Planning Commission, 1998).

2.5.5 At the same time it needs to be pointed out that a study entitled "Public Intervention for Poverty Experience of Indian State" carried out in nine States across the country suggests that, if strategies for poverty alleviation are properly planned and implemented, even without a spectacular growth or a major overhaul of institutions and structures, poverty can be brought down significantly' (Economic & Political Weekly, Editorial, October, 1995) These studies revealed as follows:

(i) Although there is a high degree of conformity in the approach and content of the poverty alleviation programs, there is a great variation across the State in the outcome.

ii) While eradication of poverty has been a recurrent theme of the Five Year Plan, the proportion of those living below the poverty line has not declined significantly. The explanation for this must be sought in the political and administrative environment in which the poverty alleviation programs have been formulated and implemented.

iii) Agricultural growth is an important factor in poverty reduction i.e., Andhra Pradesh and Haryana. The Haryana experience also suggests that the deliberate policy of income and occupational diversification is the most effective cure for poverty.

iv) Increasing the awareness level of the people, mobilising them in the regions of socio-economic backwardness where institutional barriers of all type exist social, political, cultural, etc. may probably be an important instrument to improve the management and thus the outcome of anti-poverty programs, e.g. Bihar.

v) Mere formulation of a large number of innovative schemes and programs for the poor may not provide the sufficient condition. A strong political commitment for the poor and to a sustainable and the healthy development of the State economy is also important, eg: Gujarat.

vi) Anti-poverty measures can be best being temporary. These measures should create conditions so that the program could phased out. This would mean that growth processes need to be invigorated, eg: Karnataka.

vii) It is possible to alleviate poverty even when the rate of economic growth is slow, if the programs are well designed and implemented along with components of effective social protection schemes (PDS and others) for the most vulnerable groups eg., Kerala.

viii) Decentralised planning and adequate resource support can have a positive impact on poverty as has been shown by the Employment Guarantee Scheme in Maharashtra.

ix) In vastly arid zones, emphasis on infrastructure development especially watershed development and afforestation along with asset redistribution and employment programs can bring down poverty, eg: Rajasthan.

x) Land reforms, decentralised decision-making through genuine and effective local institutions will ensure proper implementation of the poverty alleviation program and thus a cut down poverty, eg: West Bengal.

2.5.6 Gaurav Datta and Ravallion (1996) argue that reducing rural poverty requires both economic growth (farm and non-farm) and human resource development. They also point out that agricultural growth, higher per capita non-agricultural output, high real State development expenditure, low inflation rate, high female literacy, low infant mortality and irrigation intensity make a positive contribution towards poverty reduction in rural areas. Public spending in the social sector and infrastructure development is very important in poverty reduction.

2.6 Land Reforms

Land Reforms, an asset redistributive measure, figured prominently since Independence for about a decade but seemed to have receded to the background with the food crises in the 60s and the resultant importance given to food production. In the mid 80s, however, the interest in land reform got revived apparently because of increasing uneasiness among the planners and social scientist that attempts to integrate growth with poverty alleviation have remained largely ineffective. The experiences and impact of land reforms varied from region to region. Rao (1990), classified the regions as following:

(a) Semi-feudal areas (Eg: Bihar), where barriers of reform inherent in the prevailing structure of society are too strong to be overcome by the scale and intensity of effort for land reform made so far. The Bihar experience suggests that land reforms, to succeed, need to be part of a broader long-term strategy based on a judicious combination of reform measures with growth policies and programs providing immediate relief and support to the poor.

(b) Areas with less formidable barriers (Eg: Karnataka) and relatively stronger thrust to land reforms. The Karnataka experience shows that agricultural productivity / production, political mobilisation of the poor and Panchayati Raj are important determinants of success of land reforms.

(c) Areas with a strong political mobilisation and effective land reforms but with a weak growth performance to complement the reforms (Eg: Kerala, West Bengal). In this experience land reforms were successfully but did little to improve the economic status and viability of the rural poor, particularly the landless.

(d) Green Revolution areas (Eg: Punjab), where capitalist farming is firmly entrenched and where reforms are needed mainly to improve wages, work environment, and economic conditions of labourers. Punjab, provides a convincing illustration of a situation here capitalist farmers though achieved agricultural prosperity have done so clearly at the cost of the rural poor and weak by hindering reforms.

2.6.1 In sum, in none of four situations, the reforms benefited the poor. On the other hand, in Bihar, the benefits of reforms have been diverted to the rich farmers. The rural poor may get direct and proximate benefits of land reforms but not an enduring improvement in their economic status despite political and social mobilisation.

2.6.2 The achievements under land reforms, therefore, are marked by a considerable variation between -- (a) estimated surplus and acquired surplus; and, (b) acquired surplus and distributed surplus. The lands distributed were found to be marginal, infertile and non-arable. There were dissent and court cases on acquisition procedures and the compensation paid. The tenancy laws, by and large, were ineffective and scuttled by the powerful gulags. Despite these shortcomings, nearly one-fifth of these holdings was a result of land reform. These holdings, however, small and marginal, still enabled a modicum of security and social status. Studies by ICRISAT in 1970 and the National

Academy of Administration have confirmed the importance of even modest land reforms in the livelihood strategies of the poor (World Bank, 1990).

2.6.3 With the advent of economic reforms and market economy, there arose differing views on continuing the strategy. It has been contended that the most effective measure to reduce poverty is land reforms without which other schemes cannot have impact. While one segment recommends a floor ceiling on the land holding size maintaining the present upper ceiling, the other advocates steps contrary to land reforms.

2.6.4 Poverty has two dimensions: Income poverty and Human poverty. Unless both are addressed simultaneously, no significant dent could be made on poverty scene. Social development, therefore acquires a special significance and merits urgent attention. Social development and human development have many facets including, social welfare, health, education, nutrition and a democratic institution to promote peoples' participation. Our experiences in this area are slow but not dismal.

2.7 Safety Nets / Food Security

Over the decades of planning, economic growth with some focus on distribution objective did not have the designed impact on the poverty reduction significantly. Focused intervention on these below the poverty line was considered necessary. Many programs were formulated and implemented. Over the years these programs underwent changes to make it more effective. These programs can be classified under three major heads, namely:-

1. Schemes generating employment opportunities to those below the poverty line;
2. Added asset creation in the poorer households; and
3. Skills development and training to improve the earning capacity of the poor.

2.7.1 There are many *safety net* programs to cover the poor households. They are:-

1. Public Distribution System;
2. Nutrition Programs - Mid-day meals, ICDS;
3. Social Welfare programs;
4. Special Programs for women & children in the poor house holds; and
5. Health care.

2.7.2 State interventions in foodgrains markets have been in existence in India for a long time. A Public Distribution System (PDS) that regulated the movement of foodgrains from the surplus production States to the deficit ones formed one of the core elements of the food management system. Over the years, there have been a number of attempts to modify the coverage and scope of PDS. While price stability for consumers in urban and food deficit areas were the focus in the early years, some form of equitable distribution was also envisaged in the subsequent Plans. The PDS System covered rice, wheat, sugar and kerosene. From the Seventh Plan, PDS was taken up as a permanent feature of the strategy to control prices, reduce price fluctuation and achieve an equitable distribution. The Food Corporation of India established in 1965 actively started procuring foodgrains to meet the PDS requirements. Over the years, the growth rate of procurement exceeded that of production: the share of procurement rose from about five per cent in 1965 to 19.7 per cent in 2000 (Economic Survey, 2000-2001).

2.7.3 From about 18,000 in 1957, the number of FPS had risen to over 4.61 lakhs. Of these 3.3 lakh were in rural areas. From about eight million tonnes in 1951, the foodgrains distribution in 2000 stood at 12.1 million tonnes with a peak of 20.8 million tonnes in 1991. Since 1978, our buffer stock has remained comfortable and much higher than the PDS requirement. Revamped Public Distribution System (RPDS) introduced in 1992 to give a special attention to backward remote areas, where predominately tribal populations live, covered 1750 blocks through 1.02 lakh FPS. The annual food

subsidy rose from Rs. 2450 crores in 1990-91 to Rs. 9200 crores in 199-2000 and to Rs. 13,000 crores in 2000-01.

2.7.4 PDS attracted much criticism. Singularly sharp was the criticism against urban regional and class bias arising out of the leaks affecting the food security for the poor. It was also found that the rich and the middle classes benefited more from PDS. The Planning Commission's Tenth Plan approach paper states that there is a 36 per cent diversion of wheat, 31 per cent diversion of rice and 23 per cent diversion of sugar from the system at the National level.

2.7.5 Some of the problems besides illegal diversion are:

1. The poor do not have cash to buy all the 20 kg at a time and they are not also permitted to buy in installments.
2. Low quality of foodgrains – a World Bank Report (June 2000) indicate that half of the stock is at least 2 years old , 30% of the stock below 2 to 4 years old and some grains are even older.
3. Weak monitoring, lack of transparency and inadequate accountability of officials implementing the scheme.
4. Price charged at the retail level exceeds the official price by 10 to 14%.
5. Poor also require quality grain lest there should be health problems.

2.7.6 Many economic analysts have felt that PDS is not a cost effective way of income transfer to the poor as compared to other nutrition programs or wage employment programs. The per capita income transfer to poor from all subsidies (food and non-food) in rural areas not tangible enough to make the program an 'attractive one' for the poor. Available data suggests that many of the poor States choose to draw a much lower share of PDS than what they are entitled to eg: Bihar, Uttar Pradesh, Madhya Pradesh (World Bank 1997). It has now been realised that from the concept of 'universal' coverage 'targeted' coverage is required to eliminate the class bias and also to contain the ever-increasing food subsidy.

2.7.7 The targeted PDS system follow a two tier subsidized pricing structure. Families below the poverty line receive rice and wheat at a much lower price (highly subsidized) whereas the households above the poverty line is supplied at a price which is much higher and closer to economic cost. The identification of this ultra poor is left to the States based on poverty estimates. In order to make the targeted public distribution system more focused, the Antyodaya Anna Yojana was launched in December 2000. This scheme is to identify 10 million poor families and providing them with 25 kg of food grains per family per month at a low price of Rs. 2.00 per kg for wheat and Rs. 3.00 per kg for rice. This scheme requires 30 lakh tons of foodgrains involving a subsidy of Rs.2315 crores. The identification of this very poor household for this scheme is best left to the Gram Sabhas and Panchayats instead of the bureaucratic machinery. This step was politically unacceptable to some States, while others argue that the targeted PDS may prove very expensive without a matching social achievement. The TPDS has come into operation in 1997 and the States have been given the freedom to modify the program in the manner they chose fit to suit the local requirements.

2.7.8 Social Security recognises the responsibility of society to relieve the economic distress faced by the people on account of contingencies beyond their control. Even the writings of Manu, Sankaracharya, Kautilya and Yojnavalkya are replete with references to payment of part of wages to a workman to compensate for loss of earning due to old age, disabilities, etc. Thus, the system of social and economic security is very ancient in India. Unfortunately, in modern India the State has been more concerned with the organised industrial welfare. Till recently the rural poor, including rural workers, suffered from 'benign neglect'.

2.7.9 Though social security systems have been in operation in almost all the States, early beginnings were made in Kerala and Andhra Pradesh (1960), Tamil Nadu (1962), Rajasthan and West Bengal(1964). However, there was a considerable difference in the quantum of assistance, eligibility, etc. A Study Group of the Report of National Commission on Rural Labour (1991) has recommended Old Age Pension, Maternity Benefits, Disability Benefit and Minimum Healthcare and Sickness Benefit. Though several state-funded and Centrally-sponsored schemes for specific groups

were formulated and implemented a substantial chunk of unorganised poor, particularly the rural poor, have been left out of the social security scheme. Realising this and also as a part of the 'Social Safety Net' in the wake of economic reforms, three major social security schemes were launched under the umbrella of the National Social Assistance Program (NSAP) in 1995. These are the National Old Age Pension Schemes (NFBS), and the National Maternity Benefit Scheme (NMBS) to be implemented by the Ministry of Rural Areas and Employment. About 42.4 lakh person benefited with a financial expenditure of Rs. 309 crores, against an allocation of Rs. 669 crores by March, 1997. There has been criticism that the provision under the Centrally-sponsored schemes is lower than the existing State schemes is also insensitive. Nevertheless, the three schemes are well conceived and the Centre, for the first time, assumed a role in helping the States to provide a package of essential social protection to the poor (Guhan, 1995). The States on their own have formulated a number of Schemes. Many of them are innovative and arise of location-specific concerns. A flavour of such programs sponsored by Tamil Nadu is given in **Appendix II**. In all more than about 100 programs were in operation. These programs are being implemented as end in themselves without synergy and convergence. Many, including Panchayat presidents are not aware of the programs. Every poor household is entitled for some set of eligible programs. Hardly they get one or two programs and that too not consistent. These programs result in some income transfer to the poor households. Government spends Rs. 6-10 for transferring Rs. One to the house holds through these welfare measures.

2.8 Decentralisation

Decentralisation as a concept was widely accepted and put into practice with the introduction of the Community Development Projects in 1952. Under this, a community block comprising about 100 villages covering one lakh population became the unit of planning for development. The Balwantraj Mehta Committee (1957) recommended the 'decentralised Administration' to be under the control of the elected bodies with the block as the basic unit of decentralisation. Thus Panchayat Raj Institutions (PR1s) got established throughout the country. The story of Panchayati Raj has been the story of ups and downs. It seems to have passed through five important phases; The phase of ascendancy (1957-64), stagnation (1965-69), of decline (1969-77), the revival 1 980-93) and the phase of consolidation (1 993 onwards).

2.8.1 Activities assigned and taken up by PRIs since the beginning were limited. Their resource base was weak, elections irregular or the PRIs were superseded as the political elite at higher levels (MLAS, MPs, etc.) were lukewarm to the idea of decentralisation. On the positive side, politically the PRIs initiated a process of democratic seed drilling in the Indian soil; socio-culturally facilitated the emergence of new local leadership; and from the development angle, it helped imbibe a development psyche among the rural people. The Ashok Mehta Committee (1978) suggested several measures to strengthen the PRIS. The failure of development strategies through PAPS and the declining levels of the people's participation in the development process has rekindled the interest in the PRIS, which culminated in the 73rd Amendment to the Indian Constitution giving a statutory status to the PRIS. Even though the PRIS have been constituted across the nation, many have not implemented the programs in letter and spirit. Devolution of financial and administrative powers to these grassroot institutions of self-governance has largely remained inadequate. Though reservation for women and socially weaker sections has been one of the greatest achievements of the modern PRIS, the social structure and influences still render these groups ineffective.

2.8.2 Human poverty need to be addressed through human development, which encompasses, education, health, drinking water, housing, rural infrastructure, etc. In the early 1960s along with general provision relating to basic needs, a well-defined approach called the **'Minimum Needs Approach Program'** (MNP) was evolved. The Planning Commission, for the first time, spelt out this approach and formulated a Perspective Plan 1961-75. In the Fifth Plan (1973-75), the 'Minimum Levels of Living' approach was introduced with two components: (a) a capital basis for specific target group i.e., the poorest 30 per cent of the population; and (b) notifying seven public services as the Basic Minimum Needs (BNP) and specific target were fixed. Expect for the housing component, 90 per cent of the seven BNPs provision were addressing the needs of rural areas. Over the years, rural energy, sanitation, PDS were added to the list of MNP. Considerable improvement in the socio-economic infrastructure in the rural areas has been achieved and it has gained momentum since 1980

with the introduction of several employment generation and other human development programs. However, these approaches and strategies have had only marginal impact on the poorest sections of society. This has led to decentralised and participatory approaches to improve the efficiency and reach of MNPS. In 1979, the seven Basic Minimum services were identified whereby the target was to cover the entire country by 2000 AD. While the major responsibility in the regard rests with the Ministry of Rural Areas and Employment, the Ministry of Health, Welfare, HRD, etc., also have a role in fulfilling the MNP commitments. One major flaw still persisting is non-integration and convergence of the schemes of various ministries at the grassroots level. Awareness building exercises are also found to be inadequate.

2.9 Environmental Access to Food

Though physical and economic access to all nutrients is a necessary condition, it is not sufficient for ensuring orderly physical and mental growth to realise genetic potential. This requires enabling environment for securing effective biological utilisation of the nutrients consumed. At high levels of morbidity, the body's physiological or internal entitlement to food and nutrients is diminished, even in the presence of adequate external entitlement. Water borne diseases, infection and pollution affect the processing power of the body and the poor under nourished population suffer most. Nutrient loss from the body in such an environment is very considerable. Protected water supply, sanitation and proper waste disposal alone can ensure optimum biological utilization of nutrients consumed by the population.

2.10 Drinking Water

The responsibility of providing drinking water rests with the States. Though funds were allocated in the budgets, but in the mid-1960, it was found that these water schemes were provided only to those villages which had an easy access. The Centre entered the scene in the Fourth Plan with assistance to States to identify hard core problem areas. In 1972-93 in yet another effort to accelerate the pace of coverage the Central Government introduced the Accelerated Rural Water Supply (ARWS) with 100 per cent grant. Water supply hitherto looked after by the Urban Development Ministry got transferred to the Rural Development Ministry. Despite the total coverage reported at the beginning of the Eighth Plan, subsequent investigation showed that the many people of the previously covered villages has become 'no source' villages. This number was quite huge resulting in new efforts through the Rajiv Gandhi National Drinking Water Mission, which also addressed problem like quantity, contamination and community participation. The coverage of rural and urban population with drinking water facility increased rapidly between 1985 to 1999. Sanitation facility in rural areas covers only 9.00% of the rural population *vide table* below.

TABLE 3
Population covered with drinking water and sanitation facility

Unit/Area	1985	1990	1997	1999
Drinking Water				
Rural	56.3	73.9	86.74	98.0
Urban	72.9	83.3	85.0	90.2
Sanitation Facility				
Rural	0.7	2.4	6.37	9.0
Urban	28.4	45.9	50.00	49.3

Source: Economic Survey 2000-2001

2.10.1 Despite a massive allocation and effort, the situation continues to be critical in many villages especially during the summer owing to indiscriminate water mining.

2.10.2 As stated earlier, health, housing, sanitation, literacy and education are all linked with poverty and social security measures to tackle it. However, since these are discussed in detail in other related papers, these are not covered except mentioning them as important components, so that their importance does not go unnoticed.

2.10.3 There have been conflicting and varying opinions on the impact of the Structural Adjustment and Economic Reforms started in 1991. Some argue that rural poverty has increased which is also reflected by the increasing Foster Greater - Thorbeacke measures of poverty (FGT). The poor people have very little purchasing power and hence they are peripheral to the structured market economy with which so much development thinking and activity is concerned. The 'Miracle of the market' paradigm, does not work in their favour. It has been generally realised that economic adjustment could adversely alter the living standards of the poor in the medium term at least until the beneficial provision of the new policies materialise. The stabilisation phase is likely to be accompanied by a decline in economic growth and employment. These might worsen the position of some of the vulnerable sections of the labour force. Of particular concern is that fiscal contraction is likely to result in reduction to outlays on subsides and on budgetary outlays which are intended to benefit the poor, The financial reforms are feared because they lead to contraction of credit to the priority sector and PAPS. Significantly though, an extraordinary range of activities has come up in rural areas, real wage in agriculture is also increasing probably due to more diversified activities seen all over the country, The phenomenon has not been well captured leading to certain apprehensions on the effect of the New Economy Policy on employment and growth. The fact that the hope for future employment generation will primarily rest in the rural sector is discussed later in the Chapter on "Employment", Indian agriculture has some inherent strength; comparative advantage of some crops is very high for India. Horticulture and aquaculture offer great potential. Globalisation has also opened up possibilities of agro-processing. But this commercialisation process has lured several small and large farmers in the dispossession of land and pushed them in to the labour market.

2.11 Current Status of Poverty Alleviation Programs

On the positive note, poverty is declining slowly but still remains widespread. Despite methodological variations, the 55th NSSO Round has brought out the fact that there has been an appreciable reduction in poverty. Even when incomes do not appear to have improved, long term wellbeing has been noticed (World Bank, 1997). The female literacy has increased to 54.3 per cent in 2001 as compared to just 9 per cent in 1950-51. Life expectancy has risen to over 63 years and infant mortality recorded a significant reduction. Rural investments including rural roads, irrigation, electrification, health and education have made inroads against rural poverty. For instance, the area under irrigation has gone up from 22 million hectares to 78 million hectares in 1996. The Central Plan Budgetary expenditure on Anti-Poverty Programs (food subsidy employment programs, IRDP Social Welfare Nutrition Welfare of the Scheduled Castes and the Scheduled Tribes and Basic Needs) has been steadily rising.

2.12 Areas of Concern

Despite the positive statements of the previous paragraph, our efforts at reducing poverty are far less effective than our neighbours. The absolute number of people below the poverty line has been increasing steadily. Though the infant mortality rate has declined considerably, it is still one of the highest in the world. The life expectancy at birth has doubled but still remains well below the countries who were worse off than India in 1950 (Eg. China, Sri Lanka). India accounts for a quarter of the maternal deaths world-wide. Female literacy is markedly lower than men. About 37 per cent of population still lack access to safe drinking water. Among 192 countries in the world, India ranks 128 in terms of the Human Development Index (HDI). Though in the recent years the participation of Centre in the social sector has been increasing, the share of expenditure by States is declining indicating a non-serious attitude or excessive dependence on Centre by States.

2.13 Lessons Learnt

The Department for International Development (formerly ODA) in its white paper "Eliminating World Poverty; A Challenge for the 21s' Century (1997)", has very succinctly put the challenges that face the world which may as well be the mission of India.

1. To see a society where everyone can live in peace and security; have a say in how their community is run; and have access to those things we so often take for granted like clear water, fresh air and the chance to earn a living and bringing up healthy, educated children.

2. To make the government accountable to the people; protect human rights and create human opportunities for economic growth.

3. To ensure that development is sustainable. This means we must meet our needs today and those of the future generation without sacrificing the resources we need now (without damaging the environment) and in the future.

4. To show progress in gender equality and the empowerment of women by eliminating gender disparity in education and other areas.

2.13.1 Economic growth reduces poverty. But growth alone does not provide sufficient conditions for reducing poverty. It is not enough to focus the intervention on the symptoms of poverty i.e. low income. The objective is to counter the marginalisation processes pushing a large number of the brink of subsistence. Measures to promote investment both public and private are very crucial. Employment programs, if well designed with sufficient thrust incorporating a guarantee (unlike the lean season focus as of now) of round-the year employment to the poor. Emphasis on improving the rural resources and infrastructure can have a strong, positive impact on poverty reduction. Wage employment programs are self-targeting in nature and therefore, are more effective in reducing poverty.

2.13.2 For empowering the rural poor in their quest for poverty reduction, a synergy need to e developed between the institutions and individuals and ensuring that they address issues of direct relevance to them directly.

- A blend of devolution and collective action for natural resources management
- Delivery of financial services to the poor to enable them to access and secure financial assets
- Developing linkages with the NGOs and the private sector as partners for service delivery

2.13.3 **From the lessons that we have learnt in implementing programs to overcome rural poverty, the following areas may be identified as those needing priority attention:**

- Landlessness is closely associated with rural poverty. Land reform measures, therefore, are still valid in ensuring income gains to poor.

- Access to education, health and economic opportunity go hand in hand in reducing poverty, but the investment in these sectors is far lower to meet the magnitude of the problem. Investments in this sector should increase.

- Anti-poverty programs, -Including PDS have not been cost-effective in reducing poverty. There is an urgent need to reform the anti-poverty programs. Merging the plethora of schemes/programs into a well-defined and well targeted programs is one option. Wherever the local participation is ensured, the effectiveness of PAPs is relatively better indicating a large role for the PRIs and NGOs in planning, executing and monitoring the schemes with a view to reducing leakages and strengthening the delivery mechanisms.

- Welfare programs play two different but equally important roles in eradicating poverty: First they try to provide at subsidised cost or at no-cost a wide range of amenities and services which, in a way, compensate for the inadequate access to the benefits of growth and redistribution policies. Secondly, they help the poor to invest in themselves - health, nutrition, education, etc.

- In terms of the spatial spread and visibility, these programs have grown considerably over the years and it is necessary to continually lay emphasis on these compensatory measures to the poor. Economic reforms undoubtedly have an adverse impact on the poor in short and medium run (long run effect still untested) and therefore, social safety net has to be widened and strengthened.

- Management of inflation will be a critical factor in poverty alleviation.

- The agricultural sector cannot bear the burden of ever-growing population. Therefore, diversification of the rural economy through entrepreneurship development and strengthening of credit and marketing institutions would be essential.

- A properly designed watershed development program through effective participation of the people including the landless poor, can help alleviate poverty in rainfed areas.

2.13.4 As Fawzi H. Al-Sultan, President of IFAD, in the Conference on Hunger and Poverty, 1995 stated

> "What we need now is to move from a system in which the poor participate in officially-led development programs towards one in which governments and external donors support people-initiated development. – the entitlement of the poor, allowing them to have greater control over their lives and futures"

2.13.5 Science has opened up vast opportunities for achieving a sustainable food security. Scientific strategies and priorities must be rooted in the principles of ecology and employment generation if they are to serve the cause of public good. We need more science, and technology, both in the public and private sectors, related to the agriculture for proving Neo-Malthusian predictions of widespread food and drinking water insecurity, wrong. Only then we can convert the 2Ist century into a Millennium of Hope. Eventually all future development approaches which keep poverty reduction as their core objective must recognise the significance of investing in human capital. Only such an effort could create the foundation for a greater participation of the poor in the over-all developmental process.

2.13.6 **International Experiences**: One of the most significant poverty reduction success stories by planned interventions comes from China. In this program, the Government of China had taken several critical measures to attack poverty like setting up goals, strengthening state institutions, providing additional funds and effectively utilising them, and mobilising the resources. The 8 -7 Poverty Reduction Programme (8 for 80 million people and 7 for seven years of the Plan) is a targeted intervention that strengthened state institutions, organised relevant training programs with a practical and income enhancing orientation and advances in new technologies, augmenting the provision of credit and farm inputs and facioitating labour mobility from endemically poor areas. The emphasis was on expanding the income generating activities among disadvantaged groups by strengthening crop, forestry and livestock production, developing transport and communication services, and in general, raising scientific knowledge, education, literacy, health and physical fitness.

2.14 Towards Hunger Free India

The Prime Minister released the Food Security Atlas of Rural India on April 24, 2001. While identifying areas of high food insecurity in the country, provides information on the availability, access and absorption of food and is thus a holistic approach to the problems of hunger and malnutrition. ("Towards Hunger Free India" – A Joint publication of the Planning Commission, MS Swaminathan Research Foundation and UN World Food Program). Success in eliminating endemic and transient hunger will ultimately depend upon our success in ending both unsustainable lifestyles and unacceptable poverty. The Prime Minister emphasized the fact that

> "the responsibility of mitigating the hunger of the poorest of our brethren cannot be that of the Government alone. It requires the cooperative efforts of the Central and State Governments, local self-government bodies, non-governmental organizations, international organizations and above all, our citizens."

A Ten-point Agenda for Action was adopted at the Closing Session of the Consultation, broad features of which are given in the succeeding sub-paragraphs.

(i) Identification of the vulnerable individuals:

The first step is to identify families and individuals suffering from endemic hunger and malnutrition. This is best done by the *Gram Sabha*. Usually, such families/individuals tend to have limited or no access to productive assets like land, cattle, fishponds and education. They often live by daily unskilled wage work. The methodology of the Food Insecurity Atlas of Rural India is a tool that can help in identifying the hotspots of hunger.

(ii) Information Empowerment:

Families/individuals identified as vulnerable to endemic hunger can be given *Household Entitlement Cards* which give information on all Government projects (both Central and State Government) relating to poverty and hunger elimination, to which they are entitled. The various government projects should be dis-aggregated by gender, age, class and caste and precise information provided on methods of accessing the benefits to which people are entitled. Land ownership records should be periodically updated and made available to all concerned. Such steps will enable all eligible persons to derive benefit from their entitlements, for which provisions exist in the budget of the Central and State Governments. Also the Panchayats / local bodies should be empowered legally, administratively and financially to assume the responsibilities assigned to them under the Eleventh Schedule to the Constitution.

(iii) Eliminating Protein Calorie Malnutrition and Energy Deprivation:

Existing projects like the targeted Public Distribution System and nutrition programs (eg. Integrated Child Development Services, Mid Day Meals and Antyodaya Anna Yojana) will have to be mobilised to ensure that they reach those who have so far been bypassed by such schemes. The PDS should include the distribution of nutritious cereals like *jowar*, *bajra*, *ragi* and millets because they have a low cost and high calorie / protein / micronutrient advantage. Knowledge on childcare and healthcare practices as well as support services should be targeted to pregnant and nursing mothers, so as to ensure effective protein-calorie nutrition of young children. ICDS should encourage increased involvement of women in the management of feeding programs. Greater attention is needed to appropriate supplementary nutrition for children in the 0-2 age group, the most critical period in terms of brain and body growth, and also the most neglected in ICDS, and the group with the highest established levels of malnutrition. This will ensure better health and nutrition of both the infants and mothers. Reaching the unreached and giving operational content to Gandhiji's concept of Antyodaya are major challenges.

Food assistance agencies should accord priority to cost-efficiency and program-effectiveness. The large surplus food reserves available with Government provide unique and uncommon opportunities for establishing a national grid of Community Grain Banks. Such Banks administrated by local self-help groups could become the vehicle for administering food for work, **Antyodaya Anna Yojana**, targeted public distribution system and all such schemes designed to assist the vulnerable sections of the population.

(iv) Eliminating Hidden Hunger caused by Micronutrient Deficiencies:

A multi-pronged strategy consisting of direct interventions like the fortification of food, the administration of oral doses of vitamin A, iron and iodine fortified salt; as well as the promotion of the cultivation of vegetables and trees like *amla* in the small areas surrounding huts/homes (home garden), can be introduced in every village. 'India-mix' which is fortified with essential vitamins and distributed through ICDS centres in selected states should be extended to all States and Union Territories. The highest priority should go to the elimination of hidden hunger as soon as possible since this is an easily achievable task. The programs can be designed on a campaign mode as in the case of vaccination for important diseases.

(v) Safe Drinking Water and Environmental Hygiene:

Environmental hygiene can be improved through co-operation among local communities. Every village and town should have a plan for the treatment and recycling of solid and liquid wastes. Waste recycling could also become a remunerative enterprise and self-help groups can be trained to take up such environment enhancing enterprises. Clean drinking water is necessary to ensure the efficient biological absorption and digestion of food in the body. In addition, the consumption of boiled water should be encouraged and facilitated. This one step could help in reducing infant and child mortality rates significantly.

(vi) Enhancing Purchasing Power through Sustainable Livelihoods:

There is need for synergy among the farm and non-farm employment programs in different agro-climatic zones. Efforts should include the corporate and business sectors in contract farming and buy back arrangements of the farm products. This will increase employment opportunities in the rural areas. Productivity enhancement and market development need priority attention. Livestock and agro-forestry are important to livelihood security in semi-arid and arid areas. Appropriate infrastructure for perishable commodities including livestock and poultry products as well as fruits, vegetables and flowers should be developed as soon as possible. The Rural Infrastructure Development Fund needs to be harnessed for this purpose. Every individual should be able to earn his/her daily bread through economically and ecologically viable means of self-employment. To this end, the organization of an innovative *National Program for Sustainable Livelihood Security* with provisions for both skilled and unskilled work and for value-added on-farm and non-farm employment should be considered for inclusion in the Tenth Five Year Plan. Assistance under such a program can take the form of food, cash and infrastructure.

(vii) Special Attention to Women and Children:

While all the above programs should accord equal attention to men, women and children, special steps are essential to attend to the needs of pregnant and nursing mothers and pre-school children. There are several national and state schemes intended to help adolescent girls, pregnant and nursing women. They can be listed in the Household Entitlement Cards, to ensure that the coverage of such projects includes the excluded. Education, social mobilisation and regulation are essential for overall empowerment of women including prevention of female foeticide and infanticide. The highest priority in Panchayat level monitoring should go to both the incidence of Low Birth Weight (LBW) children and the male-female sex ratio. The serious consequences of LBW in relation to brain development and subsequent health should become widely known. Sex ratio is an important indicator of the status of women in the society. Women's roles as nutritional caretakers as well as their work outside the house have to be equally acknowledged. Their educational level, nutritional status and control over food resources and assets are all determinants of household food security. Thus strengthening opportunities and options for women and making them key players is the first step to alleviate hunger.

(viii) Strengthening Food Based Safety Nets:

There is an immediate need to strengthen food based safety nets in a manner that food assistance plays an important role in ensuring minimum nutritional intake for the most undernourished people. ICDS and the Mid Day meal program are very relevant examples. The focus of food assistance should shift from merely appeasing hunger in the short term towards enabling development of human faculties. Programs such as FFW (Food for Work) should use food consumption to encourage investment and leave behind a lasting asset, which will continue to help the community, household or individual into the future. With respect to natural resource management and disaster mitigation, FFW can be used to promote sustainable livelihoods for the food insecure. This requires action by concerned Ministries, Government and Non-Government Organizations, in a variety of sectors, integrated under a coherent policy framework for food assistance. Action with respect to geographic and gender targeting as well as to age and social status together with refocusing on specific nutritional gaps, will lead to greater and more speedy impact. Drawing from the best experience

available there is an urgent need to develop more effective mechanisms for the delivery of food assistance programs.

(ix) Linking Disaster Mitigation with Development:

Both at the national and global level there is an immediate need to link disaster mitigation with development. Without disaster preparedness, development itself is at risk. Increased attention is needed to find ways of mitigating the effects of natural disasters so that a single calamity does not push some people over the edge. An example of a mitigation activity is local level grain and water banks, which provide assistance at both the community and household level. Food Assistance is a powerful tool in tackling hunger at times of natural disasters: the challenge is to ensure that distributions are in accord with the demands of development, while at the same time safe-guarding the most vulnerable sections of society.

Where appropriate, additional food assistance should be targeted to disaster-prone areas that are home to many food insecure people. It should strengthen the ability of these households to cope better with short term shocks. Food assistance should combine with other investments under the umbrella of a broad food security strategy.

(x) Greater Market Access to Farm products:

Industrialized countries must provide greater market access to the farm products of developing countries. If trade and not aid is to become the pathway for poverty reduction, trade should become not only free but also fair. At the same time, greater attention and investment will be needed to strengthen our efforts in the areas of ecotechnology, post-harvest technology, sanitary and phyto-sanitary measures and adherence to FAO **Codex Alimentarius** standards. Emphasis on food quantity and safety is vital not only for attracting and retaining global markets, but even more importantly to protect the health of the poor. In addition, restrictions on farmers selling their products anywhere in the country should be removed. If foreign farmers could enjoy the privilege of removal of quantitative restrictions on exports to India, Indian farmers should enjoy the same privilege not only abroad but also within the country.

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APPENDIX-1
Chronology of Events in Rural Development
(See para 2.4)

Year & Programmes	Major Objectives & Components of the Program	Achievements & experiences in brief
1.Early Years		
(a) Community Development Programme (CDP): and National Extension Service 1952.	Rejuvenate economic. & social life in rural areas through infrastructure building at local level and investment in human resource development through the provision of education and health. The programme was implemented in well defined geographical area i.e., Community Development (CD) Block.	During the pilot phase, remarkable results were obtained in a number of CD blocks. When the programme was expended to cover the entire country the weakness of the socio-economic system came to the surface. The programme was not supported by appropriate technology and institutional reforms. Its impact on poverty alleviation was not conspicuous in any part country.
(b) Land Reforms 1956-66	Redistribution of land through land ceiling , tenancy reforms abolition of Zamindari allocation of surplus land to landless poor or marginal farmers.	The initial pace of reforms was slow as this as this was a state subject. Distribution of surplus land was far below expectation. Distributed lands were marginal and unproductive. Position of small tenants did not change much. Land reforms was as good as a forgotten strategy since 1970s.
II. Poverty Alleviation Programmes	Deficit in foodgrains in the late 50s led to the Grow more food campaign. Increasing agricultural production and productivity through introduction of High yielding varieties and increase in irrigation.	Green Revolution was a major achievement. But successes were confined to irrigated areas and better-off farmers. Regional imbalances and disparity was glaring.
A) Area Development 1960-71		
(1) Intensive Agriculture Development Programme (IADP)		
(2) Intensive Agriculture Area Development Programme (IAADP)		
(3) High Yielding Varieties Programme(HYV)		
(4) Command Area Development Programme (CADA)1974	Faster & Optimum utilisation of irrigation potential created Farm Development with emphasis on Weaker section.	Initiated in 1974 the programme expanded to cover 47 irrigation projects administered by 36 Command in Area Development Authorities in 12 States by 1984 Cover 102 district. All irrigation projects in India have CADA.

Year & Programmes	Major Objectives & Components of the Program	Achievements & experiences in brief
(5) Hill Area Development Schemes (HADS), 1972	Socio-economic development of Hill Areas in harmony with ecological development. Promoting basic life support systems with sustainable use of resources.	Hill area were classified as special areas (all North Eastern State, J&K and Himachal Pradesh and general areas (Tamil Nadu, West Bengal, Maharashtra, Kerala, Goa, Karnataka, Uttar Pradesh).
(6) Drought - Prone Area Programme (DPAP) 1973-74	Creation of durable assets that would contribute towards reducing severity of drought, wage employment etc.	The programme is being implemented in 947 blocks of 155 districts in 13 states covering 746 lakh hectares as on March 97. Since inception about Rs. 1992 crores have been spent under DPAP.
(7) Desert Development Prog-amme(DDP) 1978	Arresting environmental degradation and improving environment and productivity in Hot and Cold (J& K, HP) deserts.	By March 1997, DDP was being implemented in 227 blocks of 36 districts in seven states. DDP has covered 457 lakh hectares since inception till March 97 about Rs. 620 crores have been spent under DDP.
(8) National Watershed Deve-lopment Project for Rainfed Areas (NWDPRA) 1990.	To generate successful models in all the community Development blocks where less than 30% arable area in under irrigation to bring the benefits of Green Revolution to dry regions.	A cent per cent Centrally sponsored programme under the Ministry of Agriculture Required level of Public participation was lacking. 2554 model projects in as many blocks across 25 states Uts covering an area of 45.84 lakh hectares at a cost of 1.24 crores have been achieved by 1996.
(9) National Wastelands Deve-lopment Board(NWDB) and Integrated Wastelands encompassing Wastelands.	Development of non-forest wastelands. Development of micro-Watershed encompassing Wastelands.	Established at the initiatives of the late Prime Minster, Rajiv Gandhi. Later merged in the Ministry of Rural Areas and Employment. By the end of March 1997, an estimated Rs. 216 Crores have been spent covering 2.84 lakh hectares.
B. Target Group Development 1970-71.	Direct attack on poverty, improving productivity and assess to productive resources and services to poorer sections of community in selected backwards areas. These schemes were fully funded by the Central Government.	Initially 46 SFDAs and 41 MPALDAs were started. In 1979 both the agencies were merged into SFDA and were in operation in 198 districts through 168 SFDAs. Between 1971 and 1977, around 6.5 million rural households with a budgetary outlay of
1. Small Farmers Development Agencies (SFDA)		
2. Marginal Farmers and Agricultural Laboured Development Agencies (MFALDA).		

Year & Programmes	Major Objectives & Components of the Program	Achievements & experiences in brief
		Rs.134.31 crores and credit support to the tune of Rs. 243 crores were covered. In 1979 this was merged into IRDP.
C. Self-Employment		
1. Intregated Rural Development Programme 1979 - (Self Employment Programme)	An integrated approach for both agriculture and other development targeting the poor. This programme imbibed the objectives of SPDAs also. Subsidy and credit were provided to poor households to take up self employment and income augmenting activities. The cost of the programme was to be shared equally between centre and state. National target of assisting 600 families per block annually was laid out.	Initiated as a pilot project in selected blocks, it was expended to cover the whole country in 1980. During the Sixth Plan the programme covered 15.13 million families with Rs. 1,500 crores and a similar number in the Seventh Plan was covered. Rs. 1,186 crores for Central assistance was allocated in the seventh Plan. By the end of March 97, over 50 million families with 50,000 crores have been covered since inception.
2. Development of Women & Children in Rural Areas (DWCRA)- 1983	To provide income generating skills and activities to poor women in rural areas. Social and economic empowerment leading to improve d areas to health, education etc.	Started as a pilot schemes in 50 districts in 1983, it is now implemented all over the country. As on January, 1997, 1.88 lakh groups with 29.54 members have been assisted to the tune of Rs. 220.43 crores. This is one of the fairly successful scheme.
3. Training of Rural Youth in Self Employment (TRYSEM) 1979.	Providing technical and entrepreneurial skills to youth from the poor families to enable them to take up self employment.	Started as a centrally-sponsored programme on 15 August, 1979. As on December 96, 37.09 lakh youth have been trained but a very large number of them could not settle in the trades in which they were trained. Lack of credit facilities and demand for trade are some of the reasons.
4. Took Kits Programme (1992)	To improve the quality of work of rural artisan and thereby their income earning opportunities.	Started as a pilot schemes, it now stands extended to the whole country; 4.7 lakh tool kit as a cost of Rs. 84.0 crores have been provided.
C. Wage Employment		
1. Rural Man Power Programme (RMP) (1960-69)	First major wage employment programme aimed at providing 100 days of employment for at least 2.5 million persons at the end of the Third Plan in areas prone to pronounced employment.	Resource constrains curtailed the programme only to 20% of the outlays of Rs. 150 crores. The programme ended in 1960-69 generating 137 million man-days of employment.
2. Crash Schemes for Rural	To provide employment to	Started with Rs. 50 crores

Year & Programmes	Major Objectives & Components of the Program	Achievements & experiences in brief
Employment –1971 (CSRE)	at least 1,000 persons in each of 350 districts every year through labour intensive work and creation of durable assets.	annual outlay in 1971, created employment to the tune of 360 millions man-days. The scheme marked considerable lack of planning an assets created were mostly non-durable in nature.
3. Pilot Intensive Rural Employment Programme (PIREP) 1972.	To provide additional employment for unskilled labour by creation of assets which have multiplier effect on employment generation through skill upgradation.	Implemented along with CSPST, Initiated as a pilot project in 15 CD Blocks ended 1975-76 creating 18.16 million man days of employment.
4. Drought-Prone Area Programme (DPAP) an Desert Development Programme.	Mitigating the severity of scarcity condition by organising labour-intensive and production-oriented works to generate employment in rural areas.	The RWP of 1971 was converted in DPAP and later redesigned to be an area development programme.
5. Feed For Work(FWP)-(1977)	To generate additional gainful employment to unemployed in rural areas with a view to improving their incomes and nutrition. Creation of durable community assets by utilising the surplus foodgrains.	The programme could not make much headway due to some constrains inherent in the schemes itself. During 1977-79, a total employment of 979.32 million days for generated.
6. National Rural Employment Programme(NREP) -1980	The FWP was redesignated to be NREP and the objectives of the extensive employment programme were continued. NREP became part of the sixth Plan since 1981 and implemented as a certainly sponsored programme on 50:50 cost sharing basis.	During the Sixth Plan Rs. 1,873 crores were spent on the scheme creating 1775.2 million man-days of employment. In the Seventh Plan Rs. 2,940 crores was spent to create 1477.5 million man-days.
7. Rural Landless Employment Guarantee Programme (RLEGP) 1983	To provide 100 man-days of employment in a year to at least one person in each landless household during the lean season. To be implemented alongside NREP covering the whole country	During the Seventh Plan, Rs. 2,412 crores were spent under this scheme creating 1,154.4 million man-days of employment. But both NREP and RLEGP could not provide the hundred days.
8. Jawahar Rozgar Yojana (JRY) 1989	Merging the objectives of both NREP and RLEGP, the scheme to be implemented as a centrally sponsored scheme on 80:20 (Centre : State) cost sharing basis covering the entire country.	Since inception till 1966-97 (December)., nearly Rs.240 billions were spend under the scheme creating 6.4 billion man-days employment.

Year & Programmes	Major Objectives & Components of the Program	Achievements & experiences in brief
9. Intensive JRY-IJRY Indira Awas Yojana (LAY) Million Wells Scheme (MWS) Innovative JRY.	All part of JRY but aimed employment generation through special efforts in some backward areas (JRY) housing for SC/ST (LAY) and irrigation facilities for SC/ST (MWS).	Since 1996, all these components have become independent schemes, while IJRY was merged with Employment Assurance Scheme. By November, 1996, 1.05 million wells at a cost of Rs. 3,671 crores have been constructed under MWS. By the 1996, about 30 lakh houses have been constructed.
10.Employment Assurance Scheme (EAS) 1993	To cater to employment in most difficult areas * to provide 100 days of employment for 2 members for each poor households through creation productive community assets.	Started in 1.752 backward blocks in 257 districts with Rs. 600 crores. It has since been expended gradually and now covers the whole country. As on February, 1997, Rs. 4,110 crores have been spend under the programme generating 853 million man-days of employment.
11. Member of Parliament Local Area Development Scheme (MPLADS)	The objectives are same as JRY. But MPs can decide the allocation of work as per their assessment.	Part of JRY and EAS funds and some additional budgetary allocation formed the resources of this scheme Rs. 790 crores per annum is the allocation for this scheme.
D. SPECIAL GROUPS (SC/ST) 1. Special Component Plan (SCP) 1979-80 & Special Component Assistance (SCA).	Development of Welfare of SC by ensuring enhancement of flow of finds for SCs, through individual/family assistance and also improvement in social sector basic amenities.	From Rs. 361.16 crores (7.7%) of total plan outlay under SCP in VI Plan, the allocation increased to Rs. 5,518.30 crores in 1995-96 (11.8%). About 1.38 families were assisted economically by March, 96.
2. Scheduled Caste Development Corporation (SCDS), '80; National SC & ST Finance & Development Corporation (NSFDC), 1989.	To provide a link between SC/ST poor and financial institutions. To provide financial assistance to concessional rates for income generating activities both in farm and non-farm requirements.	State and District level agencies have been established. By the end of December, '96 NSFDC has assisted 2.13 lakh beneficiaries to the tune of Rs. 314.2 crores.
3. National Commission for SCs & STs (1992)	To study safeguards, rights, socio-economic development.	Submitted its first annual report after the period ending December, 1993.
4. Tribal Sub-Plan (TSP) & Special Component Assistance (SCA)	Accelerating the pace of socio-economic development of STs and protecting them from exploitation.	In operation in 18 states and Uts. In the Seventh Plan Rs. 7,077 crores was allocated under TSP. From Rs. 1992 crores in 1991, it has risen to Rs. 3,867 crores in 1996.
a) Integrated Area	Earmarking funds for TSP.	194 ITDPs have been

Year & Programmes	Major Objectives & Components of the Program	Achievements & experiences in brief
Development Approach(ITDP)	One of the strategies of TSP. ITDPs are implemented in blocks, where 50% population is tribal.	established. Separate Agencies ITDP have been set up to implement the programme.
b) Modified Area Development Approach (MADA)	MADA will come into force in a group of villages having a population of 10000 or more where 50% are tribals.	252 MADA pockets have been formed. 79 clusters with 5000 population have also been formed.
c) Primitive Tribal Groups (PGTs)	Development of Pre-Agricultural level technology groups of tribals through micro projects.	75 PTGs in 15 states and Uts having been identified.
III. Social Welfare Measures		
1. Public Distribution System (PDS), 1950	Regulate the movement of food-grains from surplus states to deficit areas.	PDS has become a permanent scheme since the Seventh Plan. PDS role from mere 80 million tonnes in 1951 to 15.3 million tonnes in 1995 with a peak at 20.8 million tonnes in 1991. Till about 1991, distribution was higher than procurement. There were 4.33 lakh FPS in 1995 of which 3.3 lakhs were in Rural Areas. The annual cost of subsidy rose to Rs.5250 crores in 96 from Rs. 117 crores in 1993.
2. Revamped Public Distribution System (RPDS), 1992	Backward and remote areas which are predominantly tribal are to be focused for special minimum under PDS.	RPDS covered 1750 blocks through 1.02 lakh FPS.
3. Targeted Public Distributed System (TPDS), 1997	To ensure that poor and needy get the maximum benefit of PDS	The universal coverage was to be replaced with targeted coverage through differential pricing. Many states were opposed to it. However, Some beginning has been more by the end of 1977.
B. Social Security National Social Assistance Programme (NSAP), 1995 a) National Old Age Pension (NOAPs) b) National Family Benefit Scheme (NFBs) c) National Maternity Benefit Scheme (IMNBS)	To fulfil the Directive principle in article 41 and 42 of Constitution to provide social Assistance to poor families.	A total of 42.4 lakh people benefited from these scheme of which 13.9 lakh under NMBS, 9.2 lakh under NFBs and 27.6 lakh under NOAPs. The scheme is yet to pick up.
Rural Water Supply	Initiate planned supply of	Since Independence, this

Year & Programmes	Major Objectives & Components of the Program	Achievements & experiences in brief
/Sanitation		
1. Rural Water Supply Schemes(RWS), 1954; Public Health Engineering Deptt., PHED	water Create an institutional mechanism to tackle the problem of sanitation and drinking water.	was under status First initiative by Centre. By mid sixties, only those easily accessible villages were covered
2. Accelerated Rural Water Supply Programme (ASRWSP), 1992	Provide adequate drinking water to all habitations. Provide financial support to State for coverage of problem Villages.	Coverage was reported to be 94.4 per cent.
3. Drinking Water Decade (1981-90)	Provide realistic standard of quality and quantity of water to rural and urban areas	
4. Drinking Water Deptt. Shifted from Urban Development to Rural Development Ministry (1985)		Installation and commissioning of 2.6 million handpumps.
5. Rajiv Gandhi National Water Mission (RGNDW), 1986	Accelerate the process of drinking water to rural population. • Mini-mission in 55 districts • Sub-Mission to eradicate guinea warm, iron fluorosis etc.	Failure to develop appropriate operation and maintenance system.
6. Habitation Survey on Status of Drinking water (1991-94)	To identify problem villages, uncovered villages.	Creation of HRD cells in states to implement and oversee the programme to achieve target by 2000.
Sanitation Programme in Health Sector, 1984	To convert dry latrines into cost effective sanitary latrines To propagate hygienic and health practices and privacy to women to provide sanitary Monte.	Rural sanitation cells established in states. Progress is very slow. Inadequate space and non-availability of water kept most of the latrines unused.
Rural Health		
Rural Health Service (RHS), 1952	• PHCs formed part of RHS and established in CD Blocks.	Started in 1111952, PHCs. increase in number and scope of work over the period and grown to 21854 by 1996 from a more 725 at the end of First Plan.
Primary Health Centre (PHC), 1952 Multi-purpose Health Worker (MPHW), 1974 Alma at a Declaration (1978) National Health Policy (1983)	• Access to medical care. • Family welfare. • To provide a package of services at doorstep. • Affordable, accessible, appropriate health service to all. • Health for all by 2000 AD.	
Community Health Centres (CHC)	• To provide specialised medicare for every one lakh population.	Minimum Programme of Rural Health Care was implemented. Multi specialty staff were posted in June, 1996 2424 CHCs were functioning.
Sub-Centres (SC)	TO provide clinic-based service to villages in its vicinity for a population of	One SC to serve the areas of MPWS. 132730 Sub-Centres were functioning by

Year & Programmes	Major Objectives & Components of the Program	Achievements & experiences in brief
	5000-8000.	June, 1996.
Housing National Housing Policy (1953)	• Institutional base for housing • Long-term interest free loans • Provide information on low cost housing.	State Government to implement the programmes.
Village Housing Scheme (1957)	• Housing loans with subsidies • Research on low-cost housing • Rural sites distribution	Progress was slow, but in Fifth Plan major fillip was given to housing scheme. Lakh families got house site and about 16 lakh houses were built. The trend continued in Fifth Plan.
Indira Awas Yojana (IAY), 1985.	Supply house free of cost to SC/ST and other poor.	Structural progress was made and allocation increased.
National Housing Bank, 1988 Rural Housing & IAY Merged (1996)	Housing Loans Housing Finance through public sector institutions	Despite an increase in the housing stock the estimated gat is 29.8 million by 2001.

APPENDIX II

Welfare and Poverty Alleviation Schemes in Tamil Nadu

(See para 2.7.9)

Sl. No:	Name of the Scheme / Program
Welfare-oriented Programs	
1.	Free supply of books to widow's children
2.	Scholarship to physically handicapped students
3.	Elementary education
4.	Middle school education
5.	District Primary education programme
6.	Marriage Assistance
7.	Widow's daughter marriage
8.	Intercaste marriage
9.	Widow remarriage
10.	Orphan marriage
11.	Working women's hostel
12.	Marriage assistance scheme
13.	Maintenance grant to severely disabled persons
14.	High school and Higher Secondary school
15.	Family welfare
16.	Accident relief scheme
17.	Supply of drinking water in rural habitations
18.	Hut insurance scheme
19.	National control of blindness
20.	AIDS awareness programmes
21.	District TB and leprosy programmes
22.	Drinking water maintenance prog5ramme in Panchayat Union
23.	Central Government village sanitation scheme
24.	Dr. Jayalalithaa Girl Protection Scheme
25.	20 Point program
Safety Net Schemes	
1.	Noon-meal scheme for preschool children
2.	Health and Nutrient scheme
3.	Scheme for pregnant and lactating mothers
4.	Mother and child health care
5.	Dr. Muthulakshmi Reddy Ninaivu Maghaperu Udavi thittam
6.	Person security scheme
7.	Distress Relief Scheme
8.	Oil age pensioner's noon-meal programme
9.	Old Age Pension (Normal)
10.	Physically handicapped persons
11.	Destitute widow pensions
12.	Deserted destitute window pension
13.	Destitute agricultural labour pension
14.	Tamil Nadu integrated nutrition project
15.	Mid-day Meal Scheme
16.	Integrated Child Development Service Scheme
17.	Public Distribution System
18.	Targeted Public Distribution System

Asset Creation Programs

1. Integrated Rural Development Programme (IRDP)
2. Assistance for purchase of sheep and goats to SC families and tribal people
3. Agricultural land allotment
4. Purchase of cattle
5. Purchase of milch animals
6. National bio-gas scheme
7. Central assistance for installation of gobar gas plant
8. Integrated Rural Development Programme
9. Goat/Sheep rearing programme
10. Scheme for supply of milch animals

Employment-Oriented Programs

1. Training of rural youth for self-employment (TRYSEM)
2. Development of women and children in rural areas (DWCRA)
3. Drought Prone Area Programme (DPAP)
4. Jawajar Velai Vaippu Thittam (JVVT)
5. Programme for assured employment (PAS)
6. Prime Minister's Rozgar Yojana (PMRY)
7. Tailoring work centers
8. Free supply of sewing machines
9. Vocational graining for girls
10. Co-operative societies for women
11. Stationary and printing society
12. Physically handicapped
13. Self employment assistance to physically handicapped
14. Rectification of tanks for fisheries development
15. Formation of ponds in own lands for fish production
16. Special animal husbandry development programme
17. Integrated Horticulture Development Programme
18. Integrated Horticulture Development Programme for Adi-Dravidas
19. Self employment
20. Self employment training Scheme
21. Small scale industrial loan Scheme
22. Assistance for starting individual industries
23. Supply of barbering tools, iron boxes, quarrying tools
24. Subsidy for mobile ironing carts and modernising saloons
25. Training for Youth and Self employment scheme
26. Seed loan for starting self industries
27. Prime Ministers' Self employment scheme.

CHAPTER III

EMPLOYMENT IN THE EYES OF THE CONSTITUTION

3.1 Constitutional Perspective

The economic and social pattern to be attained through planning is indicated in the Directive Principles of the State Policy enunciated in articles 36 to 51 of the Constitution. In terms of these Directive Principles the State Policy is to regard the raising of the level of nutrition and the standard of living of the people as among its primary duties. The economic policy of the State must be governed by the obligation placed upon it to secure that the citizens, men and women equally, have the right to adequate means of livelihood.

3.1.1 In regard to the provision of employment and social security, the most significant section of the Constitution of India is article 41 which states as under:

"Right to Work, to education and public assistance in certain cases: 41. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to

work, to education and public assistance in cases of unemployment, old age and sickness and disablement, and in other cases of undeserved want.".

3.1.2 Despite the commitment of the State to develop it into a Welfare State, this concern was not reflected in the plan Strategies during the first, second and third Five Year Plans, when employment *per se* did not receive much attention. 'Right to work' caught the imagination of the national government only in 1988 when it proposed to make 'right to work' a fundamental right. A national debate on 'right to work' was set and consummated at the meeting of the National Development Council (NDC) at the national capital on 11th October, 1990, which was attended by all the Chief Ministers (and Governors) of the country. The NDC discussed the proposal to make the 'the right to work' a Fundamental Right. However, in view of the complexities of the issue, as brought out in the later sections of the discussion, no consensus could emerge and the amendment was not pursued.

The problems of absolute poverty and food insecurity are related to a massive and growing unemployment problem. Tackling the employment problem appears to be the most effective means of addressing the food and income security of the rural poor. Employment programs have both long-term and short-term direct and indirect effects on poverty reduction and food security. The immediate or short term effect of employment is "Income for the poor", which has a direct effect on household food security. On a longterm basis, if properly planned and executed, it builds assets of the community, contributes to creation of more jobs and thus has a long-term effect on poverty reduction. Since the problems of health, nutrition, and environmental hygiene are addressed, health of the labour force improves. Consequently, labour productivity increases and it acts as a catalyst to improved technology development. Employment is a human right, an entitlement that is in tune with the dignity and worth of human personality. Work is essential for so many reasons: for economic reasons; for personal reasons; for dignity; for income; for social integration. In fact, there was no sophistication in measuring unemployment in the country till the late sixties of the 20th century. A definition of 'full employment' in terms of standard person years of employment was adopted by the Census of India for the first time in 1971. A person who had work for 8 hours a day for a lower limit of 180 days in a year is considered to be fully employed (NSSO assumes 273 days) and others in the work force are underemployed. 273 days of employment at 8 hours a day is known as Standard Person Year (SPY) (NSSO).
[Note: A person who is working is a part of the work force of the country. A person who is seeking employment and waiting to get it is a part of the labour force. Unemployment is the difference between labour force and work force, at a point of time].

3.1.4 The Fourth Five-Year Plan (1969-1974) is a breakthrough in regard to generation of employment in the country. For the first time, the emphasis was shifted from 'growth' to 'growth with justice'. The Fourth Five Year Plan identified 9 programs (a tenth one was added later) as 'Minimum Needs Program' (MNP). Rural industries, housing, sanitation, health services, primary education, electrification and roads were identified as part of those 9 minimum needs. MNP are labour-intensive in character. Employment was also to be generated through Area Development Programs. Pilot Intensive Employment Guarantee Scheme, Integrated Area Development Scheme, Intensive Dry Land Area Development (IDLAD), Desert Development Program (DDP) were some of the schemes under the policy of rural labour – intensive infrastructure and area development programs. 'Poverty' was recognized as an important variable in the planning process. It was recognized that 20 years of planning did not alleviate poverty. Indira Gandhi's slogan of 'GARIBI HATAO' became quite popular. The Fourth Five Year Plan started a program called 'Food for Works' program. This was foundational strategy for various employment programs that came later.

3.1.5 The Fifth Five-year Plan (1974-1979) gave top priority to poverty, inequality and unemployment. Employment generation and asset creation were adopted as two strategies for the alleviation of poverty and removal of inequality. The Sixth Five-Year Plan (1980-1985) came up with a new approach known as Integrated Rural Development Program (IRDP). Two programs on employment viz., the National Rural Employment Program (NREP Central sector schemes) and the Rural Landless Employment Guarantee Programs (RLEGP, State sector schemes), were launched. Later they were integrated into a single package known as the Jawahar Rozgar Yojana (JRY) in rural areas and Nehru Rozgar Yojana (NRY) in the urban areas. Further, the 'FOR ALL' programs of the Union Government also came in handy for generation of employment. These 'for all' programs are: 'Health for all', 'Education for all', 'Housing for all', 'Sanitation/Environment for all', etc. As such, the tempo for employment generation picked up.

3.1.6 Employment got the pride of place in development planning in the Seventh Five-Year Plan (1985-1990). Recognition of regional disparities and their redress assumed importance. Government of India announced that it intended to declare 'Right to Work' as a Fundamental Right. Approach Paper to the Eighth Five Year Plan (GOI, April 1990) gave a clarion call to 'full employment' and the 'right to work'. This was a new addition, introduced in the Eighth Five-year plan (1990-1995), to the mine of verbal grandeur in development literature, which had witnessed several other pleasing overtones. Decentralized planning, sectoral and sub-sectoral shifts in investment, adoption of labour-intensive technology, appropriate land legislation and its implementation and involvement of voluntary agencies are the strategies proposed by the Eighth Five Year Plan for 'full employment'. But, as stated earlier, the expected amendment to the Constitution could not come through, nor were the follow-up of some strategic interventions with a specific action plan implemented with conviction.

3.1.7 The Ninth Five-Year Plan accorded importance to the clearance of backlog of unemployment, quality of employment and balanced attention to regions in employment. Education and skills of the workers, productivity, security of work opportunities (no casual labour), are some of the indicators identified under quality of employment. Recognizing the fact that there will be a substantial increase to the labour force in terms of numbers, the Draft Approach Paper to the Tenth Plan sets forth "providing gainful employment to the addition to the labour force over the Tenth Plan period" as the monitorable target.

3.1.8 In sum, employment policy in India has passed through four stages: (a) employment as a by-product of growth (wherein the policy is invisible 1950 to 1969), (b) employment as a tool in removal of poverty and inequality (1969 to 1988), (c) employment as a candidate for Fundamental Rights ('right to work' 1988 to 1993) and (d) finally, upgradation of the quality of employment (1997 and beyond).

3.2 Strategic Interventions for Employment

Unemployment in India has been the concern for a long time. It has also been recognized that in a primarily agrarian country like ours, employment on a massive scale can come only from the rural areas. It is interesting that in an address on *"Unemployment in India : Its causes and cure"* delivered before the University Union, Bangalore, on September 8, 1932, Sir M. Visveswaraya suggested Three Emergency Schemes in order to increase production and enlarge employment. These are:

1. *Rapid Industrialization* by multiplying factories and industrial establishments;
2. *Rural Reconstruction* by increasing production from agriculture and from cottage and home industries in rural areas by the cooperative effort of the people; and
3. *Establishment of Practical Training Institutions* to provide the last stages of precise knowledge needed for the practice of callings connected with industry and agriculture, for educated youth and adult businessmen.

It is interesting how these principles hold good even today.

3.2.1 Growth process was expected to create employment opportunities. Investments in major irrigation projects generated employment in agriculture and allied rural sectors. Investment on heavy industries of public sector undertakings generated jobs in urban areas. Employment of skilled and unskilled labour was the spill-over benefits of the growth process.

3.2.2 Four types of resources are required for effective labour-intensive employment programs. They are investment capital for asset creation, labour availability, wage payments and organizational capabilities. Some of the earlier approaches have not looked at this as holistic requirements and one or the other components only have been stressed. This has led to a skewed emphasis.

3.2.3 A direct strategy for generation of employment began with the Food for work (FWP) programs during the fourth five year plan (1969-74). Employment became the chief tool for poverty alleviation. Employment was brought under greater relief during the fifth five year plan through the adoption of the target approach, targets being small farmers, marginal farmers and agricultural labourers. Target approach was intertwined with another complementary strategy of area development. Dry land area development, Desert development, Tribal Area Development were taken up with a sharper focus. Central sector schemes for infrastructure development were covered through National Rural

Employment Programs. There was also a component of State sector known as Rural Landless Employment Guarantee Program. Both these programs got integrated under a scheme called "Jawahar Rozgar Yojana" (JRY) by the Seventh Five Year Plan (1985-90).

3.2.4 Multiplicity of schemes for rural development and employment therein reflects the complexity and diversity of the challenges of rural unemployment. It was at this time that the '**right to work**' was contemplated as a Fundamental Right, and was placed before the National Development Council in October 1990. While rejecting the proposal, the NDC recommended a new scheme of employment known as the Employment Guarantee Scheme (EGS). The States were given the autonomy to implement EGS with the flexibility as they may desire. The EGS scheme provides guarantee of at least 100 days of employment to all unemployed persons preferably in the lean agricultural seasons. Some States, notably Maharashtra, had launched programs with similar objectives earlier. Maharashtra became the first State in the country to guarantee work stating that "every adult person in the State shall have a right to work, that is, a right to get guaranteed employment.." The scheme is self-targeting in nature. By planning the work to be undertaken under this scheme innovatively, developmental works towards rural asset building were undertaken. The success of the horticultural programs in Maharashtra, which is one of the major export producers of fruits and vegetables, is attributed to the successful use of the concept.

3.2.5 The Maharashtra Scheme has been studied extensively and the lessons learnt were documented and debated. The International Food Policy Research Institute, in its publication *"Employment for Poverty Reduction and Food Security" (1995)* included a chapter on this scheme written by Mahendra Dev. According to various evaluations, the EGS has performed much better than other anti-poverty programs in India. Although all the anti-poverty programs are designed to provide a Safety Net, the EGS has been more successful than the others in controlling the type of works executed and the quality of the implementation. The EGS has reduced the intensity of poverty and increased food security in many households of Maharashtra, a reason for continuing the scheme in other areas, with modifications as needed.

3.2.6 The Employment Assurance Scheme (EAS) that began in 1993 has experienced several functional problems as per a view of the Program Evaluation Organization of the Planning Commission in April 2000. It is now (1996-97) being operated in 3165 revenue blocks of the country (nearly 60 per cent coverage). The scheme provides 100 days of assured manual employment to persons in 18 to 60 years age group.

3.2.7 There were 361 million persons in India in 1951 of whom 143.2 million were estimated as workers. Workers in the population in 1951 were around 40 per cent. 60 per cent were dependents, which included 38.42 per cent of children in the 0 to 14 age group. 81.51 million adults were dependent on 143.20 million workers apart from children. By 2000 AD, there are 1000 million persons of whom 400 million are estimated to be employed. 40 per cent of population are workers. Population in 0 to 14 age group has declined to 36 per cent. As such out of the 60 per cent dependents, adults constitute 24 per cent or 240 million persons.

3.2.8 Rural employment is the most effective intervention to overcome rural poverty. To compare the effectiveness of some policy interventions in alleviating poverty and hunger, Parikh and Srinivasan (1993) used the counterfactual policy simulations with a sequential applied general equilibrium model of the Indian economy for the period 1980-2000. They concluded that a *targeted policy of providing additional employment opportunities* for the rural poor, that is well designed and executed not only improves the welfare of the rural poor substantially, but the economy grows slightly faster. (Parikh, K, S, and T. N. Srinivasan, 1993: Poverty alleviation policies in India: Food production subsidy, food production subsidy, and employment generation in *Including the Poor* (Eds. M. Lipton and J. Van der Gaag, Johns Hopkins University Press).

TABLE 4
Work force and population

	1951 (%)	2000 (%)
Total Population	361.00	1000
No. of workers	143.20 (39.66)	400 (40)
Adult dependents	81.50 (21.92)	240 (24)
Child dependents	136.30 (38.42)	359.6 (36.00)
Total dependents	217.80 (60.34)	600 (60)

Source: (1) II Five Year Plan Approach Paper and (2) IX 5 Year Plan Vol.1
It may be observed that employment scenario in the country has not changed from 1951 to 1997. The percentage of workers in the population have not changed just as the dependants. While by 2000 AD, Children below 14 years have decreased, adults over 60 years have increased.

3.3 Growth rates

Growth rates in employment is a reflection of changes in investments, product choice, technology choice and domestic and international trade and services. It is also a reflection of the capacity of the economy to provide employment when these rates are viewed in regard to structure and quality of unemployment. Growth rates in employment have come down over the years. This is true of both the unorganized sector, which provides 90 per cent of employment, and the organized sector. Unemployment rates have been increasing over the years (labour force – work force). It used to be 6.09 per cent (Daily status) between 1983 to 1988 and projected to be at 7 per cent during 1997-2002.

3.4 Development of Employment Policies and Implementation Strategies

Employment policies and programs cannot be designed in a vacuum. Various aspects of development and social policies are directly related to it. They should not be conceived as separate programs and should be part of mainstream planning. Only those programs become successful where participatory planning and implementation is involved. The importance of local level institutions, therefore, cannot be ignored. The most essential requirement is that the program should generate tangible assets to which people have access on a long-term basis.

CHAPTER IV

LIVELIHOOD OPPORTUNITIES

4. **Right to Livelihood:** The Supreme Court has ruled in 1994: "Right to livelihood is an integral part of right to life" under article 21 of the Fundamental Rights. Under article 39, the Constitution further states that "that the citizens, men and women equally, have a right to an adequate means of livelihood".

4.1 Conceptually, livelihoods connote the activities, entitlements and assets by which people make a living. Assets are not only natural/biological (i.e., land, water, common property resources, flora and fauna) but also social and political (I.e. community, family, social networks, participation, empowerment, human knowledge and creation of skills) and physical (material infrastructure).

Scoones (2000) recognized five key elements as directly related to sustainable livelihoods, the first three focusing on livelihoods linking concerns over work, employment, poverty reduction, well-being and capabilities, and the last two adding the sustainability dimension.

1. Creation of working days: Creation of a gainful employment for a certain portion of the year – either on on-farm or off-farm, so that they get an economic income to meet their daily requirements of food and other expenses.
2. Poverty reduction based on income or consumption levels, which addresses issues of poverty and inequality.
3. Well-being and capabilities which encompasses far more than the material concerns of food intake or income. This will include such diverse factors as self-esteem, security, happiness, stress, empowerment etc.
4. Livelihood adaptation, vulnerability and resilience which includes the ability to be able to cope with and recover from stresses and shocks, coping with temporary adjustments in the face of change or adapt to longer term shifts in livelihood strategies.
5. Natural resource base sustainability

4.2 Lessons from Previous Experiences

Fifty years of development experience in our country have yielded some valuable and critical lessons:

1. Macro-economic stability is an essential pre-requisite for achieving growth needed for development.
2. In largely agrarian societies like India, economic growth should ensure employment generation.
3. Growth does not trickle down; development should address human needs directly.
4. No one policy will trigger development; a comprehensive approach is needed.
5. The development orientation should be sustainable.
6. Sustained development should be rooted in processes that are socially inclusive and responsive to changing circumstances, where local empowerment and institutions matter.

4.2.1 It has further been demonstrated that increasing food production globally or even nationally will not solve the problem of poverty and malnutrition, but agricultural development in regions where poverty is predominantly local will help. The United Nations Hot Springs Conference, as far back as 1943, proclaimed: "**The first cause of hunger and malnutrition is poverty; and the first cause of poverty is lack of work**". Hence the statement of Mahatma Gandhi: "To the poor and hungry, God is bread and appears in the promise of work." No discussion on livelihood opportunities will, therefore, be complete without an analysis of productive employment opportunities. The problem of eliminating hunger, reducing poverty, enhancing livelihood opportunities and improving the quality of life requires the understanding, inventiveness, and interaction of farmers, industrialists, agricultural scientists, educators, environmentalists, health care workers, and policy makers, who share a commitment to development and change.

4.2.2 Food is so basic to human well being that sustainable agriculture is the oldest and best studied of all managed ecosystems. Sustainable livelihoods, especially of the rural population, should, therefore, envisage sustainable development of agriculture by widening employment opportunities, increasing income, improving health and enhancing the quality of life.

4.3 Current Scenario of Unemployment in the Country

One of the great failures of the Indian development strategy over the decades, along with the persistence of poverty and the slow rate of increase in human development indicators, has been inadequate employment generation. This is not just a problem of welfare, since it represents a huge waste of human resources that are crucial to building the economy, and suggests that Indian growth could have been both faster and more equitable if only the enormous labour reserves had been productively utilised.

4.3.1 Economists by and large agree to disagree over the nature of India's unemployment. In the Fifth Plan, unemployment estimates were made separately for rural and urban areas on the basis of the classification made in the National Sample Survey's (NSS) 27th Round of the National Sample Survey Organization (NSSO). These estimates are based on three-fold classifications: Chronic, weekly and daily.

4.3.2 Open and disguised unemployment characterises developing countries. Growing unemployment is directly proportional to the growth in urbanisation and the spread of education. But disguised unemployment is a salient feature of a large number of developing countries. Economists A. Navarrete and I. Navarrete say: "Underemployment may be described as a situation in which the withdrawal of certain quantity of the factor labour to other uses will not appreciably diminish the total output of the sector from which it is withdrawn". It also mentions that a person is considered underemployed if he is forced to take a job he thinks is not adequate for his purpose or commensurate with his training.

4.3.3 The NSSO's quinquennial survey on employment and unemployment in 1999-2000 throws much light on the employment situation. The NSS Report of the 55th Round provides an overall view of the employment situation. The number of persons employed per 1,000 population stands reduced to 417 in the rural areas and 337 in the urban areas in 1999-2000 from 444 and 341 respectively in 1997-78. This decline in the working population is not a positive indicator.

From the several surveys the NSS has conducted since the late 1970s, the worker population ratio in 1999-2000 was the lowest. The NSS Report, which gives the break-up for men and women and rural and urban areas, shows that this downtrend is across the board.

4.3.4 There was evidently a dip in the labour force participation rate between 1993-94 and 1999-2000 (between the 50th and 55th Round of the NSS) in both the rural and urban centres. However, the decline in the proportion of the population that is neither working nor looking for work does not reflect any involuntary withdrawal from the labour force. The detailed tables presented in the NSS Report indicate that the decline in labour force participation has been in the 10-14 and 15-19 age groups. It could be inferred that the fall may be due to the greater attendance of boys and girls in schools. If so, it is a positive and desirable development that augurs well for the country's future.

4.3.5 The NSS' 55th Round has estimated unemployment based on the current daily status. The 1999-2000 survey indicates that in three out of the four categories, the unemployment rate worsened between 1993-94 and 1999-2000. Thus, the message of the report is clear. In the 1990s, there was a proportionately smaller number of people in work and higher unemployment rates in the rural and urban areas. This was true of both men and women. The reduction in unemployment of women to 94 in 1999-2000 from 104 in 1993-94 is an intriguing development.

4.4 Rural employment and Sustainable Livelihoods

About seventy per cent of the 1006 million people in India live in the rural areas and derive their livelihoods directly or indirectly from the 329 million hectares of land resources. Small and marginal farmers dominate Indian agriculture. Of the total number of farming families, more than 78 % are small and marginal with less than two hectares of farming land. They cultivate about 32 % of the arable land. There are over 111 million cultivators, who are further supported by over 75 million landless workers. Agriculture will be the primary absorber of this workforce, and this situation is not likely to change much in the foreseeable future. The availability of employment in this important sector throughout the year is dismally poor. Except in about 53.5 million hectares of the irrigated arable land, where the conditions may be marginally better, 90 m ha of rainfed arable lands hardly provides 100 days of employment in the year. It is interesting to note that this land area still produces 90 million tons of foodgrains out of about 200+ million tons that we produce; however, since the activity is highly seasonal, the availability of on-farm work is irregular and uncertain.

4.4.1 It has been estimated that at the national level, the average days worked per adult wage earner in the agriculture wage work is 137 (145 for male and 124 for female). This figure varies very widely depending on the region and the nature of agriculture that is practiced. Thus, in the arid and semi-arid regions with limited rainfall, the work available is highly seasonal and is limited in extent. For

1207 LJ&CA/2002—22B.

example, in Rajasthan, agricultural work is available only for 53 days in a year, while it is about 190 days in the NorthEast Region. Since crop-based agriculture alone cannot support them, it is necessary for agricultural labour to look for additional income-generating opportunities. Multiple livelihood opportunities, if developed at the farm / community level, will help to increase the number of employment days, diversify activities, enhance total income and minimize risks. This is especially true for women who perform multiple tasks at the farm level.

4.4.2 Livelihood security will have to be provided to this huge workforce. The ability to pursue different livelihood strategies is dependent on the basic material and social, tangible and intangible assets that people have in their possession. These include –
(a) Natural capital of soil, water, air, genetic resources etc. and environmental services (hydrological cycle, pollution sinks, etc.) from which resource flows and services useful for livelihoods are derived;
(b) Economic or financial capital including cash, credit/debt, savings, and other economic assets, as well as basic infrastructure and production equipment and technologies which are essential for the pursuit of any livelihood strategy;
(c) Human capital - the skills, knowledge, ability to labour and good health and physical capability important for the successful pursuit of different livelihood strategies; and
(d) Social capital or the social resources upon which people draw when pursuing different livelihood strategies requiring coordinated actions. In order to create livelihoods, therefore, people must combine the 'capital' endowments that they have access to and control over.

4.4.3 In an analysis of youth unemployment in India, Chadha (2000)* presents data to show that in rural India, self-employment and casual labour, rather than salaried jobs which is the major employment pattern in urban areas, are the only major avenues of employment, especially for those in the job-seeking age group of 15 – 29. Planning for what combinations are most appropriate in a particular site presents major challenges. Only a rationally integrated agrarian participation and involvement can identify site-specific problems and develop solutions.

4.5 Employment Generation and Additional Jobs

The Eighth Five Year Plan document identified the need to generate approximately 100 million new jobs for the period 1991-2000 to ensure full employment for all, based on the number of unemployed at that time and the increments to the labour force during the decade. This meant approximately ten million new livelihoods per year. Impetus was, therefore, provided for creation of a large number of additional jobs both in the on-farm and non-farm activities. However, the Government of India's Economic Review recognizes that not more than six million additional workers could be absorbed per year increasing thus the number of unemployed, especially in the rural sector.

4.5.1 The question is "Where can we create these additional livelihood opportunities?" On-farm employment can be generated only by increasing agricultural activities through increasing cropping intensities, crop diversification, development of horticulture including fruits, vegetables and flowers, as well as from investments in soil and water conservation on watershed-based development programs. The Vision 2020 document of the Ministry of Agriculture of the Government of India, envisages not only increasing the agricultural production potential but also generating employment.

4.5.2 In his paper on "Sustainable Rural Livelihoods: The Challenge of the Decade", Vijay Mahajan (2000) details some of the activities that would be needed to generate additional livelihoods in the rural non-farm sector (RNFS). Apart from agriculture, allied activities such as dairying, poultry, fisheries, horticulture, floriculture, plantations, etc. provide the basis for RNFS livelihoods in processing, manufacture, storage, distribution, transport and trade. Forests, specially agro-forestry and social forestry, also add to this list, even though timber and timber-based forest produce have declined in quantity. Mining, quarrying and support services such as farm equipment manufacture, supply and repair services are emerging as important activities.

4.6 Population Growth and Demographic changes

India's population, which has already passed one billion according to the latest Census, is poised to increase to 1646 million by 2051. This change in the total population will also introduce changes in the demographic age distribution, which will have considerable influence in planning for development. The Population Foundation of India has done a detailed exercise of not only estimating the total population

for the next several decades, but also of categorizing them by age, gender, regions etc. Since the age profile will be directly relevant to employment opportunities, the relevant information is summarized in the Table given below:-

TABLE 5
Projected changes in the population in the country

Year	Projected Population (in millions)	Population Age Group 15 –64 years	Population Age Group Above 65 years
1996	934.2	541.6 (58.0 %)	39.9 (4.3 %)
2001	1011.8	618.4 (61.1 %)	45.8 (4.5 %)
2006	1092.4	706.8 (64.7 %)	52.8 (4.8 %)
2011	1176.8	783.2 (66.6 %)	62.1 (5.3 %)
2016	1264.0	844.0 (66.7 %)	74.4 (5.9 %)
2021	1344.8	901.7 (67.1 %)	89.7 (6.7 %)
2026	1413.9	957.2 (67.7 %)	108.9 (7.7 %)
2031	1472.9	1010.0 (68.6 %)	131.1 (8.9 %)
2036	1526.5	1050.7 (68.8 %)	156.5 (10.3 %)
2041	1577.5	1077.9 (68.3 %)	181.6 (11.5 %)
2046	1619.5	1091.7 (67.4 %)	207.9 (12.8 %)
2051	1646.3	1089.5 (66.2 %)	243.5 (14.8 %)

Source: *K. S. Natarajanj & V. Jayachandran: Population Growth in 21st Century India. In* ***Population-Development Nexus in India – Challenges for the new millenium*** *(K.Srinivasan & Michael Vlassoff (Editors) Tata Mcgraw-Hill Publishing Company Limited, New Delhi – January, 2001.*

4.6.1 The most significant increase will be noticed in the working age group of 15 – 64 years. The population will increase from 546.1 million in 1996 to 1089.5 million in 2051. Most of them will be in the labour market. Providing employment to such a huge population will be the biggest challenge India will face in the first half of this century. Very significant increase will also take place in the old age population, i.e., in the age group of 65 years and over. Their number will increase more than six times from 39.9 million in 1996 (or 4.3 % of the population) to 243.5 million (14.8 % of the population). Providing old-age security in addition to utilizing productively those who are able bodied and in good physical and mental health will be another challenge.

4.7 Rural – Urban Migration

The demographic distribution pattern between the urban and rural areas is undergoing a major change all over the world, with the people moving from the rural areas and conclaves to urban areas and urban fringes. In 1995, 46 per cent of the world's population lived in urban areas. Just after 2000, and for the first time in history, the number of urban dwellers will outnumber the rural populations. By 2030, three out of every five persons in the world will be living in cities. In India, the situation will record an even more dramatic change. By 2015, more cities will join the group of cities with a population greater than 10 million, and the number of cities with a population of one million will increase exponentially. Urbanization is by far the most important social transformation of our times. The consequence of this will be that there will be more charge and pressure for goods and services; more employment and livelihood opportunities will be demanded. This will be especially significant in the developing countries like ours, where we will be faced with the extreme situation of facing not only rural poverty and unemployment, but also the problems of urban slums and their life styles.

4.8 Avenues for Employment and Income Generation

4.8.1 Providing Multiple Livelihood Opportunities: All efforts in overcoming poverty at the micro level of the household have to be essentially by the committed efforts of the people themselves, though assisted by community at large. Since most of the ultra-poor are either landless workers or people

with very small land holdings that are not economically viable, income enhancement can arise only through multiple livelihood opportunities. These include:

(a) *Primary value addition of commodities at the household level like production of semi-processed foods, pickle making, sun drying and packaging, etc.;*
(b) *Utilization of locally available resources like paddy-straw for mushroom growing, sericulture, goat rearing, dairying and milk production, backyard poultry for eggs and meat;*
(c) *Horticulture that includes production of fruits and vegetables;*
(d) *Floriculture, including production of flowers for domestic market as well as export;*
(e) *Aquaculture including integrated fish farming and utilization of Community ponds and proper use of marine wealth; and*
(f) *Effective use of common property resources, use of waste and degraded lands, specially community ponds for community aquaculture.*

Most of the activities require only the relatively small external financial input, but in terms of income, provide attractive returns. Micro-credit need to be provided for this activity to initiate action. However, what is probably most important is, ensuring adequate market opportunities for these products, since individual efforts at marketing will not only be difficult and unsuccessful, but also, exploitative of the farmer.

4.8.2 Protecting community biodiversity: It is the rural families, with their tradition of farming and conservation activities, who have preserved the rich biodiversity. It is, therefore, necessary to ensure that the benefits of commercial and economic exploitation of these resources benefit the community, specially the poor and the ultra poor, who might have contributed substantially for their preservation and conservation.

4.8.3 Establishment of rural industries

To provide income enhancement and employment, primary industries that utilize the products and by-products arising from the agriculture sector that includes crops and horticulture, animal husbandry, fisheries, poultry and aquaculture. This can be easily accomplished by organization of a consortium of rural industries that can synergise each other to provide for optimal utilization of the resource base of the community.

4.8.4 Strengthening the capital formation in the agricultural sector: Despite the large increases in production and productivity that the country has recorded in the last 50 years, the capital formation in the rural sector has remained dismally low. Investments in agriculture as percentage of GDP in the 1990s are given in the Table below:-

TABLE 6
Investment in Agriculture
(as percentage of GDP)

	Public	Private	Total
1990-91	0.6	1.6	2.2
1996-97	0.4	1.1	1.5
1997-98	0.3	1.1	1.4
1998-99	0.3	1.1	1.4
1999-2000	0.4	1.1	1.5

Source: *Planning Commission.*

TABLE 7
Gross Capital Formation : Public and Private

Year	Total	Public	Private	Percent Share	
				Public	Private
1993-94	13523	4467	9056	33.0	67.0
1994-95	15021	4971	10050	33.1	66.9
1995-96	15876	4928	10948	31.0	69.0
1996-97	16610	4689	11921	28.2	71.8
1997-98	16344	4240	12140	25.9	74.1
1998-99	16457	3876	12581	23.6	76.4

Source: *Planning Commission*

Several studies have highlighted the need for enhancement of this activity, if meaningful gains in agriculture sector were to occur. The strategies for this to happen will include:-

1) Investment for development and improvement of land as well as development of efficient water use technologies that will improve substantially contribute agricultural growth and development.
2) Availability of credit for agricultural operations, giving agriculture the status of industry.
3) Development of employment opportunities in the rural sector through strengthening the rural industries sectors.
4) Establishment of primary processing facilities in the rural areas for value addition of commodities produced at the farm level.

4.8.5 Agriculture to be given industry's status: One of the poor reasons for development of agriculture including utilization of agricultural by-products and establishment of agro-industries, is the lack of adequate capital formation. This can be partly rectified by according a industry's status to agriculture and providing it with the necessary policy support for its development, as has happened in the industrial sector. While ensuring a more equitable treatment for development, this will also mobilize resources, reduce risk and commit the financial resources of financing institutions for overall development. Credit flow for agro-based enterprises as well as micro-credit for farm activities would increase helping stabilization of production.

4.8.6 Market interface and promotion of value added agro-food production.

Wide fluctuations in the market prices of agricultural commodities act as deterrent to production of low value agricultural products like cereals, oilseeds and even cash crops like sugarcane and cotton. Demand/supply need to be stabilized so that, over-production in one year does not bring in distress sales, while lower production in another year pushes the prices to unreasonable levels. Market information and demand need to be synchronized through networking systems of information sharing and supply-demand projections. Interventions by government agencies to stabilise prices cannot be the only solution. A close nexus between demand, production, market, availability and economic prices should develop.

4.8.7 Value addition to agricultural products: The Department of Food Processing, Ministry of Agriculture, Government of India, has estimated that turnover of the food processing industry in the country is in the region of Rs. 14,000 crores, more than three fourths of which is contributed by the unorganized sector. In India, the value addition to food fortification is only 7 %, as compared to 23 % in China, 45 % in Philippines, and 188 % in UK.

The scope for value addition to basic food materials is very high. The inherent strength of the country is in the availability of a large and wide variety of raw materials, as well as a ready consumer market for the products. In view of the burgeoning population and variations in the economic status of the people, any developed product of hygiene and quality will have a viable market. For value addition and agro-processing in the rural areas, the approach should be to create farm-level infrastructure and develop capabilities at the rural level. Networking cottage, small and medium industries should viably provide the facilities for the primary and secondary processing for the take off by the large-scale industries. **An integral model is envisaged wherein the cottage, small and medium scale industries act as input conduits for further development of products by the larger industries.** For continued sustenance, **there should be well-planned backward and forward linkages.**

4.8.8 Support Services / Activities for Sustainable Livelihood Systems

As has already been mentioned, sustainable livelihood development is not a single activity but a process of change. It is thus influenced by a number of factors and activities, some of which are indicated below:

(a) ***Education and Literacy***

There is a direct relationship between literacy and livelihood opportunities. Education enables people to get a better skill orientation, promotes self-confidence and encourages them to recognize their rights and responsibilities. States, which have a higher literacy also generally, have better awareness about their entitlements and rights, which contribute to improve living standards.

(b) ***Health and Nutrition***

Consumption behavior indicates that 47.7 % households have calorie inadequacy and 19.8 % households have protein inadequacy. This has caused low birth weight babies, stunting and underweight in children. 40 % of the males and 41 % of the females have Body Mass Index value below 18.5, indicating chronic energy deficiency. Besides micronutrient malnutrition and vitamin deficiency are manifest especially among women and children. Even though required only in small amounts, their deficiency causes disability, impairs work capacity and brings illness, affecting seriously gainful employment opportunities.

(c) ***Environmental Hygiene and Sanitation***

Contaminated drinking water and poor sanitary environment are the causes for many health disorders especially in the rural areas. It has been estimated that less than 18 % of the rural households in or country have access to clean drinking water facility through taps. Those having access to safe toilets are even lower. The cascading effect that these have on health and work efficiency, and thus on sustainable livelihoods cannot be underestimated.

(d) ***Gender Perspectives in work force***

Women play a significant role in the conservation and optimal use of basic life support systems such as land, water, fauna and flora. They have protected the health of the soil though organic recycling and the first land care movement was initiated by them. They have promoted crop security and preserved biodiversity exhibiting traditional wisdom and adopting practices, which analyzed scientifically, exhibit pragmatism and simplicity. With increasing migration of men from rural to urban areas, management of agriculture in many cases is done by women. Further, sociologists state that women tend to look at problems in their totality and hence important promoters of an economically and ecologically sustainable agriculture.

(e) ***Empowerment of women***

The burden of poverty often falls heavily on women. They have less access to education, remunerative activities, and other supporting opportunities. Agriculture, animal husbandry, health and nutrition, environmental sanitation and a large number of households related activities are attended to by women. Any attempt to development focussed on these activities should, therefore, target upliftment of women and their empowerment. Conventional approaches to women's empowerment are based on the twin assumptions that alleviation of poverty would automatically lead to their employment and that the major constraint on programmes for their upliftment is monetary. The results of five decades of development have shown that economic assistance by itself does not necessarily improve the status of women. *The most vital inhibiting factor leading to the disadvantaged position of women is gender discrimination, powerlessness, vulnerability and being unorganised.* Women belonging to SC and ST are even more *disadvantaged* because of their social discrimination. Empowerment needs to be *Human-Centred* with women and children, who suffer largely, to play the central role. There is a growing need to integrate women into the economic development process. One way to do this is to ensure their access to education, technology, land rights and credit. Credit especially micro-credit for micro-enterprises has proven its value in the alleviation of poverty and in promoting livelihoods. *It also provided women the dual benefit of empowerment and better quality of life.* Experience till date has shown that micro credit has a powerful role to play in promoting Sustainable Human Development, provided it is linked market-driven micro-enterprises and production-oriented marketing.

Local level institutions play an important role in providing the needed security, self-confidence and handling the local level issues and problems.

(f) *Skill upgradation through local-specific training*

The primary asset of the rural poor is the human resource. Science and technology should come together to utilize this resource successfully by upgrading their knowledge and skills in specific areas. CAPART, KVK and other organizations have been working on appropriate technologies for utilizing local resources effectively and providing location-specific training. These should be further augmented.

(g) *Community Resource Management*

The landless people will have to depend upon common property resources like community grazing land, wastelands, community ponds etc. to eke out their livelihoods. Since these resources do not technically belong to any specific individual, there is a general tendency to overexploit them to get short term benefits. Also these are most times appropriated by the more vocal powerful sections of the community depriving the needy of even these limited resources. Local level institutions committed to the cause of the community should take leadership to ensure that: (i) a strategic plan for the development of these resources is prepared and implemented; (ii) sustainability concerns are properly reflected in the development of the plan; (iii) the disadvantaged and un-reached sections of the community, specially the women, have access to them.

(h) *Traditional wisdom, Indigenous Technical Knowledge and practices*

Traditional wisdom and indigenous knowledge have preserved agriculture as the oldest living activity. They reflect years of practical field-based experience and the local conditions under certain activities and practices have survived. This is especially valuable during periods of stress and shocks like drought, floods, natural catastrophes etc. Since most of these practices are cost-effective and socially acceptable, modern science should analyze these practices and knowledge and should see how they can be improved upon to suit local conditions.

(i) *Social Organization and formation of Self-Help Groups*

Since organization of micro-credit and micro-enterprises are important to address the issues of poverty, social and cultural dimensions of local-level problems, at the same time attending to the needs of the community, organization of the unorganized group are very relevant and shown to be a very successful attempt. Social mobilization represents a collective effort to bring about social changes and establish a new order of social thought and action. Above all intensive efforts will have to be made in the area of technological and skill empowerment of women, so that there is greater economic value to their time and labour. Self-Help Groups (SHG) is an informal credit delivery system where its members are able to generate their own capital and lend it among themselves in times of need with low interest rates and easily payable policies. Today for any development work to be initiated in any village it is imperative to route the activities through SHGs.

(j) *Advantages of SHGs*

- The SHGs provide a degree of security to the members, protect them the exploitation of moneylenders, able to have access to credit in times of emergency and other household consumption purposes without any collateral security.

- SHGs promote a sense of *building* together as a group; *belonging* to each other and develops a *bond-ship* among them.

- It provides them an opportunity to be bankable by linking their groups with the formal credit system and prove that they are credit worthy and bankable.

- It is found that only women SHGs are better able to address the specific needs and problems of the women members.

- SHGs have had a wide range of impacts, economic, social and political on the lives of its members. In some cases it has given the women members new confidence to express their views on matters of social importance.

Since accessibility to financial resources is the most important limitation for many rural development activities including entrepreneurship efforts, specially by women, a redesigning of the institutional frame work for rural lending needs to be done in our country in the context of re-engineering, re-structuring, re-organization of the banking industry. *There is also a need for a Special Venture capital Fund for micro-enterprises.*

Organization of the micro-enterprise groups provide market support for the participants by establishing direct linkages with the consumers and by providing them the power of scale in collective bargaining and ensuring that they get the maximum share of the prices paid by the consumer.

CHAPTER V

A STRATEGIC PLAN FOR 80 MILLION JOBS

5. A paradigm shift from the conventional, environmentally devastating and socially unsuitable approach for development to an effective strategy which pays concurrent and integrated attention to resource conservation, production improvement and poverty alleviation for fostering job-led economic growth is the theme of the presentation in this section. It is possible to introduce innovative development pathways to bring about economic and social changes in the rural areas by implementing a variety of eco-friendly, employment and income generating interventions.

5.1 When the high growth rate is based upon good growth rates in the primary and secondary sectors, poverty and disparity between rural and urban areas declines sharply. However, when high growth levels are led by exports and the services sector, the impact on poverty levels is minimal and even negative. In India, in recent years the growth is led by Services sector including Information Technology and exports. Also, as analyzed earlier investments in agriculture have been declining. This could be one of the reasons for high levels of rural poverty (Expenditure Reforms Commission, 2001).

5.1.1 The expectation that growth in the industrial sector will be the major source for employment generation, has been belied. The growth of the services sector in recent years has been relatively fast but employment growth in this sector has been rather sluggish. A GDP growth of about 6 per cent was achieved during 1980-81 to 1986-87 (as against around 4 per cent during the 1970s) but employment growth during this period has been of the order of around 2.5 per cent only. This trend suggests that productivity has shown an increase and the service sector has not grown merely as a residual low productivity sector. Still, this sector has significant potential for employment generation both in rural and urban areas. A decline in employment elasticity of the industrial sector has primarily been caused by the declining employment potential of output growth in the organized sector. Employment elasticity is estimated to be as low as 0.15 per cent for the organized manufacturing sector, but it is between 0.5 to 0.6 for the unorganized sector. A larger contribution of the small and unorganized sector is, therefore, likely to raise the employment elasticity and employment growth in the manufacturing sector significantly. The small industry sector currently contributes about one-half of value added and four-fifths of the total employment in manufacturing. If this segment of manufacturing can be made to grow at 10 per cent per annum, with the organized sector growing at about 5 per cent, the overall

employment growth in the manufacturing sector will be about 4 per cent as against 2 per cent in the recent past.

5.1.2 It might also be relevant to examine the recent analysis of Prem Shankar Jha (*The Hindu, July 24, 2001)* on the likely scenario that may develop as a result of free import of many consumer goods items as a result of WTO agreements and liberalization trends. While the average annual growth of job seekers has risen from 2.3 per cent in the 1970s and 80s to above 2.5 per cent the average growth of employment has fallen to 0.8 per cent in the 1990s. This is particularly disturbing when one notices that it fell to 0.46 per cent during 1998, to 0.04 per cent in 1999 and to minus 0.15 per cent in 2000. To depend upon industrialization alone for further job markets becomes, therefore, a fallacy and the main thrust of this paper that the rural sector alone holds promise, gets reinforced.

5.1.3 As has been discussed earlier, the country's current problem is not just production of food, but economic access to food. Employment and thereby income generation, both at the individual and community level, will have to be the main focus. It is also recognized that most of the jobs of the future will have to come in the rural sector, which means agriculture and allied occupations including agri-business and processing. India's potential in agriculture and agri-business are enormous and only a small part of them have so far been tapped. The strategy focuses on but is not confined to the agriculture sector. The growth generated by these programs will create a greater demand for farm and agricultural machinery, equipment, inputs, transportation, distribution, storage, marketing and supporting services. The increasing purchasing power generated by increased income of the rural families will create a greater demand for a wide range of consumer goods and services. The multiplier effect of these activities will be creation of assets and stimulation of a higher growth rate.

5.1.4 Further, employment generation needs to be seen not merely in terms of creation of new opportunities for wage employment. An equally important thrust will need to be laid on creation of necessary conditions for an increasingly larger number of people to undertake activities on a self-employment basis, as well as raise the productivity and income levels of those already self-employed so as to see that they are not compelled to leave them and join the ranks of the openly unemployed. Infrastructure and accesses to credit and market linkages are found to be the most crucial factors in the development of a vibrant self-employment sector. Institutional arrangements for supply of these services along with suitable programs for the development of technical skills and entrepreneurship would need to be evolved.

5.1.5 Given the variegated nature of work requirements of different workers, particularly the underemployed, and also the varied nature and structure of work in different activities, the goal of providing work to all can only be achieved on the basis of detailed local level planning. Since a major part of unemployment and underemployment is to be found in rural areas where variations of these kinds are particularly marked across regions and areas and among activities, employment planning on a decentralised basis assumes special significance. While a certain degree of mobility, particularly among the openly unemployed and the educated, should be expected and even be encouraged, for a large mass of underemployed and unemployed, particularly, women, marginal farmers and those engaged in seasonal activities, work needs to be generated locally, in the villages or nearby small towns. An exercise to assess and plan for work opportunities within an area to match the labour supply characteristics of the unemployed and the underemployed workers can only be effectively undertaken on an area-specific basis.

5.1.6 The premises on which this paper is developed are:

1. Poverty alleviation and sustainable development towards a decent standard of living is possible only with an assured economic access to food.
2. Such assured economic access to food is possible only through employment opportunities.
3. Industrialization and establishment of heavy industries offer limited solutions only to the urban population and hardly touches the rural sector, where much of the problems of poverty and unemployment are critical.
4. The problem of unemployment can be mitigated only through creation of job opportunities in the rural sector.

5. Sustained agricultural growth is central to development of employment opportunities. This has to come by improved production and productivity and application of modern advances in technology.
6. Both on-farm and off-farm employment should be considered so tat jobs are available for a minimum number of days throughout the year.
7. Primary processing of agricultural products and their value addition should take place at the rural level. This will enhance the income of the farmer and generate primarily off-season employment.
8. Employment planning at the rural level should focus on generation of both individual and community assets – both short term and long term - so that the initiatives are sustainable.
9. The programs planned should be locally relevant and should be undertaken with the support of the people and the community.

5.1.7 The high-potential programs suggested here are not new or unknown. Horticulture including fruits, vegetable and flowers, aquaculture, sericulture, goat-rearing, poultry and dairy, commercial forestry and wasteland development, small and medium cottage industries including value addition of agricultural products, are mentioned in every plan and many new programs have been formulated. What was however, lacking was the people's involvement in the programs and sustained follow-up.

5.2 Rural Employment Generation through Eco-Friendly Enterprises

The International Commission on Peace and Food (ICPF), under the Chairmanship of Prof. M. S. Swaminathan, was established in 1988, with the objective of capitalizing on the uncommon opportunities created by rapid and radical changes in the international environment, and to redirect humanity's efforts and precious resources to accelerate development at the national and international level. In 1991, the ICPF undertook a study in India with the objective of evolving strategies to eradicate poverty and unemployment. After examining the issues in detail and considering various options available, the Study Team developed a strategy to generate 100 million new jobs in India by 2000. The essence of the approach was to utilize India's competitive advantage in commercial agriculture and agro-industry as an engine to propel growth in incomes and employment opportunities throughout the economy. The late Shri C. Subramaniam presented the report to the then Prime Minister Shri P. V. Narasimha Rao and the Planning Commission. The Government of India formally decided to adopt the strategy and incorporate it in India's Eighth Five-Year Plan. A Small Farmers Agri-business Consortium (SFAC) was constituted to centrally coordinate the Government's role as a catalyst for the implementation of the Strategy. Unfortunately, the initiatives that were taken and the momentum with which it was started soon lost appeal and there was very little progress that were taken except some bureaucratic steps that were taken to ground the Consortium. No meaningful liaison with Industries, funding agencies, local institutions and producers were established to implement the proposal at the rural level. Despite the time lapse, most of the components of the proposal are still valid and if the Government's strategy is to consider generation of rural jobs to mitigate unemployment, the strategy with modifications as needed should be pursued.

The following are some of the suggested activities for development that will serve the triple purpose of (a) asset development (b) income enhancement and (c) employment generation.

5.2.1 Productivity Improvement in Agriculture

As discussed elsewhere in this Paper, the country achieved remarkable improvement in production and productivity of foodgrains, thanks to the revolutionary technologies that the advent of the Green Revolution witnessed. However, there is still a wide gap between potential yields and actual yields at the field level. It is possible to close this by adopting even the existing technologies more extensively and making use of new and emerging technologies. The Vision 2020 document of the Ministry of Agriculture, Government of India, outlines the strategy under two initiatives: (a) consolidating the gains already made; and (b) planning for and making new gains. A number of interventions to utilize the untapped potential are suggested and it may not be necessary to outline them all here. Suffice to say that we can have immense optimism in our hopes for the future, as the following table will show. Increased agricultural production will activate a chain of activities towards increased income and employment opportunities.

TABLE 8

Proposed intervention / Untapped potential	Expected additional production
Enhancing fertilizer use efficiency	30 million tonnes
Water management including drainage	30 million tonnes
Soil health care including reclamation of salinity/acidity/alkalinity	40 million tonnes
Realignment of cropping patterns on ecological principles	30 million tonnes
Regain productivity of command areas of wells and tanks, and small and medium irrigation projects.	120 million tonnes
Total increase in production expected from all the above interventions	250 million tonnes

Source: Sankaram A. Unpublished -1999

The above interventions proposed are in terms of Natural Resources Management. Technological advances in other areas like biotechnology, genetic improvement, integrated pest management, better storage and processing –all these hold promise of increased total production, which in turn generates additional entrepreneural activities. It is this optimism and hope that make us venture propose an integrated development plan for the rural areas.

5.2.2 Integrated Horticulture

Cultivation of fruits ad vegetables, for which Indian topography and agro-climate are well suited, is an ideal method for increasing the labour intensity and income generation potential of agricultural lands while meeting the growing need for these essential food items. Net income can range from Rs. 20,000 to 30,000 per hectare, which, even on a conservative estimate is five to ten times more than conventional farming of cereal crops. However, in the case of some fruit crops, the initial waiting period may range from three to five years, during which period, some support will be needed. As an income generating activity, even during this period employment will be available. Further, horticulture can use ten to twenty times more labour per ha than cereals. In order to create more jobs, Netherlands shifted its emphasis to production of flowers and vegetables after World War II and this has enabled the country to become one of the most important exporting countries in these products. It has been estimated that even a shift of 5 % of irrigated lands from cereals to fruits, vegetables and flowers can produce 50 per cent more productive jobs in agriculture. In order to meet the basic nutritional requirements of the population, India's production of fruits and vegetables has to quadruple. Horticulture also represents the enormous export potential for India, because of the favourable tropical, subtropical and temperate climate conditions prevailing in the different parts of the country.

The additional economic benefits that one can get by switch over to horticulture and adoption of modern technology for production, is, however, offset by the saturation of the markets at the time of harvesting and consequent plummeting of prices. The establishment of integrated horticulture projects can overcome these impediments. The following elements constitute the program:

(a) Selection of an appropriate large area for the enterprise, development of mixed copping patterns to avoid over-production of a particular commodity only, and the linkage of production with processing and organized marketing.

(b) A professionally managed society of cultivators (like the Biovillage Society in the Biovillages Model proposed elsewhere) will carry out functions related to farmer education, production of seed and planting material, processing and marketing, including gathering of market intelligence and information.

(c) Establishment of a Processing Plant for about 1000 ha or so of production area for primary processing of the commodities.

(d) Marketing of the fresh products through a producer-owned marketing organization feeding into a regional or national grid, as in the case of the dairy products.

Establishment of the Bio-Processing Industry at the rural locations has several advantages. It would remain near the people, and would fulfill their need for rural employment and income generation. Otherwise, it may become exploitative in nature and would uplift only the entrepreneur. Details of

Income generation, and capital requirements for the same are discussed in the Document "Prosperity 2000" published by the Bharatiya Vidya Bhawan. It is estimated that the Project will generate full-time employment of **6 million** persons in agriculture, **350,000** in food processing and seed production units including 130,000 skilled and 30,000 technical persons.

5.2.3 Floriculture

(a) Flower Production:

Flower Production is one of the important constituents of horticulture, which can be practiced by both small and large farmers. The flowers find an important role in all social functions whether it is joyous festival or mourning ceremony. The requirement of flowers for the different purposes is increasing gradually. There is demand for flowers for the traditional loose flower trade as well as modern cut flower trade. Flower crops are labour intensive and can provide employment for unskilled rural women and also high return for unit area. The marginal and small farmers who can employ the family labour for harvesting of flowers early in the morning will stand to gain very high profit as the harvesting charges alone constitute about 50% of the cost of the production. Flower growing for loose flower trade is also already a flourishing enterprise. This can be further expanded and made more remunerative by encouraging flower cultivation in backyard and small areas available with marginal and small farmers.
In view of the seasonal nature of agricultural labour performed by the resource–poor women of marginal farmer households, flower production can be introduced as a profitable and labour-intensive venture without hindering their main occupation. On an average, the resource-poor women could generate an income of around Rs.1500 and employment for 40 days in one year from two cents of cultivable land. Flower nurseries that were established by constructing mist chambers generated an average income of Rs.5000 per year from two cents of land.

(b) Production of Cut-flowers

Cut-flower trade promises to be a viable income enhancing and employment generating enterprise. The demand for cut flowers is increasing everyday, and specially in the urban areas, use of flowers for many occasions and domestic demand even for aesthetic beauty has grown by leaps and bounds. In the fringes of urban areas, commercial flower cultivation is becoming a welcome feature. Many flowers can be grown for this purpose, depending upon regional demand, agro-climatic suitability and resource availability. Roses, gladiolus, orchids, tuberose, Asters, Golden Rod etc. have traditionally a good market. Exotic flowers are also finding a ready market. Anthurium is a popular cutflower tropical plant cultivated for its colourful spathi. Anthurium andreanum and Anthurium scherzerianum are the two species widely cultivated for their attractive flowers. Parts of Kerala and Karnataka have congenial climatic conditions for growing Anthurium without the need for costly green houses for climate control.

Orchids are high value flowers and have scope for export to other areas. There are over 35,000 species of orchids and the hybrids outnumber the species. India is the home for as many as 1300 species. The important tropical species are Dendrobium, Vanda, Oncidium and Arachnis. Of these, Dendrobium species claim great demand in the world market. Successful cultivation of Dendrobiums in the coastal plains has been demonstrated. Though the cultivation techniques and conditions are highly demanding and stringent, they can be easily accomplished once training is given. Well-grown plants will start flowering in 6 months. The plant can live up to 7 - 8 years if properly maintained. The backup research needed for advanced production technology of orchids including new varieties is available with Regional Agricultural Universities.

5.2.4 Medicinal Plants Production

According to the report of WHO, more than 70% of the world's population still depend upon plants for their health care and remedy. In our country the indigenous system of medicines viz. Ayurveda and Siddha systems which are based on herbs have been found to be effective in curing many of the human ailments without any side effect or after effect. The use of herbal medicines is increasing in the

recent years. Many herbal products are used as nutraceuticals, which are both nutritional and medicinal. A few medicinal plants like senna, poppy, psyllium, etc., are grown in large scale and exported to European countries. Many other species are collected from the wild and marketed in the West. The actual employment generation by this activity has not been precisely estimated, but it can be considerable as the number of plants and the areas suitable for their cultivation are large.

5.2.5 Production of Seeds and Planting Materials

Another potential area of activity requiring intense labour is production of vegetable and flower seeds and horticultural planting materials. Both for vegetables and flowers, hybrid seeds have a large market. Elite planting materials for vegetatively-propogated fruit trees are very much in demand and this is one of the problems in horticultural expansion. New production technologies have opened up this as an important venture and private sector has entered this area in a big way. However, only some of the highly profitable markets have been marginally covered by their programs and there is ample scope for expansion of this activity. One study estimated the rate of growth of this sector to 300 per cent for the next ten years. Being labour-intensive and largely rural-based, this activity needs to be pursued with vigour.

5.2.6 Animal Husbandry Programs

An activity naturally allied to agriculture and crucial for rural income and employment generation is animal husbandry. The potential of this sector for income and employment generation can hardly be over-emphasised. Based on some recent studies by the National Dairy Development Board (NDDB) and the earlier estimates by the National Commission on Agriculture, it is estimated that the animal husbandry sector, even with the existing stock, can generate employment equivalent to 86 million person years inclusive of employment in processing and marketing of milk and milk products. The phenomenal success of the Operation I & II programs, as well as the fact that India has now emerged as the largest producer of milk in the world, is a tribute to the contribution of the organized rural communities in achieving a seemingly impossible task. Besides the fact that it has contributed to the rural economy, what has to be appreciated is the fact that it has contributed to rural employment in a big way. It is claimed by experts that a much higher growth than in the past can be attained in this sector, raising productivity and income levels of those engaged in it as well as creating new employment opportunities.

5.2.7 Integrated Program Of Intensive Aquaculture

Intensive aquaculture technology can be utilized to provide high protein food for the rural and urban populations, generate new jobs and self-employment opportunities for the poor, and use the common property resources effectively. Aquaculture technology, which is based on environmentally sound practices for conserving and recycling water and organic wastes and effluents, also has a strong ecological component. Improvements in production technology of culture fishes, which includes proper pond maintenance and feed schedules, has demonstrated that five to ten more production is possible. With the high prices of animal protein products and proper education on the advantages of fish meat, the domestic demand for fish will increase enormously. Though capital intensive, the program has a promise of success. In the Biovillages Model, it has been demonstrated that rural common property resources can be effectively used, specially to benefit landless families and women. The study above estimates 50,000 ha of fish pond area being available for development of this activity. It will generate a total of 1 million jobs, including 250,000 for educated unemployed entrepreneurs and 750,000 farm workers.

5.2.8 Sericulture

The production of raw silk, which involves the cultivation of mulberry leaves, raising of seed worms, cocoon rearing, reeling and twisting of yarn, is a labour intensive handicraft with a vast untapped potential for further development in India. Presently about six million persons are directly involved in cultivating mulberry and silk production. This figure can easily be doubled. Although sericulture is already a well-established industry in the country, there is enough scope for improving production by using modern intensive production technology.

Though there are State and Central Developmental Organizations to help the sericulturists, there is a felt need for one or more voluntary organizations to provide the essential inputs of high-quality disease-free silk worm layings, cuttings of improved varieties of mulberry, effective chemicals for the control of the pests and diseases, technical help in scientifically carrying out chawki-rearing, cocoon production and silk reeling. Model Sericultural Villages including the setting up of a viable Grainage Unit can be established in locations already identified by the Central Silk as suitable in terms of climate and other conditions. A village or a cluster of hamlets and villages within walking distances, with about 50 ha of irrigated and about 125 ha of rainfed area under mulberry may be considered to be a Model and viable unit for a comprehensive program to develop sericulture to develop leaf production, grainage, chawki-rearing, adult worm rearing and cocoon production, and reeling and twisting of silk yarn.

Dr. Rangaswami's report, referred to earlier, has estimated that the cost of establishing five Model Villages will be 536 lakhs for five years, including 360 lakhs for buildings and infrastructure and recurring expenditure of 176 lakhs. The return has been calculated to be Rs. 835 lakhs per year.

Among the labour-intensive rural occupations, sericulture is by far the best and India is as the climatic and environmental conditions are most suited for developing this agro-based rural small-scale industrial program. It will provide year-round employment opportunities for all employable, adults specially women, village youths, landed and landless poor, and also help leadership qualities in organizing the cultivation of mulberry, rearing of cocoon, and reeling and marketing the same. Even on conservative calculations, It is estimated to provide direct employment opportunities to 700,000 farm families, as this is an enterprise, which involves the inputs from the entire family at the various stages of the production process.

5.2.9 Afforestation

Another area with large scope for employment generation, that has only been marginally recognized so far, relates to regeneration of natural resources such as land and forests. Programs of afforestation, regeneration and restoration of degraded land are not only likely to generate large volumes of employment in general, but also benefit, in particular, such disadvantaged sections of the society as tribals and women who are most adversely affected by the degradation of eco systems.

Afforestation by regeneration and planting new areas

Forests have immense potential for employing society's unemployed and underemployed rural and tribal human power in many forest-related activities. Since both timber and non-timber forest assets are involved, it has the strategic importance of materialising the socio-economic objective of "employment for all". Forests provide three types of employment viz., (1) Direct employment; (2) Self-employment and (3) Indirect or secondary employment (Pant, 1986; Indurkar, 1992). Direct employment from forest management activities is provided for both salaried personnel discharging technical, planning, monitoring and administrative activities, as well as for the section of the rural and tribal force that performs arduous physical labour in connection with the development and maintenance of the forests. These include: planting and regeneration of forests; collection and primary processing of minor and major forest products; plantation activities including preparation of nurseries; soil working; inter-cultivation; fencing; felling and transport. Modern forest plantations require roads, buildings and other infrastructure, which also provides employment for skilled and semi-skilled labour. Self-employment is provided in the form of resource-based activities whose output is wholly or partially consumed by the persons employed. Self-employment is generated by availing of privileges provided to local residents under the Forest Act, like firewood removal by head-loads, fodder cutting, grassing and lopping, availing of concessions and entitlements and collection of minor food items. The secondary employment arises out of the processing activities through primary and secondary forest activities. The primary forest industries cover saw-milling, sawing and planing of woods, and pulp and paper industries. Secondary forest industries comprise of manufacturing of wood articles including packing boxes, crates, and other containers, furniture and cabinets, agricultural tools and household construction items like doors and windows.

Forest Resources: On the basis of the estimates by the National Remote Sensing Agency, the total forest cover in the country is about 19.27 per cent of the geographical area. The recorded forest area (area notified as forest) is 76.52 m ha of which 54.44 per cent is reserved forest, 29.18 protected

forest and 16.38 per cent is unclassified forest. Dense forest cover is much less and estimated to be only 11.17 per cent.

TABLE 9

Class	Area (m ha)	Percent of Geographical area	Percent of forest area
Dense Forest (Canopy density 40% & above)	36.73	11.17	57.98
Open Forest (Canopy density 10 to 40%)	26.13	7.95	41.25
Mangroves (Salt tolerant forest eco-system)	0.48	0.15	0.75
Total Forest Cover	63.34	19.27	
Scrub (stunted trees and shrubs)	5.72	1.74	
Non-forest	259.66	78.99	

An ideal forest cover for any country would be about 33 per cent area. We shall not be able to achieve this level ever, but it is proposed that this forest cover be increased by *four per cent*. This means that an additional area of 12-13 million ha will have to be planted by forests. Visualized as a Five-year Plan, this will involve planting of about 2.5 million ha per year. Later in this text, in the Section on Wasteland Development, it is indicated that this activity alone will generate 50 million new jobs. Currently for afforestation and soil conservation activities, the Government provides for Rs. 5000/ha for hilly areas, and Rs. 4000/ha for non-hilly areas. This involves cost of labour for nursery raising, planting and maintenance cost including earthwork, as well as managerial and supervisory costs. This is generally found to be insufficient, and the casualty is therefore maintenance of planted areas. Increasing allocation for this activity alone will not solve the problem. What is required is the people's involvement wherein a feeling develops that what is planted with care should also be maintained with care.

There are some very interesting success stories that one would like to mention here. Mangroves which are the natural vegetation in the coastal saline lands are facing threat of extinction because of indiscriminate felling and inappropriate checks for their preservation. When a Joint Mangrove development program was being developed in the States of Tamil Nadu, Andhra, Orissa, West Bengal and Andaman Nicobar Islands, the welfare of the people as well as their needs and aspirations were assessed and built into the program. This included providing them livelihood security from the very environment which they were destroying. The awareness created has ensured community involvement in reaping the benefits without detriment to ecology.

One of the major advantages of afforestation is that they provide permanent assets to the community. A number of non-timber products like fuel-wood, honey, Sal leaves, tamarind, lac, resins, gums and waxes are produced. It is estimated that even at present, the value of non-timber forest produce alone is about Rs. 28,000 crores per year. While the Government can have control over timber to prevent unauthorized and illegitimate felling of trees, the Forest Policy should have clear guidelines about the sharing of non-timber products so that the rights of the people living there are also recognized. The Joint Forest Management Program, initiated recently, envisages such interventions, but this will have to be pursued through educational and community involvement programs more intensely.

5.3 Wasteland Development:

The Ministry of Rural Development, Department of Land Resources, in collaboration with the National Remote Sensing Agency, has prepared a Wasteland Atlas of India. A Wasteland is described as "degraded land which can be brought under vegetative cover with reasonable effort, and which is currently underutilized and land which is deteriorating due to lack of appropriate soil and water management or on account of natural causes." Approximately twenty per cent of the total geographical area (about 64 million ha) is under various categories of wastelands. Several surveys have indicated the limitations in utilizing this entire land area for one type of productive use or the other, partly due to encroachments, use restrictions etc. But on a conservative estimate, about forty per cent of this area can be put to productive use. It is possible to reverse land degradation through participatory management and turn around dry, barren and eroded lands into lush green regions. To deal with "economic poverty", especially in the rural sector, it is necessary to deal with "ecological

poverty". Regeneration of the environment leads to economic wellbeing, as a result of greater resource availability, improved agriculture and animal care, and consequently increased incomes. People's management is necessary for ecological restoration, with people empowered as decision-makers.

5.3.1 The National Wasteland Development Society had prepared a massive program of afforestation and utilization of wastelands. In the Seventh and Eighth Five-year Plans, the program was given a considerable importance. However, due to lack of political will in some States, and implementation difficulties faced at the grassroots level, the program did not have the measure of success that was anticipated. Where people's participation was sought and the program followed up with commitment, as it happened in parts of Tamil Nadu, the Social Forestry Program undertaken in these lands has met with success. As an employment generation scheme, it is a great success.

5.3.2 It is estimated that development of *one hectare of wasteland will generate 128 mandays of employment* with a wage component as high as 70 per cent of the outlay. Importance of wasteland development from the point of view of employment generation arises not only from the employment intensity of the development phase involving earth work, etc., but also from the sustained employment opportunities likely to be generated in the utilization of the reclaimed land for afforestation and watershed development. A study by the, National Council of Applied Economic Research (NCAER), for instance, shows that one hectare of planted area provides employment of the order of 600-700 mandays per year. This scheme would like to develop two basic assumptions: (1) about 20 per cent of the estimated wasteland area will be available for development and (2) about 120 to 150 mandays of work in the rural areas will be considered as full employment for one person. On the basis of the NCAER study, each ha will generate employment for five persons. On the basis of these two assumptions, development of about 12 million ha of wastelands alone for afforestation will develop **50 million** jobs.

5.3.3 However, if wasteland development has to achieve these objectives beyond the stage of asset formation, due attention should he given to (a) securing the active participation of the rural poor in wasteland development and (b) allocation of the developed land to the rural poor with legal titles. There is an interesting experimental study in the Mahboobnagar District of Andhra Pradesh. Village Community Land and *Puramboke* land were taken up for cultivation of economic fruit trees, but to ensure that the trees were cared for and nurtured, *tree pattas* were given to each individual household with the promise that a large part of the economic outcome will be theirs when the trees come to bearing. Large orchards of mango, guava and other fruit trees are flourishing in that area. Since it has now become a community asset, landless labour are also able to get wage employment on a regular basis on this activity and many subsidiary activities like marketing, etc. have developed.

5.4 Soil Conservation

It has been estimated that about 173 million ha of land is under some threat of degradation, and conservation measures taken will not only save the top soil from erosion, but will also improve the groundwater resources of the area. Large-scale soil erosion control works had started off as famine relief work for rural employment, duly codified by the Royal Commission on Agriculture. Soil conservation works are looked upon everywhere as suitable for rural employment because the employment is near people's homes, needs no skills, nor even elaborate implements, and conserves water, a precious commodity in these areas. New tanks are dug; old ones are desilted; thus permanent assets are created. Soil and water Conservation has thus become one of the important programs in the country. About Rs. 33,378 million has been spent on this program so far, with about eighty per cent of the expenditure going for creation of Rural Employment (please see Table Below). The list does not include foreign-aided or NGO Projects. This is probably the largest Rural Employment-oriented Program of the Government.

TABLE 10

Rural Employment through Soil and Water Conservation and Watershed Programs

Programs	Area Treated (million ha)	Expenditure (million Rs.)	Rural employment (million mandays)
1. Soil & Water Conservation in the States (up to 1993-94)	33	27,036	10,814
2. Centrally sponsored Scheme for Soil Conservation in Catchments of River Valleys and Flood-prone Catchments (up to 1993-94)	4.5	1,539	616
3. Drought-prone and Desert Development Programs (up to 1998-99)	-	2,493	997
4. National Watershed Development Project for Rainfed Areas (up to 1998-99)	7.3	2,310	924
Total	**44.8**	**33,378**	**13,351**

5.5 Water Conservation and Tank Rehabilitation

Agricultural water management encompasses those models, systems and techniques of water conservation, remediation, development, application, use and removal of excess water. Appropriate water management is the selection and adoption of the right techniques to meet the site specific agricultural water needs. Rainwater conservation and utilization is the backbone for the success of rainfed agriculture. Even after the development of full irrigation potential of about 139.5 m ha, about 60 m ha will remain rainfed. About 800 cubic km of water is available as surplus runoff. Since rainwater can be effectively conserved, managed and utilized based on a hydrological unit, the watershed approach has been adopted.

5.5.1 In the arid and semi-arid regions which receive limited amounts of rainfall (300mm to 750 mm per year), water is a precious natural resource, and needs to be preserved at any cost. In traditional systems, this was sought to be done by storing the rainwater in small and medium size tanks or mini-lakes. The stored water could be used for agricultural purposes as well as for domestic use. In addition, the storage of water in these tanks helped to recharge the wells in the area and augmented the groundwater aquifers. The tanks, located at suitable intervals in the region, were also interconnected where possible, so that the excess water from one tank will flow into the other and so on. Most of these tanks have now become non-functional and have silted up. Since rainfall is received in flushes during the monsoon months, in the absence for proper storage of the runoff water, most of this water is lost.

5.5.2 Desilting of these tanks and their restoration will serve two primary purposes: (1) they will store water, a precious resource, and help to recharge the wells in the area (2) provide off-season employment to a large number of people. Since this paper deals with employment generation, rural employment opportunities will be discussed here.

5.5.3 Recently, with assistance from the European Economic Community (EEC), Pondicherry Government has proposed to rehabilitate 86 tanks in phases. Desilting the ponds or lakes, conserving the bunds through suitable vegetative and protective covers, and social mobilization to develop it as a 'peoples' activity' are all integrated in the implementation of the project. The project is expected to have multiplier effects in terms of of not only economic and social benefits, but also promote harmony within the community as everybody works for common good. The plan is not only to rehabilitate the tanks, but also create a sense of awareness and ownership among the users so that the continued maintenance of the tanks will be ensured. It is estimated to provide off-season employment to 30,000 to 50,000 persons for about six months in a year. The expected economic gains to the community in

the form of more water for irrigation, and mitigation of drinking water problems in drought prone areas are also considerable. The program should be considered as a 'permanent asset-building' activity that will have both short-term and long-term gains. The Tamil Nadu Government has also launched a similar program and is looking for funds to strengthen the program.

5.6 Compost Preparation, Vermiculture and Organic Farming

Animal wastes and crop residues form important organic materials that are available for crop production and for maintaining soil health. It is estimated that about 1000 million tonnes animal dung is produced in India every year, which yields about 500 million tonnes of farm yard manure. Ir is estimated that annual production of crop residues is about 300 million tonnes. Age part of it is used as animal feed. In addition to this, there is also production of domestic wastes, quite a large part of it can be used as manure after due processing. The organic materials generated on the farm can be enriched by further processing through vermicomposting. Vermicomposting or Vermiculture, as it is termed, improves the quality of the otherwise poor organic matter by concentrating the nutrients in the end product. Earthworm castings are rich in ammonium, urea and nitrate besides containing plant growth promoters. Regular application of vermicomposts to cultivated lands has been found to improve the physical, chemical and biological properties of the soil.

5.6.1 Vermiculture, as the technique of using indigenous species of earthworms systematically to turn farm wastes into valuable biofertilizers (vermicompost), can be a rewarding avocation to the resource-poor farmers. It is basically an eco-friendly technique, which yields rich organic manure, with 0.72% nitrogen, 0.25% phosphorous and 2.74 % potassium. Besides supplying nutrient-rich manure, it can help in safe and profitable disposal of farm as well as urban wastes. Awareness has to be created among the farmers on the benefits of vermicomposting and they need to be trained in vermiculture techniques.

5.6.2 The Vermiculture programme is essentially focussed on resource-poor, both men and women, unemployed youth and landless agricultural labourers. Vermiculture offers one of the multiple livelihood opportunities to these people by way of additional employment and income generation. In the Biovillages program at Pondicherry, this micro-enterprise was successfully introduced as an employment and income-generating activity. The cost of production including family labour works out to about Rs, 3500 per ton while the prevailing cost of vermicompost is Rs. 5000 per ton.

5.7 Organically produced foods:

Inorganic fertilizers, pesticides and a host of other agricultural chemicals are considered necessary inputs for any system of high-tech agriculture. In the nutrition and health-conscious western world, there is an increasing demand for natural foods – a synonym for food produced using natural organic materials substituting for inorganic chemicals. The premise is that inorganic chemicals and pesticides leave toxic residues or metabolic products injurious to health. Such organically produced agricultural products have a good export market, while their demand even in the domestic urban markets is also on the rise. The current certification procedures are, however, complex. The assistance of the NGOs in training the interested farmers can be sought and this venture will open up an entirely new vista of handling sophisticated agriculture.

5.8 Establishment of Agro-Industrial Complexes

Since primary value addition and development of ancillary industries based on agricultural raw materials is important for enhancing income but also generating employment opportunities, the Government should consider establishing Agro-Industrial complexes for the processing of agricultural products, on the lines of Industrial Estates for Small Scale Industries. Even though even now there is no bar on the establishment of agro-based industries in these Estates, their location near Urban centres and the facilities being provided to them for the handling of raw materials; are not conducive for their establishment there. Exclusive Centres at the right locations will certainly help promote these industries.

5.8.1 Some of the earlier efforts made by the Government may be mentioned here. Multi-purpose Cooperative Societies (LAMP) had been established earlier in a large number of Centres with support from the National Cooperative Federation. Some of them had even excellent infrastructure developed

for activities that were relevant to the local needs. Most of them do not function properly because they never developed properly as people's institutions and were essentially bureaucratically controlled institutions more wedded to rules and regulations than committed to serving the poor. It is possible to restructure them and motivate local institutions to run them. An attempt on these lines was made in Kolli Hills, a pineapple producing tribal location in Tamil Nadu.

5.8.2 The Report of the International Commission on Peace and Food, referred to earlier, had given a framework for the establishment of a Tapioca-based Industrial Complex. The project envisages use of tapioca for starch extraction and preparation of Sago. A number of byproducts are also produced. An integrated scheme for the preparation of all these components is proposed for the industrial complex. The project will provide (a) a ready market for the tapioca produced by the farmers (b) utilizes all the commercially viable components from the product (c) ensures quality certification of the products to the required standards (d) provides skilled and semi-skilled employment to a large number of local people.

5.8.3 The institutional framework already developed for establishing liaison between the producer and business establishments, viz, Small Farmers Agri-business Consortium (SFAC) should be activated.

5.9 Expected Outcomes and Impact

The total number of additional jobs that will be created as a result of the activities outlined above is summarized in the Table below:

TABLE 11

Summary Table indicating additional jobs that would be created

Sl. No.	Enterprise	Jobs Created
1	Productivity Improvement in Agriculture	7,000,000[1]
2	Integrated Horticulture	
3	Floriculture	
4	Medicinal Plants Production	6,327,000[1]
5	Production of Seeds and Planting Materials	
6	Animal Husbandry Programs	13,700,000[5]
7	Integrated Program Of Intensive Aquaculture	1,117,500[1]
8	Sericulture	700.000[1]
9	Afforestation and Wasteland Development	
10	Soil And Water Conservation	50,000,000[3]
11	Water Conservation and Tank Rehabilitation	1,000,000[2]
12	Compost Preparation, Vermiculture and Organic Farming	5,00,000[4]
13	Establishment of Agro-Industrial Complexes	1,000,000[1]
	Total	About 80 million additional jobs

1 Estimates by G. Rangaswami for the International Commission on Peace and Food "Prosperity 2000". Bharatiya Vidya Bhawan
2 From Estimates included in the EEC documents
3 From NCEAR estimates
4 From Experiences in the Biovillages program at Pondicherry
5 From NDDB Estimates

Operationalization of the plan through implementation of various interventions will result in improved living standards of the rural poor (in terms of nutrition, health and education) by augmenting their income and employment opportunities without seriously damaging the natural resources and environment.

5.10 Compounding Services needed for the Implementation of the Plan

While the above proposal has been primarily concerned with employment generation and income enhancement, a number of other services also need to be expanded if the program is to be successful. This includes organization of micro-credit for the enterprises, dissemination of modern and efficient production technologies, training and development of human resources, strengthening of the markets including sensitization for the products from these enterprises etc. Some activities at the local level like mushroom production, floriculture, community aquaculture etc. will generate products, which are likely to have a local market and can, therefore, be handled by organization of self-help groups and limited cooperative marketing strategy. However, products like silk production, value added products from rural industries etc. will have to be considered on a wider canvas of both domestic consumption and international exports. The former specially, will require planned government support and intervention as domestic markets and international requirements will have to be integrated. Ventures started at a few places without such commitment and support from government have run into problems. This aspect needs to be carefully woven into the Plan.

CHAPTER VI

A BETTER DEAL FOR THE VERY POOR

6. Need for a scheme

A calorie intake of 2400 kcal per person per day in rural areas and 2100 kcal per person per day in urban areas defines the poverty line.

6.1 In monetary terms, based on a consumption basket, the 1999-2000 NSSO survey places the poverty line at Rs. 377 per capita per month in rural areas and at Rs. 454 per capita per month in urban areas.

6.1.1 Depending upon the methodology adopted the total number of people below the poverty line is estimated at 260 million (with 193 million in rural areas) under one method and at 232 million (with 171 million in rural areas) under the other. The sceptics place the figure at around 30% of the population or over 300 million.

6.1.2 Whatever the exact figure the fact remains that the number of people below the poverty line in India i.e. those who do not get two full meals a day continues to be alarmingly high. The fact that 53% of the under four year olds i.e., 60 million children are moderately or severely malnourished amply proven this point. (National Family Health Survey 1992-93). All these data relate to abject poverty. If the lack of access to minimum levels of education, health facilities, civic amenities, employment etc. are taken into account i.e. if the index is to be human poverty which relates to quality of life the number will be much larger.

6.1.3 In these circumstances what is necessary is not so much a debate about the numbers but doing something upfront, and in a big way to address the problems of abject poverty as well as human poverty.

6.1.4 For achieving this, a two pronged strategy is necessary. The first strategy should be to put the economy on a high growth path along with time bound programmes for increasing literacy, health facilities, civic amenities, employment opportunities etc. by giving higher priority in the country's economic planning and development. As more and more people share in the growth and the other benefits, both human poverty and abject poverty, will come down.

6.1.5 Experience of China clearly establishes that when the high growth rate is based on good growth rates in the primary and secondary sectors not only does the total levels of poverty come down sharply but also that the gap in poverty levels as between rural and urban areas backward area and forward areas poverty levels and between ethnic groups also comes down. However, when high growth levels are led by exports and service sector, the impact on poverty levels is minimal or even negative. In India, in the recent years the growth is led by service sector, including Information

Technology and exports. Investments in agriculture have, however, been coming down steadily and speedily in the last two decades – from a high of 4.1% of GDP in 1978-79 to about 1.5% now. This could be a major contributory factor to the high incidence of rural poverty. The growth in the secondary sector has also been somewhat muted in the last few years.

6.1.6 The second is a targeted programme, which will provide relief to the abject poor, even as they wait for the trickle down effect of the good growth rate and emphasis on various aspects of human resource development. Here the main problem is the extent of leakages, placed at 85% by one of the former Prime Ministers a good 15 years ago. In the leakages, corruption in direct money terms is only one part, the other aspects being the administrative and institutional inability to deliver the benefits to the targeted sections, diversion for commercial purpose, diversion of the benefits to the better off sections of the society and so on.

6.1.6 Thus, in the package of measures to be taken up, two of the elements would be: (i) to increase investments in Agriculture sharply – at least doubling it to 3% of GDP – and (ii) launching a targeted programme in which leakages would be least. A massive employment programme, linked to labour incentive schemes aimed at increasing productivity of land and marketability of outputs, like, command area development programmes, renovation and maintenance of minor irrigation works and irrigation channels, soil conservation programmes, rural roads, watershed programmes, afforestation, etc. would appear to be the answer.

6.2 The Scheme of Employment Guarantee Programme

Taking the number of people below the poverty line as 250 million, this works out to 50 million families. If two adults in each family, one man and one woman, are to be given employment for one day at Rs. 60 per head (it will be necessary to keep the wage level slightly below the off season wage rate in rural areas), the funds required pr annum would be 50 million x 2 x Rs. 60 or Rs. 600 crores. To provide one days work, every month it would cost Rs. 7200 crores. Thus to provide 5 days work every month to two adults in every BPL family the amount required would be Rs. 36000 crores.

6.2.1 Two comparisons are relevant. First, the provision for Employment Guarantee Programme in the current year's Budget of the Ministry of Rural Development is Rs.1600 crores i.e., equivalent to less than two days wage per annum for two adults in each BPL family. Even if it is assumed that the entire Budget provision for all schemes of the Ministry of Rural Development (Rs. 9200 crores) is made available for such wage employment, it would suffice to provide just a little more than one day's work every month for two adults below BPL family.

6.2.2 Second, at 20 kg of food grains per family per month at half the economic cost the food subsidy to each BPL family works out to Rs. 100 a month, provided (i) there are adequate arrangements to reach the subsidised food grains to the BPL families in all areas and (ii) the BPL families do have the other Rs. 100 to be pad for the purchase of the subsidised food grains. Both are seriously in doubt in many states.

6.2.3 Against these numbers, the proposed employment programme, should, at least on paper, enable each BPL family to get about Rs. 600 per month; a level at which they can get more than 20 kg of food grains plus other required food items, all at market prices.

6.2.4 Given the fiscal constraints, the resources necessary for this programme have to be found from within. This will have to be through a twin process of abolition of subsidies and use of funds earmarked for the benefit of these sections of the society under numerous programmes, each having certain other objectives, as well, though often rather minor in nature. Considering the inevitable time lags in taking decisions covering a large number of subsidies and on going programmes, the scheme could start with a target of providing 3 days work every month for one member in each BPL family. The funds required for this purpose would be Rs. 21,600 crores and this order of funds could be generated by abolition of -

(i) Consumption Subsidy part of Food Subsidy (Rs. 7200 crores)
(ii) Kerosene Subsidy (Rs. 6500 crores) and
(iii) LPG Subsidy (Rs. 6500 crores);
and utilising

(a) the savings in Fertiliser Subsidy – Rs. 3000 crores in the first year if the ERC's recommendations are accepted
(b) a part of the allocations for the various programmes of the Department of Rural Development, including that for Jawahar Gram Samridhi Yojana, Employment Assurance Scheme etc. and
(c) the entire provision set apart for MP's Local Area Development Programme.

(For the reasons explained in the Annexure, the total savings from abolition of kerosene and LPG subsidy taken together will be only Rs. 10,000 crores)

6.2.5 In order to ensure that such wage employment is used for productive purposes, it can be stipulated that at least 75% of this has to be linked to programmes like Watershed Development Projects (over Rs. 300 crores), Soil Conservation Projects (Rs. 120 crores), village roads programme (Rs. 2500 crores), repair and maintenance of minor irrigation works and channels (Drought Prone Area Programme (Rs. 210 crores), Desert Development Programme (Rs. 160 crores), programmes of afforestation of NWDB (Rs. 430 crores) and NAEB (Rs. 130 Crores) and provisions in the budgets of the States for similar schemes and for maintenance of minor irrigation works and irrigation channels. The amounts provided for these programmes can be used to the extent necessary for the material component, so as to 'absorb' a much larger amount of the wage component that will be available under the Employment Guarantee Scheme. To illustrate, the outlay for afforestation projects under NAEB is over Rs. 130 crores, while, of the allocation of Rs; 430 crores for NWDB, the amounts that could be spent in the 1,70,000 villages adjoining reserved forests could be placed at, say Rs. 150 crores. If these amounts exceeding Rs. 250 crores – could be utilised for planting materials, pick axes and shovels, baskets, water cans, water supply etc. then it would be possible to put through a programme of more than Rs. 2000 crores on such afforestation programmes in these 1,70,000 villages adjoining reserved forests, as the EGS amounts availability for these villages would be Rs. 8000 crores or more. This will secure a ten fold increase in afforestation, soil conservation and moisture conservation in the villages where such efforts are mostly required.

6.2.6 An utilisation level of 75% for such productive purposes could be prescribed as there may be areas in which, in the seasons when such Employment Schemes are most required, it may be difficult to identify productive programmes. In metropolitan and large urban areas the scope for public works with large labour component may be limited and it may be necessary to look for suitable rural/agricultural programmes in the adjoining rural areas. Within this 75% level, the mix of schemes to be taken up could vary from state to state and from district to district depending upon its requirements and the funds allocated for different purposes in that area. Likewise the demand for employment schemes will also vary from month to month in each place depending on the other and more lucrative employment opportunities that may be available in the normal course. Thus it will be necessary to use the 36-60 days figures of employment for the year as a whole as a benchmark and allow for month to month variation.

6.2.7 It will be best to announce that this new initiative would be launched from, 1.4.2002, so as to give the states enough time to (i) identify and publicly announce the BPL families at the village and locality levels (in urban and metropolitan areas); (ii) indentify the various productive works to be taken up at the district and sub district level utilising the amounts set apart for such schemes and the funds available under the EGS (which is to be used only for the wage component); and (iii) complete necessary 'Budget accountability' formalities to ensure that funds are available from day one for utilisation at the field level. A time gap of this order would also be necessary to put through the decisions for locating and diverting, to this Scheme, the necessary resources.

6.3 Areas of Concern

Any reduction in expenditure, including by way of reduction/abolition of subsidies, by government *ipso facto* leads to a reduction in incomes/benefits for some groups of people. The larger the benefits that they lose, the more vocal will be the protests from such vested interests.

6.3.1 Over 30% of the subsidised supplies in the case of kerosene gets diverted for use as fuel in transport (particularly lorries) while in the case of LPG a similar proportion gets diverted for use in dhabas, restaurants and three wheelers. As such diversion is unauthorised there cannot be any formal protest from such lobbies when subsidised sale of these products are abolished.

6.3.2 The consumption of these products is much more in those states which have better arrangements read – better administered States!) for the effective distribution of these products. Thus when these subsidies are abolished and the founds for the Employment Guarantee Schemes are based on the proportion of BPL populations in the different States, there will in fact be a diversion of funds from the "better off" states to the 'comparatively backward' states. The better off states will thus be in the forefront in objecting vociferously to the abolition of the subsidised sale of LPG and kerosene.

6.3.3 In both LPG and kerosene bulk of the sales take place in metropolitan and urban areas, with the proportion being much more in the case of LPG than in the case of kerosene. In the case of LPG, the BPL sections may not be able to afford the high cost, even if they could access it. On the other hand, the BPL sections do use kerosene as a fuel whenever they are able to access it. Thus with the abolition of these subsidies the BPL sections may lose about Rs. 50 per family per annum (assuming that about 30% of the 13 million kilolitre of kerosene, with a subsidy of Rs. 5 per litre does reach them and that virtually no LPG is used by them). But then it could be argued that the gains from assured employment that they get would be substantially higher. On the other hand the loss for the middle and upper class in the metropolitan and urban areas will be real. Thus after the category of the "better off" states the next in line among the vociferous protestors would be the metropolitan and urban areas and then the rich and the middle classes!

6.3.4 As far as the fertiliser subsidy is concerned its gradual elimination over a period of 5 years on the lines recommended by the ERC will ultimately be in the interest of the farmers as at that stage the market can be totally freed and imports allowed at zero duty. However, there would be vociferous protests, particularly from states like Punjab and Haryana, which are maximum consumers of the subsidised urea. It should not be difficult to convince them through constant and concerted efforts that the move is in the right direction and in their own interest. Thus the difficulties in phasing out of he fertiliser subsidy, though difficult in itself, will be some what less than the difficulties likely to be faced in the abolition of kerosene and LPG subsidies.

6.4.5 Food Subsidy is even today limited only to the BPL sections. Still the abolition of the food subsidy could lead to objections from the BPL sections in metropolitan and urban areas if enough avenues for providing them with employment opportunities under the EGS are not put in place straightaway. One way out would be to announce that the new arrangements would come into force from 1.4.2002, thus allowing adequate time for all necessary arrangements to be put in place in this regard.

6.4.6 Yet another problem relates to those of the BPL sections who are not in a position to avail of the employment programme due to old age, being physically handicapped etc. If during the transition period if these persons could be identified, then for them and for them only the arrangements for subsidised supply of food grains at subsidised rates on payment of the equivalent amount in cash in lieu could be continued and for this purpose an amount set apart – say Rs. 2000 crores – which would be distributed to the states in cash, with reference to the number of such persons in each state.

6.5 Resource Requirements for Implementation

The above discussion has focussed on the possible avenues for employment generation. The question naturally arises, "What will be the resource requirements for such a scheme, and from where can it be mobilized? Should some of these ventures be considered as an on-going activity and resources mobilized from existing programs? Is it possible to club / modify existing programs so that there will a more focussed attention to the problem at hand?"

6.5.1 As has already been pointed out, there are a number of Government Programs addressing these or related issues, which form part of the Five-year Plans. The problem is, therefore, not the lack of programs, but their implementation and reaching the target groups. The brief discussion here only, are indicative of the possible resources for the proposed employment generation schemes; the actual amounts available will have to be worked out in each State according to their programs and activities.

6.5.2 For the enterprise on "Productivity Improvement in Agriculture", which is expected to generate an additional 7 million jobs, there are already a number of schemes in operation funded both centrally and by the states. Agriculture being a State subject, the primary responsibility for addressing

agricultural issues rests with the State governments. Since the project is essentially on the application of newer technologies for increased production, the State and Central Agricultural Extension Agencies with support from NGO organizations, can implement the program from out of existing funds and resources, with only marginal additions and focus, where needed.

6.5.3 Integrated Horticulture with emphasis on cultivation of fruits, vegetables, flowers and medicinal plants, is a high-income generating activity. Private sector funding should be mobilized for this purpose, if necessary with support from financial institutions. Assistance from the Government will essentially be needed for support facilities and infrastructure. The National Dairy Development Board has estimated that expansion of the Animal Husbandry programs will be self-supporting. The precise financial support needed for this activity will have to be worked out.

6.5.4 Improved Sericulture is expected to provide additional 700,000 jobs. However, there are sensitivities in the issue as some activists are against destruction of worms to keep the cocoons in tact. Specifications for the domestic demand and international requirements vary; consequently the development plan should attempt to integrate them so that marketing problems do not loom large.

6.5.5 The major employment generation activity considered here is Afforestation and Wasteland Development including Soil and Water Conservation and Tank Rehabilitation. This enterprise, which is expected to generate about 50 million jobs, will require massive governmental support, even though there is scope for involving the private and industrial sector for this purpose. The Ministry of Environment and Forests, Government of India has prepared a National Forestry Action Program-India, which is a 20-year Plan. The program two types of activities: (1) Improving forest cover density and productivity of about 31 million ha of existing forest lands and (2) Bringing under forest plantation an additional 29 million ha of non-forest and farm lands. By the latter step, the total forest cover in the country is likely toi go up to 33 %. The resources needed for this activity has been estimated to be Rs. 133,000 crores. Even when this activity is considered as an asset-building enterprise with a large potential of generating income and contributing substantially to GDP over a period of time, given the current levels of allotments to this sector, the program will be considered as too ambitious. The employment generation that this author has outlined above considers afforestation (includes regeneration planting and new areas from wasteland) only to the extent of 12 million ha and may be a more feasible proposition. It is the conviction of this author that the needed resources for this activity can be found by (1) merging many of the non-productive rural development programs into a focused activity (2) by involving the private sector in undertaking economic plantations and (3) involving local communities and assigning to them the rights for non-timber products and developing it as an asset-building exercise to the community.

6.5.6 The Planning Commission estimates that the various Ministries of the Government of India spend roughly Rs. 35,000 crores on Programs that are meant to achieve Poverty Alleviation. The State Governments spend probably much more than this for the schemes developed by them.

6.5.7 The thread running through the entire discussion here is that the people should not depend on the Government alone for generating jobs. The majority of the jobs will have to come from Private sector and through self-employment and entrepreunership opportunities. The Government can, at best, provide seed money for some programs, provide infrastructure support and activate a program. The Expenditure Reforms Commission is seized of the matter and has suggested the need for integrating the various schemes of the government into a holistic integrated program.

6.6 Revised targets if only "limited resources" are available.

The proposals in this document for employment generation and income enhancement are modular in nature. Depending upon the resources available and location-specific suitability, they can be undertaken.

6.7 Implementation Strategy

New policies, new institutions and new modes of organization will be needed to implement such a program successfully. Effective implementation of an ambitious program of this nature and magnitude requires:

1. Political will on the part of the Government;
2. Able administration to formulate conducive policies and guidelines;
3. Efficient Government machinery for extending necessary technical and logistic support;
4. Whole-hearted support of the financial, local and private institutions to assist in funding and input supply;
5. Cooperation of the NGOs for providing services;
6. Local level institutions to aid the area-planning and execution strategies and above all
7. The conviction, involvement and committed participation of the people as the ultimate partners and producers.

6.7.1 Programs of a similar nature have been implemented at the micro-level and there are innumerable success stories. The key to the success of these programs have been committed individuals who have been able to plan program suitable to the specific community and implementing them with the people's involvement and commitment through motivating people. Formal bureaucratic structures may not be suitable for this since formal organized structures of the Government do not provide for a system to sustain the enthusiasm and initiative for a follow-up to logical successful steps.

6.7.2 The entire plan is built on the basic framework provided by the human-centered development pathway. Development of resource-poor in the rural areas by empowering them with knowledge, information, skill and eco-friendly technology is the crux of the whole approach. Whatever programs are promoted, should be accepted, acted upon, managed and owned by the people for whom they are intended. Creating a sense of ownership among the rural poor is the essence of the approach.

6.7.3 Although Government's support is paramount for operationalizing the program effectively, there is an imminent danger if it is construed as yet another program of the Government fully loaded with subsidy, loan, gifts, and what not. It may be effective for short-term gain, but will not be sustainable on the long run. The intention is not to undermine the importance of support provided by the Government, which is channeled through its various development programs, but strengthening it through alternate and complementary pathways. If the sense of ownership is not developed among the people, groups and organizations, and if the enterprises are not economically viable, dependency syndrome will continue to persist. Initial support, both financial and institutional, will certainly act as a catalyst by facilitating the development process to start. Once this is achieved, efforts need to be made to internalize the whole process in the resource poor by slowly withdrawing the material support and concentrating in their capacity building through intellectual support by way of training and service providing. It will go a long way in building confidence in their own capability and innovativeness. Withdrawal strategy should, therefore, be built in as part of the project development itself, so that a phased withdrawal of the inputs and technical support is possible.

6.7.4 The twin development problems of natural resource degradation and poverty alleviation can be effectively overcome by ensuring people's participation, while operationalizing this plan through implementation of various interventions in a participative action mode, towards realizing sustainable agriculture and rural development. It can be achieved very effectively through concerted efforts on social mobilization. Depending on the nature of the intervention practiced and the existing social fabric in the village, the mobilization process should start with the establishment of Self-Help Groups (SHGs). The Self-Help groups can be formed either on the basis of enterprises or micro-credits.

6.7.5 It is interesting to note that the Ministry of Rural Development has recognized the importance of Self-Help groups both for savings and for micro-enterprises. In a recent meeting of State Rural Development Ministers, it was agreed that promotion of formation of Self-Help groups would be one of the major strategies that will be adopted for the implementation of rural development plans. All these efforts will enable the farmers to come out of the clutches of subsidy–ridden mind-set; it facilitates them to become self-reliant eco-preneurs.

6.7.6 Development is an outcome of efficient institutions rather than the other way around. Focus must be shifted from maximizing the quantity of development funding to maximizing development outcomes and effectiveness of public service delivery. A novel idea of implementing such development programs through a Consortium approach where, the Government, People's organizations at the grassroots level, Educational and training institutes, and Non-governments Organizations (NGOs) are partners, should be tried. While governmental interventions are necessary for ensuring that there is no misuse of funds, the implementation should be shorn of bureaucratic

controls and procedures, which may delay activities at the critical stages. We have success stories in the functioning of such a setup in the National Dairy Development Board, the People-controlled Cooperative Institutions and the Panchayat Raj Institutions in Madhya Pradesh.

6.7.7 In order to bring about greater transparency in the functioning of these institutions, and to ensure proper utilization of funds, there is a need to put into place a system of "Social Audit". Under this system, it should be ensured that all concerned have complete information on the release of funds, and the way it is budgeted and spent.

6.8 Vista of the Future

In the Vision-2020 Document that was prepared by the MS Swaminathan Research Foundation for the Ministry of Agriculture, Government of India, the following were identified as some of the critical activities that should be undertaken by the government.

6.8.1 Strengthening the capital formation in the agricultural sector

Despite the large increases in production and productivity that the country has recorded in the last 50 years, the capital formation in the rural sector has remained dismally low. Several studies have highlighted the need for enhancement of this activity, if meaningful gains in agriculture sector were to occur. The strategies for this to happen will include:

a) Investment for development and improvement of land as well as development of efficient water use technologies that will improve substantially contribute agricultural growth and development.

b) Availability of credit for agricultural operations, giving agriculture the status of industry.

c) Development of employment opportunities in the rural sector through strengthening the rural industries sectors.

d) Establishment of primary processing facilities in the rural areas for value addition of commodities produced at the farm level.

6.8.2 Providing multiple livelihood opportunities

All efforts in overcoming poverty at the micro level of the household has to be essentially by the committed efforts of the people themselves, though assisted by community at large. Since most of the ultra-poor are either landless workers or people with very small land holdings that are not economically viable, income enhancement can arise only through multiple livelihood opportunities, which include:

a) *Primary value addition of commodities at the household level like production of semi-processed foods, prickle making, sun drying and packaging etc.*
b) *Utilization of locally available resources like paddy-straw for mushroom growing, sericulture, goat rearing, dairying and milk production, backyard poultry for eggs and meat.*
c) *Community aquaculture, floriculture, horticulture that includes production of fruits and vegetables etc.*

6.8.3 Most of the activities require only the relatively small external financial input, but in terms of income, provide attractive returns. Micro-credit need to be provided for this activity to initiate action. However, what is probably most important is, ensuring adequate market opportunities for these products, since individual efforts at marketing will not only be difficult and unsuccessful, but also, exploitative of the farmer.

6.8.4 Protecting community biodiversity

It is the rural families, with their tradition of farming and conservation activities, who have preserved the rich biodiversity. It is, therefore, necessary to ensure that the benefits of commercial and

economic exploitation of these resources benefit the community, specially the poor and the ultra poor, who might have contributed substantially for their preservation and conservation.

6.8.5 Establishment of rural industries

To provide income enhancement and employment, primary industries that utilize the products and by-products arising from the agriculture sector that includes crops and horticulture, animal husbandry, fisheries, poultry and aquaculture. This can be easily accomplished by organization of a consortium of rural industries that can synergise each other to provide for optimal utilization of the resource base of the community.

6.8.6 Limited mechanization to remove drudgery

Certain agricultural operations are physically tiresome and impose heavy strains on the physical energy of the workers. Mechanization can be introduced in these areas, so that, the drudgery of work is minimized; however, it is to be ensured that such mechanization does not displace people from job opportunities that provide a steady income. The problem has to be studied holistically within the rural community, so that, people displaced by this limited mechanization can be absorbed in newer job opportunities created. This will have to be studied and carefully planned at each community level.

6.8.7 Development of Peri-urban agriculture:

Agriculture to serve the urban communities has to be more specifically tailored to meet their requirements and demands. It has been estimated that by 2010, about 50 % of the population will be living in urban or peri-urban communities. Their requirements specially vegetables, fruits, semi-processed foods, poultry, meat, fish etc. will have to come from the rural farms surrounding these communities. To make this activity commercially viable and of benefit to the farmer, information centres that will provide demand estimates of requirements of different commodities, prices, marketing systems besides improved technologies for production will be required. The market and credit infrastructure for this activity needs to be carefully framed and implemented. Storage and transportation facilities will have to be improved. In other words, a whole set of programs on capital formation, market information, storage, supply and inputs will have to be developed to meet this requirement. Many of the developed countries have expertise in handling this activity. India could benefit a lot by drawing on their experience and expertise.

6.8.8 Agriculture to be given industry's status

One of the poor reasons for development of agriculture including utilisation of agricultural by-products and establishment of agro-industries, is the lack of adequate capital formation. This can be partly rectified by according a industry's status to agriculture and providing it with the necessary policy support for its development, as has happened in the industrial sector. While ensuring a more equitable treatment for development, this will also mobilise resources, reduce risk and commit the financial resources of financing institutions for overall development. Credit flow for agro-based enterprises as well as micro-credit for farm activities would increase helping stabilisation of production.

6.8.9 Market interface and promotion of value added agro-food production

Wide fluctuations in the market prices of agricultural commodities act as deterrent to production of low value agricultural products like cereals, oilseeds and even cash crops like sugarcane and cotton. Demand/supply need to be stabilised so that, over-production in one year does not bring in distress sales, while lower production in another year pushes the prices to unreasonable levels. Market information and demand need to be synchronised through networking systems of information sharing and supply-demand projections. This is particularly important in the context of changes in international trade introduced by the World Trade Agreement (WTO). Specially in the area of value added products, market variations could be a disaster when goods are permitted to be imported freely

and cheaper and better quality products are likely to invade the market. Manufacturers would then like to develop a niche for their particular products and market intelligence would then be valuable not only to market their products but also for developing strategies for modification of their products. For example, when Sericulture activity was intensified in Tamilnadu and silk production increased, producers had problems of finding a proper market for their goods. Based on market information provided by the government, the product range was widened. Interventions by government agencies to stabilise prices cannot be the only solution. A close nexus between dernand, production, market, availability and economic prices should develop.

CHAPTER VII

Report of "The Task Force of the Planning Commission on Employment Opportunities"

7. Since this Paper was prepared, the Task Force appointed by the Planning Commission on Employment Opportunities has presented its Report (Report of the Task Force on Employment Generation, Planning Commission, Government of India-June 2001), This is a fairly exhaustive report on the Employment and Unemployment Situation in the country, analyzing the role of economic growth on employment generation, sectoral policies on employment promotion including the role of special employment programs, and the requirements of labour force skills and training. The Report also makes suggestions on the reforms in labour laws required to promote employment opportunities since it is felt that the existing laws and regulations need to be rationalized/modified.

7.1 The data sources used in this paper as well as the Task Force Report to asses employment/unemployment status are the same viz. NSS data. A detailed analysis of this survey data has been included in the Task Force's Report and is a valuable background material for the propositions made in this paper. Even though an analysis similar to that undertaken by the Task Force, was also done to arrive at the background conclusions, this was not included as part of this paper as the emphasis of the paper was slightly different. One of the significant points that has come out from these surveys is that the rate of growth of employment declined sharply from 2.04 % per year in the period 1983 to 1993 to only 0.98 % per year in the period 1994 to 2000. This has raised the question whether this deceleration is because the economic progress during this period is of the 'jobless' growth. While the methodological issues on the basis of which such conclusions are drawn may be debatable, the fact remains that the employment growth has been inadequate. Further, the unemployment rates in relative terms (percentages of population) in our country may even compare favorably to some of our neighbors or other developing countries; but in absolute numbers, the numbers of unemployed persons in this country is very large because of the size of the population.

7.2 The conclusions drawn by the Commission in this Paper as well as the in the Report of the Task Force are broadly in agreement and the Commission may endorse many of their recommendations. This Paper is limited in scope to employment generation in relation to social security and thus have covered essentially rural employment.

7.3 While reviewing the lessons learnt from previous experience, the Commission has emphasized that the industrial and manufacturing sectors alone will not be able to adequate additional employment opportunities. Most of the additional jobs will come from the rural sector. The Task Force says: "Agriculture accounts for just 0 % of total employment and what happens in this sector is therefore extremely important for the employment situation in the economy". The Commission fully agrees with the statement, and emphasizes that in the "Sectoral Policies for Employment Promotion", agriculture should receive adequate attention.

7.4 The prime concern in our future planning for social well being should be 'eradication of rural poverty'. This can be achieved only through ensuring food and economic security. The former can be partly achieved through increased production, nay provide availability but not access. The latter (economic security) can be achieved only through employment generation and income enhancement through provision of livelihood opportunities. This paper on "Social Security and Employment", therefore, focussed on the livelihood and multiple livelihood opportunities. This Paper on "Social

Security and Employment" has, therefore, focused on the livelihood and multiple livelihood opportunities of the rural poor.

7.5 In their projections on employment elasticities, the Task Force noticed that employment elasticity for the Agriculture Sector was very low. They have made the comment "Although employment elasticity in agriculture was zero for the period 1993-94 to 1999-2000, we have assumed a small positive elasticity of 0.1 for the future, primarily because the higher growth rate being projected for agriculture, implies a structural shift towards non-cereal agriculture, which is more labour-using". We do not fully agree with projections for the following reasons-

(i) It is true that traditional, non-organized, subsistence cereal farming is neither profitable enough to encourage capital formation in agriculture, nor labour-intensive h to promote healthy growth in employment opportunities. What is called for is a shift from the traditional farming practices and schedules that will lead to crop diversification that takes into account emerging consumer preferences and current requirements; primary value addition at the farm level to increase farm-gate prices of agricultural commodities; labour-intensive but drudgery-avoiding farming technologies improve both on-farm and off-farm employment opportunities; and innovative approaches to rural credit and organization. As has been detailed in the various s of this document, the strategy proposed in this paper include:-

1. Increases in agricultural production through eco-friendly technologies and their widespread adoption.
2. Crop diversification to meet emerging demands of domestic and exports requirements.
3. Shift in emphasis from cereal-farming to labour-intensive and income-enhancing farming schedules like Floriculture, Fruit and Vegetable production, Organic farming, Intensive aquaculture, etc.
4. Value addition to agricultural commodities through primary and secondary processing.
5. Development of common property resources of village communities to enable landless labour get the benefit of community living.
6. Community asset-building through soil and water conservation measures as well as through restoration/rehabilitation of tanks and water storage units to facilitate eco-restoration and better natural management. These initiatives will ultimately trigger improvements in land and water availability and thus increase land-prod activity.
7. Rural asset-building through activities like intensive afforestation, farm and social forestry, utilization of wastelands etc., and ensure community participation in this activity through benefit-sharing scheme of non-timber products.
8. Social organization of communities through Self-Help Groups, participatory decision-making, and strengthening of local institutions through their empowerment. Incidentally, this may also reduce the conveyance costs of the special programs of the Government by plugging leakages and ensuring that they reach the target groups.
9. Improving knowledge dissemination and market information, and assist in better marketing of the farmer's produce through organized efforts, better storage, etc.

(ii) The specific activities and programs that could be initiated / strengthened to implement the above are given in the Summary Table (Table 11) in Chapter 5. It is emphasized that the programs are modular in nature and can be modified depending upon resource availability and local requirements. The Expenditure Reforms Commission has indicated that a large part of the resources needed can be mobilized by a multiple approach of rationalization of resource use, reducing subsidies, merger of several schemes and programs with broad similar objectives, and through higher financial accountability and reduction of conveyance costs. The Task Force Report also brings home this point in Chapter 5 on "The Role of Special Employment Programs". We cannot agree more on these statements, and feel that where there is a will and commitment, resources alone will not be a constraint if innovative approaches are adopted.

QUESTIONNAIRE
ON
SOCIAL SECURITY AND EMPLOYMENT

General

1. Article 39 sets out policy principles to be followed by the State. They include:

   (a) That the citizen, men, women equally have the rights to adequate means of livelihood.
   (b) That the ownership and control of the material resources of the community are so distributed as best to subserve the common good.
   (c) That the operations of the economic system does not result in the concentration of wealth and means of production to the common detriment.
   (d) That there is equal pay for equal work for both men and women.
   (e) That the health and strength of workers men women and the tender of age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
   (f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

   Should in your opinion, this article require any amendment and if so, in what way?

   Suggestions

Poverty Alleviation Programs

2. The Government of India has developed many Poverty Alleviation programs targeting the poor. In addition, the State Governments have also many such programs for specific target groups. Many of them are listed in the documents in Annexures I and II of Chapter 2. In your opinion, how many of these programs are relevant and have reached the target population.

Relevance of the Programme		**Reached the targeted population**	
a. None	☐	a. None	☐
b. about 20 %	☐	b. about 20 %	☐
c. about 40%	☐	c. about 40%	☐
d. about 75%	☐	d. about 75%	☐
e. All	☐	f. All	☐

3. Despite the fact that successive Five Year Plans are supposed to address the issues involved in ***Human Development Index*** (which includes Life Expectancy at Birth, Literacy and Real GDP per capita) and ***Human Poverty Index*** (which includes percentage of people not expected to survive 40 years, Adult illiteracy, not having access to water, health services and sanitation, proportion of underweight children), the country ranks very low in both these indices. Do you consider that the steps taken by the Government to address these issues are:

   a. Properly formulated and sufficiently focussed

   Yes ☐ No ☐

b. Properly formulated but insufficiently focussed

Yes ☐ No ☒

c. Improperly formulated and insufficiently focussed

Yes ☐ No ☒

If your answer is No, how should they be reoriented and refocused?

Suggestions

Social Security Issues

4. The Public Distribution System (PDS) is the most important "Safety Net" to aid the poor. Recently this has been modified to exclude the 'Above-the-Poverty-Line' group from benefits for certain items supplied through the PDS. A number of lacunae in the scheme has been observed and discussed in the text. In what ways you would like to see the PDS modified so that it serves the poor as a "Safety Net"?

Suggestions

5. (a) Currently the PDS supplies the following items: Rice, Wheat, Sugar, Edible oils, Kerosene. Should all these items be considered as essential and supplied through the PDS (especially in view of the Targeted PDS)

Yes ☐ No ☐

(b) Should some of them be dropped?

Yes ☐ No ☒

(c) If so, which of them should be retained and which ones dropped? Please give details.

Suggestions

6. The Government operates a number of 'subsidy schemes' like subsidies on food, cooking gas, petroleum products, fertilizers and agricultural inputs etc. They are a big drain on the public exchequer and need to be severely curtailed. Which of these programs would you consider should be deleted from the subsidy items and which should be included, specifically when the target group is the Rural Poor?

Suggestions

7. A Ten-point "Agenda for Action" has been proposed for developing a Hunger-free India by 2007. Would you suggest to make any additions / deletions to this list? If yes, please give details.

Suggestions

Employment Issues

8. (a) The Government has launched many employment-oriented schemes, the notable among them being: 1) Employment Assurance Scheme (EAS) 2) Jawahar Rozghar Yojana (JRY) 3)Swarnjayanthi Gram Swarozghar Yojana (SGSY). Massive investments have been made on these schemes. Should, in your opinion, have these programs have been properly focussed?

Yes ☐ No ☐

(b) If your answer is "No", what modifications would you suggest to these programs?

Suggestions

9. (a) Should the "State" guarantee the "Right to Work" as a Fundamental Right?

Yes ☐ No ☐

(b) If yes, what should be the minimum number of days of work in a year for which employment should be guaranteed?

(a) 50 – 60 days ☐

(b) 80-100 days ☐

(c) 100 – 150 days ☐

(d) more than 150 days ☐

1207 LJ&CA/2002—24A.

10. (a) Should wage employment in rural areas should be considered as a "Safety Net" for Poverty Alleviation.

Yes ☐ No ☒

(b) If so what should be the minimum number of days in a year, a person should be guaranteed wage employment?

(a) 50 – 60 days ☐

(b) 80-100 days ☐

(c) 100 – 150 days ☐

(d) more than 150 days ☐

11. If "Wage employment" for unskilled labour is regarded as a "Safety Net" program, and not as a replacement program for other avenues of employment (including self-employment) which may be more remunerative, what should be the wage rates that should be provided?

(a) Open market rates, which are usually below the minimum wages for the area ☒

(b) 50 % of the minimum prescribed rates of the area ☐

(c) 75 % of the minimum prescribed rates of the area ☐

12. (a) Since the main purpose of wage employment programs is to eliminate Hunger and alleviate poverty, should the wages for employment be paid in kind in the form of food?

Yes ☐ No ☐

(b) If so, what percentages of wages should be paid in kind?

(a) Entire wages in kind ☐

(b) 50% of wages in kind ☐

(c) 25 % of wages in kind ☐

13. Chapter IV of the Paper lists several "*Avenues for Employment and Income Generation*". Do you have any specific additional suggestions to make? If so, give details.

Suggestions

14. The Paper outlines a broad Strategic Plan for generation of 80 million additional jobs over five years. Some components have been identified. Do you have any comments / suggestions on these components?

Suggestions

15. Two of the major components identified are "Afforestation and Wasteland Development "and "Soil and Water Conservation and Tank Rehabilitation". Except for the targets set and suggestions on

mode of operation, these are not new programs. If you are aware of the limitations of the earlier programs, would you like to suggest changes / modifications? If so, please give details.

Suggestions

Technology Issues

16. Agriculture is viewed in a broad sense to include all terrestrial activities including plants, animals and fisheries, In that sense, agriculture is the backbone of our economy and will continue to influence all our programs. Technology backup for improvement of production and productivity and its diffusion are critical. What improvements / modifications would you like to see in these programs for intensification of agricultural development? Please give details.

Suggestions

17. One of the problems facing agricultural development is Capital Formation in the Agriculture Sector, which has been dismally low. Do you have any specific suggestions for strengthening Capital formation in the Agricultural Sector.

Suggestions

Implementation issues

18. People's Participation in the development of Poverty Alleviation and Employment Generation programs is considered as very important. What should the mechanisms for their involvement?

a) Discussions at elected local bodies
b) Discussions in the Gram Sabhas
c) In consultation with NGOs working in the areas
d) In consultation with BDO and VLWs
e) Identification of local needs through Participatory Rural Appraisal

19. According to you which agency should coordinate implementation of the Employment Generation programs of both government and non-government agencies (both of the organized and non-organized sectors) ?
    (a) Government Agencies through the Rural Development Department of the State Government ☐
    (b) Local Bodies like Panchayat Raj Institutions and Gram Sabhas ☐
    (c) NGOs working in the area ☐
    (d) A consortium of these agencies ☐

Financing Rural Wage Employment Programme

20. The pattern of consumption of LPG and kerosene shows that a large metropolitan/urban people divert them for non-domestic purpose. Do you consider it appropriate to divert the subsidy on these items for rural way employment programmes?

Yes ☒ No ☒

21. A Small Farmers Agri-business Consortium (SFAC) was constituted to centrally coordinate the Government's role as a catalyst for the development of entrepreunership and establishment of a liaison between industry and producer. If this organization is to function effectively, how would you like it to be organized?

Suggestions

22. Globally and even nationally, programs of Poverty Alleviation and Creation of Rural Assets have been successful only when there is a committed leadership and people's involvement. How would you ensure that this is available?

Suggestions

23. Organization of the Rural Poor into Self-Help Groups (SHG) and their capacity building both for micro-enterprises and micro-credit has been suggested as a Implementation Strategy. Do you have any experience in the operation of these groups, and do you have any comments on the suggestion? Please give details.

Suggestions

MODELS FOR THE DEVELOPMENT OF SUSTAINABLE LIVELIHOODS

Several models have been tried in different parts of the country and at different locations for sustainable livelihoods, which is another term for ensuring income enhancement, employment generation and poverty alleviation. Most of these conceptually correct models have been success stories, which have been developed and implemented by committed people or organizations with community support and governmental patronage. It has also to be recognized that all these projects are location-specific and have taken into account the assets and resources available at the local level. As such, the choice of the model will depend upon the location and other factors like resources available. Three such models are discussed in this section.

A. HUMAN-CENTERED DEVELOPMENT MODEL

"Biovillages Program at Pondicherry implemented by the MS Swaminathan Research Foundation"

The program is developed on the concept that asset building and community development have to be the pathways for poverty eradication, which have to be on a genuine partnership with the poor, *enabling* them to *earn* their living. The term 'Biovillage' is derived from the Greek word **bios** which means living, and is thus a human-centred development paradigm. With a pro-poor, pro-nature and pro-women orientation, the program pays concurrent attention to: (a) Natural Resources conservation and enhancement; (b) Poverty eradication and (c) Women's empowerment.

The principal components of the programme are:

- Eco-farming leading to the substitution of chemical and capital with knowledge and biological inputs like vermiculture, bio-fertilizers and bio-pesticides; this in turn creates new eco-jobs in villages.
- Increased avenues for rural non-farm employment based on opportunities for remunerative marketing.

Thus, integrated attention is paid to on-farm and non-farm employment. The new livelihood opportunities are based on an analysis of the resources available to the family. Thus, landless labour families take to household mushroom cultivation, ornamental fish rearing, coir rope making, rearing small ruminants under stall fed conditions and other enterprises which are within their resource capability. Those with a small plot of land take to hybrid seed production, floriculture, dairying, poultry and other high value enterprises. Groups of assetless women take to 'aquaculture in' community ponds. The asset building exercise is based on micro-level planning, and micro-enterprises supported by micro-credit.

Multiple livelihood opportunities help to enhance total income and minimize risks. The key inputs are education and training, social mobilization and producer oriented marketing. The self-help groups operate a Community Banking system, which makes available credit to its members on terms decided by them. The system involves low transaction costs and a high percentage of loan recovery. Over a period of time, the training is done by local women or men. The pedagogic methodology is learning by doing and hence formal literacy is not a pre-requisite for admission to the training courses. A fundamental principle guiding the biovillage movement is **inclusion** and not **exclusion**. The women and men who become trainers are inducted into a **Biovillage Corps of Rural Professionals**. Most of the nearly 100 Biovillage corps members inducted so far, are either semi-literate or even illiterate. They are the prime-movers and doers of the biovillage movement. They have demonstrated that the rural poor can take to new technologies like fish to water, provided they are enabled to learn through practical work experience and not through class room lectures.

The Biovillage model of sustainable human development helps to bridge at the same time the demographic, digital; economic and technological divides. It promotes harmony with nature and with each other. It is based on ecotechnologies which are environmentally benign, economically viable and socially equitable. It shows the path to an ever-green revolution in agriculture, where productivity advances can take place in perpetuity without associated ecological or social harm. The choice of technologies is flexible depending on local desires, capabilities and opportunities. While the concept has certain ground rules like "a pro-nature, pro-poor and pro-women" orientation to technology

dissemination and a partnership and not a patronage approach to poverty eradication, the precise action plan is developed by the people of the village in partnership with professionals.

The program funded by several organizations, but primarily by the Government of India and the UNDP, operated in 19 villages in Pondicherry. The biovillages project was a rich and exciting learning experience for all those involved in the program, viz. Farm families especially farm women, scientists associated with the implementation, the Pondicherry Government, the financial institutions and other NGOs. Its success can be measured in terms of the following achievements:

a) Creating awareness among farm families on their rights and responsibilities
b) Improving income and employment at the village level
c) Access to improved technologies in crop and animal husbandry and associated activities
d) Natural resources conservation and management
e) Better utilization and management of common property resources
f) Better health and environmental sanitation
g) Better organization within communities and formation of micro-enterprise and micro-credit self-help groups (SHG)
h) Building up of self-confidence and empowerment of women as well as creating an entrepreneurship spirit in them

In view of the success of the program, Pondicherry Government is interested in extending the program to the entire State and a Detailed Development Plan has now been prepared. Details of the Operational design of the program and methodology are available in the Project Report and other publications on the subject.

B. RURAL ENTERPRISES-ORIENTED MODELS OF DEVELOPMENT

1. The Spark Program of the Government of China

The Government of China launched a very significant program of rural employment towards rural prosperity in 1978 and the progress of the program has been remarkably successful. It was realized that if the economic conditions of the rural areas were to improve, then processing of agricultural commodities at the primary level will have to be undertaken at the village level. Rural industrial development was put on the top of the national developmental agenda. Between 1978 and 1992, the number of rural enterprises from 1.52 million to 20.78 million, the number of employees in the sector from 28 million to 10.23 million and the share of rural industries to GNP from 7 % to 31.0 %. It has been claimed that Rural Enterprise has become the backbone of the rural economy as well as a mainstay of small and medium enterprise. Further, besides providing rural employment to many who were in the throes of hunger and poverty, the development of rural enterprises has strongly supported agricultural modernization through the process of capital input. The benefits that have accumulated from the promotion of rural industries have been many.

It is interesting to note that, when the program was initially started, the bureaucrats and the urban planners were not too supportive of the program and were deeply apprehensive about its success. However, the farmers themselves took up the program with a conviction and commitment because they saw clearly the many kinds of benefits that can result from it. Now it has become a movement.

2. The Bio-Industrial Watershed Model

A 'Bio-Industrial Watershed Model' was developed by J.S. Bali, and the Ministry of Rural Development – Department of Soil Conservation. This has some notable features in promoting rural employment. The concept aims at a dynamic convergence between Land and Water Development, the Biomass Production System (Agriculture, Horticulture, Animal Husbandry, Forestry, Agro-forestry, etc.), and Processing and Marketing of surplus biomass within the area. The program has to be backed by Infrastructure (roads, transport, communication, power, market information and facilities etc.) and People's Institutions at the grassroots level (Panchayat Raj, Gram Sabha, Self-help Groups etc.).

For ensuring sustainable livelihoods, 'sustainable production systems of plants and animals' will have to be developed. These include Agriculture, Horticulture, Agri-horticulture, Animal Husbandry,

Forestry, Agro-forestry, Agrostology, Aquaculture, Sericulture, Apiculture, Mushroom Production etc. Home processing and value addition to marketable biomass products, where employment will be available mainly to women, Central Bio-Processing units with backward linkages with farmers and labour, and forward linkages with the Marketing Enterprises will be established within the community.

Soil and Water Conservation Programs in the States (including Centrally-sponsored Schemes of Soil Conservation in Catchments of river-valleys, Drought-prone and Desert Development programs, and National Watershed Development Project for rainfed area) have generated over 13,000 million man-days of rural employment. As a mater of fact, this is the largest employment generation scheme of the government, despite its problems in implementation due sometimes to improper administration. This has been discussed earlier in the Report.

Annexure
(See para 6.2.4)

LGP & Kerosene Subsidies

At present (sale) prices of products and an imported crude price of US$25 per barrel, the subsidy on Kerosene at Rs. 5 per litre on a total utilisation of about 13 million kilo litres in the current year is estimated at Rs. 6500 crores on LPG. The subsidy outgo at Rs. 123 per cylinder on LPG is also estimated at Rs. 6500.

In both items the consumption pattern show a large metropolitan/urban bias. In both items the order of diversion for non-domestic purposes is estimated at over 30%.

HSD is also subsidised (Rs. 0.58 paise per litre) at a crude price of US$25 barrel. However as consumption is quite large (nearly 48 million kilo litres) the subsidy amount is quite substantial – over Rs. 2800 crores.

As against these subsidies totalling nearly Rs. 16000 crores, the surcharge on domestic crude would yield nearly Rs. 10,000 crores while the cross subsidy from Petrol would be under Rs. 4000 crores leaving a net deficit of over Rs. 2000 crores in the oil pool accounts. Government have already announced that the Administered Price Mechanism will be abolished at the end of this year. In other words from 1.4.2001free market conditions are to prevail in the sale of these commodities. Thus if any of these commodities are to be sold at a subsidised price for any particular groups of consumers than a dual prices system will have to be introduced which will not only lead to increased 'diversion' but also defeat the very purpose behind the dismantling of the Administered Price Mechanism.

Thus as things stand today in the subsidy on kerosene and LPG would have to be abolished from 1.4.2002. The present proposals involve abolition from an earlier date i.e. with the introduction of the enlarged employment programme.

When this abolition takes place, arrangements can be put in place for the present level of crude surcharge (Rs. 10,000 crores) to flow direct to the Budget, so that this amount is available as a source of financing for the Enlarged Employment Programme. The cross subsidy from Petrol as also the additional inflows from the; surcharge on domestic crude whenever the international price of crude goes over US$25 per barrel, could be credited to a separate Stabilization Fund for cross subsiding diesel price, thus protecting these consumers from large price increases in prices whenever crude price shoot up in the international market.



NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

EFFECTUATION OF FUNDAMENTAL DUTIES OF CITIZENS

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating a public debate and eliciting public response.

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on

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1. Subhash C. Kashyap, Citizen and the Constitution, CDS, Ministry of Information and Broadcasting, Publications Division, Government of India, New Delhi, 1997;
2. Understanding the Constitution, NCERT, New Delhi, 2000;
3. Fundamental Duties of Citizens (Verma Committee Report), MHRD, Government of India, New Delhi, 1999.

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CONTENTS

		Pages
Part – I	1.1 Introduction	377
	1.2 Historical Background	378
	1.3 Concept of Duty	380
Part – II	2. Fundamental Duties of the citizens under the Constitution	381
	2(a) Ideals and Institutions of Constitution	
	2(b) Noble Ideals	
	2(c) Sovereignty, Unity, Integrity	
	2(d) National Service	
	2(e) Common Brotherhood, Dignity of Women	
	2(f)Rich heritage of our Composite Culture	
	2(g)Natural Environment and Living Creatures	
	2(h)Scientific Temper and Humanism	
	2(i) Safeguarding Public Property	
	2(j) Striving for Excellence	
Part – III	3.1 Steps Towards Effectuation	392
	3.2 Awareness	392
	3.3 Inculcation	393
	3.4 Aspiration	397
	3.5 Implementation	398
Part – IV	4.1 Enforcement of Fundamental Duties	398
	4.2 Judicial Pronouncements	399
	4.3 Justice Verma Committee	404
	4.4 Available Legal Provisions	404
	4.5 Suggestions for Further Action	405
Part – V	Questionnaire	408
	Annexure	411

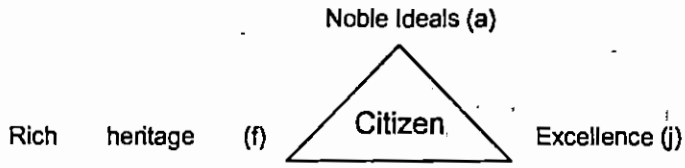
PART – I

Introduction

1.1 Introduction

1.1.1 When the working of Part IV-A of the Constitution, consisting of the sole article, namely article 51A, dealing with Fundamental Duties of citizens, is taken up for review, certain crucial questions are bound to arise. The most crucial of all questions would be: Has article 51A served its purpose, and if not, where have the people who worked the provision defaulted in the discharge of their democratic duties of citizenship and failed their fellow citizens? There can be no two opinions about the need for the retention of the article in the Constitution, and equally there can be no dispute on the fact that the provision requires to be known and effectuated much better than what has been the case thus far.

Three things make a nation. First is noble ideals. Second is the citizens capable of achieving the noble ideals. Third is the striving for excellence by such citizens.



1.1.2 Our dream of free India was, and is

"Where the mind is without fear and the head is held high;
where knowledge is free;
where the world has not been broken up into fragments of narrow domestic walls; where words come out from the depth of truth;
where tireless striving stretches its arms towards perfection;
where the clear stream of reason has not lost its way into the dreary desert sand of dead habit;
where the mind is led forward by the into ever widening thought and action into that heaven of freedom, my Father,
let my country awake*.

1.1.3 Mahatma Gandhi, the father of the nation, had been dreaming Independent India to be a place where there would be no poverty, no disease, no ignorance, no depravity.

Nahin daridra kon dukhi no deena
Nahin kou abudh no lachchan heena

1.1.4 This dream could materialize, and shall materialize, when every citizen solemnly resolves to discharge with all his wisdom and might, the Fundamental Duties enshrined in article 51A of the Constitution.

1.1.5 The Nation is what the Citizens are. The Citizen is the unit of the Nation.

God,
Merciful God;
Because a dark deepening crisis
Is engulfing this beloved land of ours,
Give us men a time like these demands.

Honest men,
Men of strong minds,

* Rabindra Nath Tagore

1207 LJ&CA/2002—25A.

Of big hearts and true faith and ready hands;
Men whom the lust for power will not corrupt;
Men whom the spills of office will not buy;
Men who possess opinions and a will;
Men for whom service to the nation will come
Before their selves;
Men who will not lie;
Men who will not indulge in gimmickry;
Men who will not feed us on slogans or on stunts.

Give us, O God

Men of Honour,
Of Integrity;
Men who can and will
Stand up to demons of demagogy;
Men who will not yield to treacherous flatterers;
Tall men, sun crowned
Men who liver above the fog and fluff of mock adulation,
In public duty and private thinking.

God, give us such men as
A trying and testing time like this demands.

1.1.6 Where from will God give us SUCH MEN?

Our Constitution says : Article 51A will make all Citizens of India, SUCH MEN.

SUCH MEN will achieve the Noble Ideals (Clause-(a)) by striving for excellence (Clause-(j)) while also translating into daily life the Fundamental Duties enshrined in clauses (b) to (i).

1.1.7 "The future of India lies in acting, implementing and invigorating compliance with Fundamental Duties enshrined in article 51A of the Constitution".

1.2 Historical Background

1.2.1 To achieve the above objective, a brief historical background leading to the inclusion of article 51A in the Constitution of India, needs to be set out. The Swaran Singh Committee appointed by the Congress Party for a review of the Constitution had recommended that certain Fundamental Duties and obligations which every citizen owed the nation should be included in the Constitution. These recommendations were implemented with the incorporation of the new article 51A in the Constitution. Incidentally, this happened during the period of emergency aberration in our democratic history. Alongside the introduction of article 51A, several other articles of the Constitution were also amended. Some of the amendments had the effect of crippling the powers of the High Court and the Supreme Court. Soon after the emergency ended and a new Government assumed office in 1977, the Constitution (44th Amendment) Act, 1978 was passed, whereby many of the amendments brought in by the 42nd amendment were undone.

1.2.2 What is significant to note is that 44th Amendment did not disturb these provisions. Thus, article 51A commands the confidence of all the political parties and has remained on the statute book for 24 years.

1.2.3 The inclusion of Fundamental Duties brought our Constitution in line with article 29 (1) of the Universal Declaration of Human Rights and with provisions in several modern Constitutions of other countries.

1.2.4 There appear to be good reasons why the authors of the Constitution did not feel the need of enacting the Fundamental Duties in the Constitution as given to us.

1207 LJ&CA/2002—25B

1.2.5 Firstly, the framers of the Indian Constitution were such visionaries as had practiced values in life, discharging their societal and national obligations and had followed noble ideals which had inspired our national struggle for freedom and the need to defend the country, promote harmony, secularism and preserve the rich heritage of the composite Indian culture. To the framers of the Constitution, these were basic and inherent values which were being practiced by each and everyone. These were first nurtured in the home traditionally and were subsequently supplemented by education in schools and colleges. These were integral part of the way of life in India and it was taken for granted that aberrations in the practice of these will not be acceptable to the society. As such no need was felt to incorporate the Fundamental Duties specifically in the Constitution[*].

1.2.6 Secondly, the duties were spelt out by the Preamble to the Constitution which contains the ideals and aspirations of the people of India and the dedication of Constitution for fulfilling such ideals and aspirations. We have solemnly resolved to secure to all the citizens of India justice, liberty, equality and fraternity. Whatever is needed to achieve these goals, is our obvious duty to perform – is a dictate of the Preamble.

1.2.7 Thirdly, all the rights enshrined in Part III on Fundamental Rights have inbuilt obligations therein. The need is to read them so as to spell out and understand the duties flowing therefrom.
{(2) & (3) – Mr. Justice R C Lahoti – Rastogi Memorial Lecture}

1.2.8 However, "with the lapse of time, degradation of values, particularly values in public life became blatantly evident and the nation felt the need to amend the Constitution and incorporate these values specifically as the Fundamental Duties of every citizens".

1.2.9 Article 51A, which constitutes Part IVA of the Constitution, reads as under:
"Article 51A. Fundamental Duties – It shall be the duty of every citizen of India –

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
(c) to uphold and protect the sovereignty, unity and integrity of India;
(d) to defend the country and render national service when called upon to do so;
(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
(f) to value and preserve the rich heritage of our composite culture;
(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
(i) to safeguard public property and to abjure violence;
(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.".

1.2.10 This article has the potential to regenerate and reconstruct the nation. It has been on the statute book for the last 24 years. It commands that – "it shall be the duty of every citizen of India" – but it is an irony that more than 99 per cent of the citizens of India do not even know about the existence of this article in the Constitution, much less its provisions. The awakening letter of Mr. Justice Rangnath Mishra, Former Chief Justice of India, addressed to the Hon'ble Chief Justice of India, (who took congnizance of it and it was registered as a Writ Petition) said : -

> "All of us are experiencing to our horror degrading human behaviour in society every day. The deterioration is gradually becoming sharper and unless this fall is immediately arrested and a remedial measure found out and enforced, the situation would not improve. Fundamental Duties have

[*] Justice Verma Committee Report.

remained in the Constitution Book and have not come out to reach even the class of people who handle the Constitution.".

"If society becomes duty based, every one in India should turn attention on performance of duties and through such performance ensure and be entitled to the rights of a citizen.".

".....as a nation-building measure, teaching Fundamental Duties in every educational institution and as a measure of in-service training everywhere was necessary as these cannot be inculcated in our citizens unless these are brought into their minds and living process through teaching and education".

"..... it is the obligation of the State to educate the citizens in the matter of Fundamental Duties so that a right balance between Rights and Duties may emerge".

1.3 Concept of Duty

1.3.1 There has been some rather disproportionate emphasis on the rights of citizens as against their duties even though the traditions and temper of Indian thought through the ages laid greater emphasis on duties. Actually, rights and duties are the two sides of the same coin. For every right, there is a corresponding duty. Rights flow only from duties well performed. Duty is an inalienable part of right : What is duty for one is another person's right and respect human life and not to injure another person. If everyone performs his/her duty, everybody's rights would be automatically protected. Gandhiji while emphasizing the economic and social responsibilities of all citizens said:

"The true source of right is duty. If we all discharge our duties, rights will not be far to seek. If leaving duties unperformed we run after rights, they will escape us like will-o-the-wist, the more we pursue them, the farther they will fly".

"I learned from my illiterate but wise mother that all rights to be deserved and preserved come from my duty well done. Thus the very right to live accrues to us when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define duties of man and women and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be a usurpation hardly worth fighting for".

Harold Laski has also said that rights are related to functions and are given only in return for some duties to be performed. Rights are conferred on individual citizens not only for their own development but also for social good. As the universal declaration of Human Rights put it : "Everyone has duties to the community in which alone the free and full development of the personality is possible [Article 29 (1)].

1.3.2 When the leaders and the rulers talk of citizenship values, they tend to talk in the language of "you, the people should". They forget that they are not outside the people, they are also first and foremost the citizens of India and it is as much for them as for others to respect the citizenship values. In fact, in the discharge of their functional responsibilities and duties, they have an additional responsibility to protect and promote citizenship duties and fulfill the oaths they take. Ideally, a proper balance and harmony can be achieved if the State – high functionaries of the Government and the leadership generally – cease to lecture the citizens on their duties and devote their energies and attention to protecting their rights, and the citizens themselves lay greater emphasis on discharging their responsibilities and duties instead of all the time demanding fulfillment of their rights.

PART – II

Fundamental Duties of the Citizens Under the Constitution

2.1.1 Article 51A, which constitutes Part IVA of the Constitution, reads as follows:

"51A. Fundamental Duties: It shall be the duty of every citizen of India –

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavor and achievement.".

2.1.2 The different clauses of article 51-A require elucidation so that an appropriate basis can be laid for their effectuation strategies as detailed in the paragraphs that follow:

Clause (a) of article 51A

2.(a)1 Clause (a) provides that it shall be the duty of every citizen of India - TO ABIDE BY THE CONSTITUTION AND RESPECT ITS IDEALS AND INSTITUTIONS, THE NATIONAL FLAG AND THE NATIONAL ANTHEM.

2(a)2 The first and the foremost duty assigned to every citizen of India is to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem. These are the very physical foundations of our citizenship. All of us are supposed to maintain the dignity of the Constitution by not indulging in any activities in violation of the letter or spirit of the Constitution. Ours is a vast country with many languages, sub-cultures and religious and ethnic diversities, but the essential unit of the country is epitomized in the one Constitution, one flag, one people and one citizenship. We are all governed and guided by this Constitution irrespective of caste, religion, race, sex, etc. The Constitution is the result of the many commitments, promises and pledges made by nationalist leaders to the people of India. Also, it embodies efforts of reconciliation, accommodation and compromise. All of us and the

Fundamental Rights of each of us are protected by it. Similarly, the National Flag and the National Anthem are symbols of our history, sovereignty, unity and pride. If a citizen of India by any overt or covert act shows disrespect to the Constitution, the National Anthem or the National Flag, it would be not only an anti-social and anti-national activity but it would also spell doom to all our rights and very existence as citizens of a sovereign nation. Each citizen must therefore not only refrain from any such activity but also do his best to prevent any miscreant trying to show disrespect to our national symbols. Every nation is proud of its citizens because of their dedication, sincerity and patriotism. We, the citizens of India, have to be equally proud of our nation, our Constitution, our National Flag and our National Anthem. We must put the nation above our narrow personal interests and then only we will be able to protect our hard-earned freedom and sovereignty.

2(a)3 The IDEALS of the Constitution are summed up in the Preamble:-

JUTICE, social, economic and political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity; and to promote among them all
FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation

Therefore, in every word, deed and thought every citizen must remember and practise in life these ideals of the Constitution.

2(a)4 The principal INSTITUTIONS of the Constitution are the Executive, the Legislature and the Judiciary. All institutions fall under these three wings of the State. It is a duty of every citizen to respect these institutions. For instance, if a citizen or a body of citizens or a section of the citizens feels that injustice has been done or is being done to him/her or it, recourse must be taken in the Court of Law for justice as that would be to respect an institution of the Constitution. This aspect of article 51A of the Constitution and its clause (a) has not only been widely neglected and deliberately disrespected, during the last 24 years that article 51A has been on the statute book, there has been a growing tendency of seeking redress by "Hoolad", "Hartal" and "Hinsa" (Hue and Cry, Strike and Violence) thus committing disrespect to the constitutional institution, the Judiciary.

2(a)5 In his speech at the close of the Constituent Assembly, Dr. B.R. Ambedkar said:-

> "If we wish to maintain democracy not merely in form, but also in fact, what must we do? Their first thing in my judgment we must do is to hold fast to constitutional methods of achieving our social and economic objectives. It means that we must abandon the bloody methods of revolution. It means that we must abandon the method of civil disobedience, non-cooperation and satyagraha. When there was no way left for constitutional methods for achieving economic and social objectives, there was a great deal of justification for unconstitutional methods. But where constitutional methods are open, there can be no justification for these unconstitutional methods. These methods are nothing, but the Grammar of Anarchy and the sooner they are abandoned, the better for us".

2(a)6 "Four things are given to a judge: to hear patiently, to consider diligently, to answer wisely and to decide impartially" (Socrates). If a Judge, in the conduct of his/her judicial functions, neglects any of these four duties, it is a disrespect to the constitutional institution of Judiciary. By granting adjournments and yielding to delaying tactics, resulting in delaying disposal of cases is disregarding the Fundamental Duty of respecting the (Judicial) institution of the Constitution.

2(a)7 In his closing speech at the Constituent Assmebly on 25th November 1949, Dr. Rajendra Prasad observed :-

> "We have provided in the Constitution for a judiciary which will be independent. It is difficult to suggest anything more to make the Supreme Court and the High Courts independent of the influence of the Executive. There is an attempt made in the Constitution to make even the lower judiciary independent of any outside or extraneous influence. One of our Articles makes it easy for the State Governments to introduce separation of Executive from Judicial functions and placing the magistracy which deals with criminal cases on similar footing as civil

courts. I can only express the hope that this long overdue reform will soon be introduced in the States".

2(a)8 When lawyers go on strike for redressal of their professional grievances and stall the working of the courts, it is in contradiction to and infringement of the Fundamental Duty enshrined in clause (a). In consequence, thousands of cases fixed for the day are adjourned and the entire working of the court is disrupted. It is blatant disrespect to the constitutional institution – the Judiciary. For redressal of professional grievances, representation can be made to the relevant authorities or to the legislature. Redress can be sought under the remedies provided in articles 226 and 32 of the Constitution. If at all a public demonstration is felt necessary, a silent rally before or after the court hours can serve the purpose. The effectuation of this clause has suffered tremendously because freedom is being abused as unbounded liberty.

2(a)9 Every office holder, elected or appointed, is as much bound by the provisions of article 51A as other fellow citizens. He has the added responsibility to set an example of good citizenship and to induce others within his sphere of influence to abide by the culture of the Constitution.

2(a)10 A Member of Parliament must, as a citizen, respect the ideals of the Constitution and also Parliament, the legislative institution of the Constitution. It is the first and foremost duty to respect the Judiciary and to respect the Institution to which he belongs, that is, Parliament. The conduct or behaviour which stalls the working of the House means disrespect to the constitutional institution. In case of disagreement on any point he is entitled express his opinion and he must abide by and behave within the Rules of Business. He can get his dissent recorded, but in case, he does not feel redressed, and creates "Hoolad, Hartal or Hinsa" to express his disagreement or dissent, it means infringement of his first duty under clause (a) of article 51A.

2(a)11 The following closing remarks of the President of the Constituent Assembly, Dr. Rajendra Prasad, are illuminating and thought provoking :-

Whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the country is administered. That will depend upon the men who administer it. It is a trite saying that a country can have only the Government it deserves. Our Constitution has provisions in it which appear to some to be objectionable from one point or another. We must admit that the defects are inherent in the situation in the country and the people at large. If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country. After all a Constitution like a machine is a lifeless thing. It acquire life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them. There is a fissiparous tendency arising out of various elements in our life. We have communal differences, caste differences, language differences, provincial differences and so forth. It requires men of strong character, men of vision, men who will not sacrifice the interests of the country at large for the sake of smaller groups and areas and who will rise over the prejudices which are born of these differences. We can only hope that the country will throw up such men in abudance. I can say this from the experience of the struggle that we have had during the period of the freedom movement that new occasions throw up new men; not once but almost on every occasion when all leading men in the Congress were clapped into prison suddenly without having the time to leave instructions to others and even to make plans for carrying on their campaigns, people arose from amongst the masses who were able to continue and conduct the campaigns with intelligence, with initiative, with capacity for organization which nobody suspected they possessed. I have no doubt that when the country needs men of character, they will be coming up and the masses will throw them up. Let not those who have served in the past therefore rest on their oars, saying that they have done their part and now has come the time for them to enjoy the fruits of their labours. No such time comes to anyone who is really earnest about his work. In India today, I feel the work that confronts us is even more difficult than the work which we had when we were engaged in the struggle. We did not have then any conflicting claims to reconcile, no leaves and fishes to distribute, no powers to share. We have all these now, and the temptations are really great. Would to God that we shall have the wisdom and the strength to rise above them, and to serve the country which we have succeeded in liberating".

Clause (b) of article 51A

2(b)1 Clause (b) provides that it shall be the duty of every citizen of India - TO CHERISH AND FOLLOW THE NOBLE IDEALS WHICH INSPIRED OUR NATIONAL STRUGGLE FOR FREEDOM.

2(b)2 Some of the noble ideals which inspired our national struggle for freedom were:

I. to achieve freedom from foreign rule so that the people of India have self-government which would establish a society where there will be no exploitation of man by man, no poverty, no disease, no illiteracy.

II. The above objective can be achieved only when all citizens have opportunities for all round development of their personality.

III. For all round development of personality, man-making education is required.

IV. Such education can be inculcated when precept is coupled with practice, and

V. Country is placed above self.

The citizens of India must cherish and follow the noble ideals which inspired the national struggle for freedom. The battle of freedom was a long one where thousands of people sacrificed their lives for our freedom. It becomes our duty to remember the sacrifices made by our forefathers for the cause of the country. But, what is much more important is to remember, imbibe and follow the ideals which pervaded our unique struggle. It was not a struggle merely for political freedom of India. It was for the social and economic emancipation of the people all over the world. Its ideals were those of building a just society and a united nation of freedom equality, non-violence, brotherhood and world peace. If we, the citizens of India remain conscious of and committed to these ideals, we will be able to rise above the various fissiparous tendencies raising their ugly heads now and then, here and there.

2(b)3 Parties and politicians who use religion, casteism, separatism, etc. for political ends and for capturing power are clearly violating their Fundamental Duties under the Constitution.

2(b)4 Dr. B R Amdedkar in his closing remarks said in the Constituent Assembly :-

> "Will history repeat itself? It is this thought which fills me with anxiety. This anxiety is deepened by the realization of the fact that in addition to our old enemies in the form of castes and creeds we are going to have many political parties with diverse and opposing political creeds. Will Indians place the country above their creed or will they place creed above country? I do not know. But this must is certain that if the parties place creed above country, our independence will be put in jeopardy a second time and probably be lost for ever. This eventuality we must all resolutely guard against. We must be determined to defend our independence with the last drop of our blood.".

2(b)5 The ideals envisaged in clause (b) are also the ideals of the Constitution some of which are reflected in the other clauses of article 51A itself. The promotion and harmony and spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women *vide* clause (e), to value and preserve the rich heritage of our composite culture *vide* clause (f), to develop scientific temper, humanism and the spirit of inquiry *vide* clause (h), to strive towards excellence *vide* clause (j) are also the noble ideals which inspired our national struggle for freedom.

2(b)6 The implementation of such Fundamental Duties require aspiration of the citizens rather than enforcement or sanction. When at the formative age of life such noble ideals are inculcated and hammered upon, and also practised in daily life, aspiration to practise them throughout life will be inevitable; it will become part and parcel of the nature and character of the citizen. Strong foundations of nature and character are laid during the formative period (6 to 17 years), that is when the boys and girls are at school. It is there that the personality is developed and moulded. It is there that the man is made.

Therefore, in every school, private or public, and in every class, education for all round development of personality should be inculcated. The students of today are the nation builders of tomorrow. As the citizen, so the nation.

"Mahatma Gandhi laid stress on the purity of the methods which had to be pursued for attaining our ends. Let us not forget that this teaching has eternal values and was not intended only for the period of stress and struggle but has as much authority and value today as it ever had before. We have a tendency to blame others for everything that goes wrong and not to introspect and try to see if we have any share in it or not. It is very much easier to scan one's own actions and motives if one is inclined to do so than to appraise correctly the actions and motives of others. I shall only hope that all those whose good fortune it may be to work this Constitution in future will remember that it was a unique victory which we achieved by the unique method taught to us by the Father of the Nation, and it is up to us to preserve and protect the independence that we have won to make it really bear fruit for the man in the street. Let us launch on this new enterprise of running our Independent Republic with confidence, with truth and non-violence and above all with heart within and God over head." {Closing observations of Dr. Rajendra Prasad, President of the Constituent Assembly}

Clause (c) of article 51A

2(c)1 Clause (c) provides that it shall be the duty of every citizen of India – TO UPHOLD AND PROTECT THE SOVEREIGNTY, UNITY AND INTEGRITY OF INDIA.

2(c)2 To protect the sovereignty, unity and integrity of India is a pre-eminent national obligation of all citizens of India. In a democratic system of governance, sovereignty lies with the people. To defend our sovereignty is our own responsibility. If the freedom and unity of the country are joepardized, the nation ceases to exist and if there is no nation, who lives?

2(c)3 It may be recalled that the values of sovereignty, unity and integrity of the nation are first mentioned in the Preamble to the Constitution. Under article 19(2) of the Fundamental Rights, reasonable restrictions are permitted on freedom of speech and expression in the interests of the "sovereignty and integrity of India."

2(c)4 The Fundamental Duty enshrined in clause (c) of article 51A is essentially addressed to those citizens who belong to the defence forces or responsible for the maintenance of law and order. It can be said that this Fundamental Duty has been well effectuated. This clause, by necessary implication, imposes a Fundamental Duty on every citizen of India that he shall not do anything derogatory of upholding or protecting the sovereignty, unity or integrity of India. It is a duty prohibitory in nature addressed to traitors and spies.

2(c)5 Practically, the whole of Chapter VI of the Indian Penal Code (IPC) relating to offences against the State is relevant for protecting the sovereignty and integrity of India. If liberty resides in the minds of men and women, the same is true of unity. Any conduct which seeks to destroy or damage unity is punishable under Section 153-A of the IPC; Imputations and assertions prejudicial to national integration are punishable under Section 153-B of the IPC. Statements or reports containing alarming news which tend to promote enmity etc. are punishable under Section 505 (2) of the IPC.

Clause (d) of article 51A

2(d)1 Clause (d) provides that it shall be the duty of every citizen of India -TO DEFEND THE COUNTRY AND RENDER NATIONAL SERVICE WHEN CALLED UPON TO DO SO.

2(d)2 The primordial origins of the State are said to be in the need to defend ourselves against external enemies. In modern nation-States, it is considered axiomatic that every citizen is bound to be ready to defend the country against war or external aggression. The present day wars are not fought on the battlefield only nor are they won only by the armed forces; the citizens at large play a most vital role in a variety of ways. Sometimes, civilians may be required also to take up arms in defence of the country; the citizens are fighting only to defend their own liberty and that of their posterity.

2(d)3 Here, mention may be made of article 23(2) wherein State is allowed to impose "compulsory service for public purposes" subject to the condition that no discrimination is made on grounds of religion, race, caste or class or any of them.

2(d)4 The Fundamental Duty enshrined in clause (d) of article 51A is contingent on the citizens being called upon to defend the country and render national service. It is obviously addressed to all citizens other than those who belong to the army, the navy and the air force. It is a Fundamental Duty entrusted to the common man as indicated by the expression "when called upon to do so". Those citizens who belong to any of the three defence forces are entrusted constantly with this Fundamental Duty. This Fundamental Duty has not so far been tested as there has been no occasion when the common man was called upon to render national service and to defend the country from any external aggression. The defence of the country may be needed against external aggression and war mongering armed rebellion within the country.

Clause (e) of article 51A

2(e)1 Clause (e) provides that it shall be the duty of every citizen of India - TO PROMOTE HARMONY AND THE SPIRIT OF COMMON BROTHERHOOD AMONGST ALL THE PEOPLE OF INDIA TRANSCENDING RELIGIOUS, LINGUISTIC AND REGIONAL OR SECTIONAL DIVERSITIES; TO RENOUNCE PRACTICES DEROGATORY TO THE DIGNITY OF WOMEN.

2(e)2 The duty to promote harmony and the spirit of common brotherhood amongst all the people of India essentially flows from the basic value of fraternity enshrined in the Preamble to the Constitution. India is a country of different castes, languages, religions and many cultural streams but we are one people with one Constitution, one flag and one citizenship. Spirit of brotherhood should come very normally among the citizens of a country like India where the norm has been to consider the entire world as one family. The Constitution also casts upon us the Fundamental Duty of ensuring that all practices derogatory to the dignity of women are renounced. This again should come normally to a country where it is an aphorism that Gods reside where women are worshipped. (*yatra naryastu pujyante ramante tatra devata*). It is for us to rise above the later day degenerations and aberrations which tarnished the image of our society. Incidentally, it may be noted that under article 23(1) of the Fundamental Rights, traffic in human beings is prohibited.

2(e)3 The first part of the clause (e) deals with the duty of citizens to promote harmony and spirit of common brotherhood among all the people of India. The harmony and brotherhood are to "transcend" religious, linguistic and regional or sectional diversities.

2(e)4 This part does not necessarily involve the elimination of various types of diversities. It is true that diversities will exist but they should be "transcended". Without eliminating their existence, the citizens can still develop a mental outlook that will enable them to go beyond those diversities. They are required to rise above narrow cultural differences and to strive towards excellence in all spheres of collective activity.

2(e)5 The second part of the clause gives a mandate to remove prejudices and prejudicial or harmful concepts based on diversity on point of sex. Public opinion, in general, and even the opinion of women themselves, may fluctuate from time to time, and region to region, even from individual to individual. The central core of the concept is indignity to women. The passing of the Commission of Sati (Prevention) Act, 1987 emphasizes the importance of the duty. Many laws have been passed by the Union Government and the State Governments which punish practices derogatory to the dignity of women. The significance of clause (e) lies in its call to every citizen to renounce such practices. This clause easily lends itself to its effectuation in a concrete case because of its comparatively precise dimension." (Vishaka vs State of Rajasthan AIR 1997 S.C.3011)

Clause (f) of article 51A

2(f)1 Clause (f) provides that it shall be the duty of every citizen of India TO VALUE AND PRESERVE THE RICH HERITAGE OF OUR COMPOSITE CULTURE.

2(f)2 To preserve the rich heritage of our composite culture is another Fundamental Duty of every Indian citizen. Our cultural heritage is one of the noblest and the richest. Also, it is part of the heritage of the earth. What we have inherited from the past, we must preserve and pass on to the future generations. In fact, each generation leaves its footprints on the sands of time. We must hold precious and dear what our fore-fathers have created and their successive generations bequeathed to us as symbols of their artistic excellence and achievements. Generations to come always draw inspiration from past history which stimulates them to aim at ever greater heights of achievement and excellence. It becomes the ardent duty of every citizen to ensure that these monuments and pieces of art are not in any way damaged, disfigured, scratched or subjected to vandalism or greed of unscrupulous traders and smugglers.

2(f)3 Every culture stands for some noble ideals. In India the foundation, the background, the life centre is spirituality – the keynote of the whole music of national life. Spirituality is a repository of noble ideals and they are essential in preserving the rich heritage of our composite culture.

2(f)4 One of the most ancient civilizations of the world, India can take legitimate pride in having been a civilizational unity without a break for more than five thousand years. We all are part of this great civilization and culture. Our contributions in the field of art, sculpture, architecture, mathematics, science, medicine, etc. are well known. Some of the oldest, deepest and most sublime philosophical thoughts and literature were born in India. We have several historical monuments of great archaeological value spread over the entire country. These include forts, palaces, temples, cave paintings, mosques, churches, etc. Also, this territory has had the honour of being the birthplace of several great religions like Hinduism, Buddhism, Jainism and Sikhism. Our past has shown us the path of peace, love, non-violence and truth. As citizens of this country, it is the responsibility of all of us to work for the preservation of this rich heritage and its cultural values and live in love and harmony.

2(f)5 The Directive Principle relating to protection of monuments and places and objects of national importance under article 49 similarly enjoins the State to protect monuments and places and objects of national, artistic or historic importance.

2(f)6 Clause (f) being the heart and soul of article 51A, requires explanation, elaboration and illustration, since the expression "rich heritage" is comprehensive. This clause requires the citizens to value and preserve the rich heritage of our composite culture. Emphasis is on two types of action viz. valuation and preservation of our heritage. The process of valuation of heritage presupposes an appreciation of the heritage. It is essentially an intellectual process but it is a necessary prelude to the preservation of heritage which is a physical activity. Nobody will be inspired to preserve the heritage unless he has an appreciation of its richness. India has a splendid culture and it requires lifetime to understand and appreciate its many facets. The culture of India is considered to be composite culture and a culture which is composite is bound to have components derived from various sources. In the words of Sri Aurobindo, the seer, the Indian culture is described as:

> "More high reaching, subtle, many sided, curious and profound than the Greek, more noble and humane than the Roman, more large and spiritual than the old Egyptian, more vast and original than other Asiatic civilizations, more intellectual than the European prior to the 18th century, possessing all that these had and more, it was the most powerful, self-possessed, stimulating and wide in influence of all past human cultures."

2(f)7 The compositeness of Indian culture is due to the wide and democratic nature of the Indian thought. Indian culture is basically spiritual. It is eternal law of life "May good thoughts come to us from the entire universe". Our nation has a tradition of sheltering the persecuted and the refugees of all religions and all nations of the earth.

2(f)8 Under the leadership of Mahatma Gandhi, our freedom struggle received its inspiration, courage and moral strength from truth and non-violence out of the inexhaustible reservoir of the basic values of "Satyam" (Truth), "Shivam" (Goodness) and "Sundaram" (Beauty).

2(f)9 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (Adopted by the General Assembly of the United Nations on December 10, 1948) declares in clause (1) of Article 29: "Everyone has duties to the community in which alone the free and full development of his personality is possible."

2(f)10 All round development of personality of the citizen in all the aspects, intellectual, mental, physical and spiritual, is a rich heritage of our composite culture and is a panacea for all administrative, political and social ills. It is the Fundamental Duty of every citizen to develop his/her whole personality through education which should not be merely for the learning of certain selected subjects but also for the development of the intellect and of the mind, of the body and of the spirit. Its ultimate aim should be to improve simultaneously the standard of life and the standard of living of an individual. One of the reasons for erosion of moral values in public life and steep deterioration in work consciousness is the dilution and deviation of the spirit behind education. The need of the hour is to reverse this trend.

2(f)11 Article 28 of the Constitution prohibits imparting religious instruction in educational institutions which are run or aided by the State. This article has been grievously misrepresented so that spiritual education has been made out of bounds in educational institutions. Religious means the manifestation of the divinity inherent in man (Vivekananda). It could never have been intended by the founding fathers of the Constitution to exclude the manifestation of the divinity in students. On the contrary, manifestation of divinity and manifestation of perfection inherent in man constitute the first and foremost purpose of education. There cannot be a shred of doubt that this was not and could not be prohibited. What was prohibited was sectarian education, that is, promotion of philosophy of any particular sect or sects. Truly speaking, instruction for spiritual development is the basis and foundation of man-making education.

2(f)12 The Sri Prakash Committee (1959) defined moral value as that which guides us to behave properly with others, and spiritual value as that which takes us out of our narrow selves, and inspire us to sacrifice for the good of others or for a great cause. The Committee noted that learning of such moral and spiritual values is very essential.

2(f)13 The National Policy on Education (NPE) (1986/1992) attaches great importance to the cultural perspective of education. To quote the recommendations made in the NPE on value education:-

> "The growing concern over the erosion of essential values and an increasing cynicism in society has brought to focus the need for readjustments in the curriculum in order to make education a forceful tool for the cultivation of social and moral values. ..... Such value education should help eliminate obscurantism, religions fanaticism, violence, superstition and fatalism. Apart from their combative roles, value education has a profound positive content, based on our heritage, national goals universal perceptions. It should lay primary emphasis on this aspect."

2(f)14 The highest heritage of our composite culture which engaged attention of Indian seers and sages and which they found out after a disciplined quest is that there is a divine element in human beings. The manifestation of divinity is a crucial indicator of civilization of human kind. Civilization is the manifestation of that divinity in man. To imbibe in oneself that divinity and inculcate in every citizen the urge to endeavour all-round development of his personality on that basis, is the highest heritage of our composite culture which has to be followed and preserved, as Fundamental Duty of every citizen:

2(f)15 The divine core of personality is covered by five dimensions :-

(i) Physical dimension consisting of the body and the senses;
(ii) Energy dimension which performs digestion of food, blood circulation, the respiration and every activities within the body;
(iii) Mental dimension chracterised by the activities of the mind – thinking and feeling;
(iv) Intellectual dimension chracterised by the determinative faculty and will power; and
(v) Psychic dimension experienced as bliss, e.g. during deep sleep.

2(f)16 A rich heritage of our composite culture is man-making education initiated from childhood and continued through-out life. A rich heritage of our composite culture has been the dedication of the individual and performance of higher law in day-to-day life. It must be recalled that in our culture right from the initial stage of law making, the law consisted of duty and duties only, which could broadly be divided into three aspects – sacrifice; ceremonies; and temporal duties (*Shrauta*, *Grihya* and

Samayacharike), the last one being referred to as Dharma Sautras. As we became more civilized, the concept of rights became more important so much so that the rights of the citizens over shadowed the duties of the citizens.

2(f)17 Our composite culture lays greatest emphasis on **higher** law, which is the **panacea** for all political, social, economic and ethical ills in the society. Higher law means a determined resolve to a conduct and behaviour which will have the effect of rendering all penal laws redundant.

2(f)18 The foremost are five :

(i) If a citizen commits theft, he is punished with imprisonment or with fine or both; this is law. However, if the citizen takes the determined resolve within himself that he will not commit theft even if the whole world may, this is higher law (*Asteya*);

(ii) If a citizen causes hurt to another person, he is punished; this is law. However, if the citizen takes a determined resolve within himself that he shall not cause hurt to anyone; this is higher law (*Ahimsa*);

(iii) If a citizen commits cheating he is punished; this is law. However, if the citizen takes a determined resolve within himself that he shall not cheat or deceive any body; this is higher law (*Satya*);

(iv) If a citizen takes a bribe he is punished; this is law. However, if every citizen takes a determined resolve not to take bribe, and not to give bribe, even if the whole world may; this is higher law (*Aprigraha*); and

(v) If a citizen outrages the modesty of a women he is punished, this is law. However, if the citizen takes the determined resolve that (except his wife) he shall always look upon women as his mother, sister or daughter; this is higher law (*Brahmacharya*).

2(f)19 Thus, not to commit an offence because of prescribed punishment makes a citizen law abiding. To resolve to practise higher law and to discharge the duties called higher law, would be a process of rejuvenating and reconstructing the nation. Therefore, all-round development of personality of the citizen. which is the richest heritage of our composite culture is the most-significant part of article 51A.

2(f)20 The noble ideals cherished and followed [under clause (b)] and the rich heritage of our composite culture followed and preserved [under clause (f)] and the endeavour to strive towards excellence in all spheres of individual and collective activity [under clause(j)] – these combined as triveni – have the potency and potential to regenerate and reconstruct the nation.

2(f)21 To protect the rich heritage of our composite culture and to prevent it from being adversely influenced from any contradictory, derogatory or destructive culture is a significant aspect of the Fundamental Duty to value and preserve the rich heritage of our composite culture. Therefore, any warming sounded particularly to the younger generation is significantly valuable. "..... our culture, which is a composite culture of several cultures in India, is the best and yet we are aping the western methods and trying to become westernized far too rapidly. It was said of Mahatma Gandhi that he would rather have had the British stay if they become Indian.... We, who are struggling as a developing country, cannot endure because we are required to keep our culture going...." Regarding addiction to drug and liquor and fast club life, "Is it this kind of culture to which we were born and is it this kind of culture which we must ape and copy? This is not our society and I only hope that our boys and girls, even if they go abroad, will not bring back those habits to us because we on our part must preserve our culture. We as a nation have existed spiritually and have a spiritual past and a spiritual future which we cannot jeopardize by learning the absurd ways" of other countries. {Mr. Justice M Hidayatullah, former Chief Justice of India : Convocation Address, Bangalore University}

2(f)22 When we review the working of clause (f), it is striking that there has been an invasion of Western school of thoughts on India, in dress, in diet, in literature; and the Indian mind has been going under the spell of the West. Reviving of Indian heritage is most necessary. It is the only way to recultivate the social and moral values which are the pride of our composite culture. The target is to achieve the national goals of heritage and bringing home the idea of universal brotherhood.

2(f)23 Clause (f) has the potential that its implementation in daily life by each and all citizens would be the panacea for all administrative, political and social ills and will lead to all round development of

personality of the citizen and will achieve the ultimate objective; viz. eradication of poverty, disease and illiteracy.

2(f)24 The display of scenes and dialogues of violence, vices and vulgarity on the TV have adverse influence on the immature mind of the young generation. This menace is growing day by day and is to be checked without further delay.

2(f)25 It is generally accepted that deterioration in the values and lack of probity in public life are the two evils which hamper the growth of our nation. In para 3.13, the Justice Verma Committee quoting from the Lord Nolan Committee of UK, has set out the following values. These values would be suitable recognized in the clause dealing with Fundamental Duties; Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and leadership by example.

2(f)26 If these are incorporated and recognized, it can be hoped that we have none of the sins described by Mahatma Gandhi as follows :

Politics without Principle, Commerce without Morality, Wealth without Work, Education without Character, Science without Humanity, Pleasure without Conscience, Worship without Sacrifice.

Clause (g) of article 51A

2(g)1 Clause (g) provides that it shall be the duty of every citizen of India - TO PROTECT AND IMPROVE THE NATURAL ENVIRONMENT INCLUDING FORESTS, LAKES, RIVERS AND WILD LIFE, AND TO HAVE COMPASSION FOR LIVING CREATURES.

2(g)2 In the face of the menace of the increasing pollution and environmental degradation, it is the duty of every citizen to protect and improve natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. The rising air, water and noise pollution and large-scale denudation of forest are causing immense harm to all human life on earth. The mindless and wanton deforestation in the name of needs of development is causing havoc in the form of natural calamities and imbalances. By protecting our forest cover, planting new trees, cleaning rivers, conserving water resources, reforesting wastelands, hills and mountains and controlling pollution in cities, villages and industrial units, we can help save the future of our fellow citizens and of planet earth itself. What is needed is a concerted effort at, an awareness campaign and a planned strategy to move forward through voluntary citizen initiatives. Governmental steps alone cannot help bring about a pollution-free atmosphere to live now and in the future.

2(g)3 The mention of protection of environment, etc. as a duty of citizens, is intended to reinforce the other constitutional provision - article 48A under the Directive Principles of State Policy which enjoins the State to protect and improve the environment and safeguard the forests and wild life.

2(g)4 Earth is the common heritage of man and animals. We have no right to annihilate or drive away from their territory or natural habitat the wild denizens. Ancient Indian thought talks of *Sarvesham Shantir bhavatu* (peace unto all living beings and entire environment) or *Ahimsa paramodharma. Ahimsa paramo tapah* (non-violence is the greatest duty and the greatest penance).

2(g)5 This duty has received intensive and extensive, legislative and executive attention during the last few years. The Environment (Protection) Act, 1986, is an important step in that direction. The range of its provisions and the far-reaching measures that can be undertaken through statutory rules and orders that can be issued under the Act, show that the duty to protect and improve the natural environment has been spelt out quite elaborately in our law.

Clause (h) of article 51A

2(h)1 Clause (h) provides that it shall be the duty of every citizen of India - TO DEVELOP THE SCIENTIFIC TEMPER, HUMANISM AND THE SPIRIT OF INQUIRY AND REFORM.

2(h)2 One of our great founding father, Jawaharlal Nehru always laid great emphasis on the need for Indian citizens developing a scientific temper and a spirit of inquiry - an inquisitiveness for learning from

developments around the world. This was particularly necessary because of the most revolutionary scientific advances during this century and in the context of our background of superstitions and obscurantism. Nehru laid the foundations of the modern industrialised India by building the necessary scientific and technological infrastructures. Now, it is the bounden duty of every citizen to preserve and promote a scientific temper and a spirit of inquiry to keep pace with the fast changing world. Also, the Constitution ordains that science and technology must be tempered with a sense of humanism because ultimately the end of all progress is the human being and the quality of life and relationships that is developed.

2(h)3 Scientific temper means outlook founded on organised knowledge and experience. Scientific temper is based on reason and rationality in contradistinction to superstition or blind faith. Scientific temper discards obsolete learning. It requires thirst for knowledge and urge for research for facts and a zeal for setting things right.

2(h)4 Humanism is primarily rational coupled with emotional quality. Every citizen has three elements inherent - animality, humanity and divinity. Caution and control are required against falling into animalism. Humanism is outstanding in man's nature. There must be its incessant manifestation in conduct and behaviour. Every citizen should strive for development or rise towards divinity - qualities higher than human. No one can aspire to be divine unless he/she strives in thought, word and deed to be first a human.

2(h)5 To cause harm in body, reputation or property to others by any word; deed or thought is animality. To advance in one's career or in any activity without causing harm to any one is humanity. To go forward taking along another towards his progress and even pushing another ahead of oneself - selfless service - is divinity. Spirit of inquiry and reform is prerequisite for every right action, progress and development.

Clause (i) of Article 51A

2(i)1 Clause (i) provides that it shall be the duty of every citizen of India - TO SAFEGUARD PUBLIC PROPERTY AND TO ABJURE VIOLENCE.

2(i)2 It is most unfortunate that in a country which preaches non-violence to the rest of the world, we see from time to time spectacles of senseless violence and destruction of public property indulged in by a few of its citizens. This is why it became necessary to prescribe the responsibility "to safeguard public property and abjure violence" as a fundamental citizenship duty.

2(i)3 The clause (i) has been invariably observed in its breach. If violation of the various Fundamental Duties under article 51A is rated, this clause is outstanding. Whenever there is a strike or bundh or rally, and mob mentality develops, public property is the first casualty. Buses and buildings are destroyed, sometimes followed by loot and arson. Where as it is the Fundamental Duty of every citizen to protect public property and abjure violence, they just remain silent spectators - miserable and helpless. What is the remedy? Answer is inculcation of human values right from the formative period of life so that strong foundation is laid for effectuation of Fundamental Duties, more particularly enshrined in clauses (b), (f), (i) and (j).

Clause (j) of article 51A

2(j)1 Clause (j) provides that it shall be the duty of every citizen of India - TO STRIVE TOWARDS EXCELLENCE IN ALL SPHERES OF INDIVIDUAL AND COLLECTIVE ACTIVITY, SO THAT THE NATION CONSTANTLY RISES TO HIGHER LEVELS OF ENDEAVOUR AND ACHIEVEMENT.

2(j)2 The drive for excellence in all spheres of individual and collective activity is the demand of times and a basic requirement in a highly competitive world. Nothing but the best would have survival potential in tomorrow's world. This would include respect for professional obligations and excellence. Whatever work we take up either as individual citizens or as groups, our effort should be directed to achieving the goal of excellence. Also, special emphasis is called for in the area of collective activity.

In Dr. Dasarathi Vs. State of Andhra Pradesh (AIR: 1985 AP 136), it was held that under article 51A (j) of the Constitution, we all owe a duty to ourselves to strive towards excellence in all spheres of individual and collective activity so that this nation may constantly rise to higher levels of endeavour and achievement. When the State undertakes to promote excellence, it can do so only through the methods which our Constitution permits to adopt. Rewarding of sycophancy only helps to retard the growth of efficiency and excellence.

2(j)3 The clause (j) has the potential not only to regenerate and reconstruct the country but also to raise it to the highest level. "Excellence" is the secret of all development and all success. "Excellence" brings about communion with the Divine "Yogah Karmsu Kaushalm". Japan and Singapore are living examples. It is amazing that Japan stood up head and shoulders in such a short time after the devastation in Hiroshima and Nagasaki. The open secret is "Excellence". Every single citizen, in whatever walk of life he is, endeavours and perseveres for excellence in his project because right from primary schools the word "Excellence" is inculcated in his blood, by displaying numerous mottos, maxims and quotes containing the world "Excellence".

2(j)4 Here, far from striving for excellence, it has become generally the nature and character of the citizen to find loopholes in law and flourish individually on adulteration, hoarding, black-marketing apart from *hoolad*, *hartal* and *hinsa*. Steep deterioration in work consciousness, the urge for maximum wages for minimum work, sub-standard production, blackmailing, and corruption have become rampant in society and growing day by day. This has to be reversed. Those at the top must begin and strive for it.

Dr. Rajendra Prasad expressed himself in these words :

> "I would have liked to have some qualifications laid down for members of the Legislatures. It is anomalous that we should insist upon high qualifications for those who administer or help in administering the law but not for those who make it except that they are elected. A law giver requires intellectual equipment but even more than that capacity to take a balanced view of things, to act independently and above all to the true to those fundamental things of life – in one word – to have character. It is not possible to devise any yard-stick for measuring the moral qualities of a man and so long as that is not possible, our Constitution will remain defective".

PART - III

Steps Towards Effectuation of Fundamental Duties

3.1.1 Effectuation of Fundamental Duties is the ladder with elucidation and elaboration as the first step, awareness as the second; inculcation as the third; aspiration as the fourth; implementation (performance) as the fifth; besides enforcement. If colloquia and consultations on Fundamental Duties in the context of given events or situations are organized by citizens' groups in this mode, it will be easier for them to comprehend the full import of the provisions of article 51A, add citizenship values to their inner being, and to realize their full potential.

3.2 Awareness :

3.2.1 It is axiomatic that ignorantia legis non-execusat. However, one in a thousand is aware of article 51A; the Fundamental Duties. Even highly educated citizens may not be aware of this part of the Constitution. For instance, it is the command of clause (b) that every citizen shall cherish and follow the "NOBLE IDEALS" which inspired our national struggle for freedom. What were those "Noble Ideals"? During the period of our national struggle for freedom, the population of our country was 33 crores which means that 67 crores were born post-independence, after 15th August 1947. They have to be informed

what the "noble ideals" were. Article 51A does not identify them. The Constitution does not define them. Even the common man of those days would say that the object of national struggle for freedom was to redeem the country from the bondage of the British Rule and to acquire self-rule instead. And the ideals were enshrined in "Vande Matram" and "Jhanda Ooncha Rahe Hamara" or "Inqalab Zindabad."

3.2.2 Practically nothing has been done to inform and awake general public to the Fundamental Duties which are mandatory or to cause awareness for their publicity and propagation.

3.2.3 The current conjucture of socio-economic forces and the disgust aroused by falling ethical standards provide a timely opportunity to launch a nation-wide MOVEMENT to enable all citizens to become aware of their rights and responsibilities, understand their obligations to observe Gonstitutional Values and carry out Fundamental Duties in day to day activity.

3.2.4 The rights and responsibilities of the citizens in a democracy are immense. And yet no systematic effort was made over the years to educate the citizens in democratic governance. The State and the society have failed to provide adequate means and mechanisms for citizens to identify, imbibe and practise the "Culture of the Constitution". This failure is mainly responsible for the low level of effectuation of Fundamental Duties.

3.2.5 The beginning has been made by the Department of Education in the Ministry of Human Resource Development in the Teaching of Values in primary and secondary schools. Similar steps have yet to be taken in the Universities and Institutes of Higher Learning. At the level of social action, several efforts have been made to generate awareness of the importance of discharging Fundamental Duties and enable citizens to imbibe and practise citizenship values.

3.2.6 For convenience of operation, the citizenry may be divided into eight groups. **Every effort should be made to identify the values relevant to each Group, discuss their application in live situations, and develop strategies for their effective internalization.**

3.3 Inculcation

3.3.1 It is the Fundamental Duty of every citizen to develop his whole personality and also that of his sons and daughters and of his pupils in the formative age of nature and character (6 years to 17 or 21 years). The purpose of schools should be to impart education; not merely for the learning of certain selected subjects but also for the development of the intellect and of the mind, of the body and of the spirit of the pupil. Its ultimate aim should be to improve simultaneously the standard of life and the standard of living of an individual. **One of the reasons for erosion of moral values in public life and steep deterioration in work culture is the dilution and deviation of the true spirit behind education. The need of the hour is to reverse this trend.**

3.3.2 In his memorable letter to the Chief Justice of India, Mr. Justice Ranganath Misra said : -

> "As a nation-building measure, teaching Fundamental Duties in every educational institution and as a measure of in service training everywhere", was necessary as these "cannot be inculcated in our citizens unless these are brought into their minds and living process through teaching and education". "It is the obligation of the State to educate the citizens in the matter of Fundamental Duties so that a right balance between Rights and Duties may emerge.".

3.3.3 Mr. Justice Venkataramiah in his landmark judgement in M C Mehta (II) Vs. Union of India and Ors. (1998) 1 SCC 471, *inter-alia*, gave directions that:

(i) the Central Government shall direct to the educational institutions throughout India to teach at least for one hour in a week, lessons relating to protection and the improvement of the natural environment including forests, lakes, rivers and wild life in the first ten classes;

(ii) the Central Government shall get text books written for the said purpose and distribute them to the educational institutions free of cost;

1207 LJ&CA/2002—26A.

(iii) the children shall be taught about the need for maintaining cleanliness commencing with the cleanliness of the house, both inside and the outside and with the street in which they live;

(iv) the Central Government shall consider training of teachers who teach this subject by the introduction of short-term courses for such training;

(v) the Central Government, the Governments of the States and all the Union territories shall consider desirability of organizing "keep the city/town/ village clean" week;

(vi) to create a national awareness of the problems faced by the people by the appalling all-round deterioration of the environment.

3.3.4 The most purposeful and practical part of Justice Verma Committee Report (1999) is the exposition of ways and means of generating awareness of and inculcating, Fundamental Duties in the citizens. To quote :

> "Citizenship is a solemn duty which every individual must discharge with due diligence and dedication. The current conjecture of social, economic and political forces calls for a movement which captures the imagination of masses and motivates all categories of citizens to abide by the provisions of the Constitution in performing their duties and exercising their rights".

3.3.5 Towards creating more awareness and consciousness of Fundamental Duties among citizens, the Committee recommends the following:

- Organizing advocacy and sensitization programmes.
- Preamble to the Constitution of India and the 10 clauses of article 51A on Fundamental Duties to be appropriately displayed on all government publications, diaries, calendars and at public places so that they always remain in the focus of the citizens.
- Radio and video spots, highlighting important messages related to Fundamental Duties, in the background of proper music and the National Flag, to be commissioned by All India Radio, Doordarshan, and other DD Channels. This should become a regular feature at least in all Doordarshan channels around the country, once or twice a day, to have significant impact over the years.
- January 3 to be observed as Fundamental Duties Day.
- Need to set up an autonomous body to act like ombudsman on Citizenship Values which could create a mechanism to act as catalyst towards overseeing operationalization of Fundamental Duties. The human resource of the senior citizens could be effectively utilized for discharging commitment of this nature. The financial implications for setting up this body which has also a state funding aspect will have to be taken into consideration.
- Small boo3klets on various aspects of Fundamental Duties written in a language easy to understand could also be developed for different levels of citizens. Such booklets should be particularly utilized by the citizens learning through Non-Formal Education (NFE) and Adult Education (AE) programmes run by state governments and voluntary agencies. The concept of Fundamental Duties can form a major component of NFE and AE programmes.
- The media should exercise considerable circumspection on the programmes, serials, pictures, news and advertisements affecting the morality or the decency of our people and cultural heritage of the country.
- Environment issues need to get more space in the media. The media should take the role of an activist guard. It is not that it has to be a current topic or a part of political agenda that the media will pay attention to. Media people have to remain alive to their constitutional responsibilities arising from Fundamental Duties to see that subjects like environment do not become a casualty.

- Media has a duty to avoid presenting acts of violence, armed robberies and terrorist activities in a manner that glorifies the perpetrators' acts; declarations or death in the eyes of the public: Fundamental Duties are not only sacrosanct but also have the element of compulsion requiring obedience, provided the machinery of the state appreciates its true nature and motivates the implementation machinery towards this end. The primary need, therefore, is to ensure a faithful and effective implementation of the existing legislation in the area covered by legislation and for prompt measures to legislate in the remaining field to fill the legislative vacuum.

3.3.6 Contribution of NGOs

Non Governmental Organizations can effectively contribute to the spreading of awarenss and inculcation in the citizens as the practical aspects of effectuation of Fundamental Duties, by evolving a variety of ways and means suitable to the areas of their operation. There are NGOs which have been undertaking such projects effectively. For instance, the Citizenship Development Society

3.3.7 On 7th April, 1979, closely following the enshrinement of Fundamental Duties of Citizens in the Constitution, a group of patriotic citizens with an urge to ensure effectuation of these duties and to prompt good citizenship values set up the Citizenship Development Society (CDS), as a registered body.

3.3.8 Several efforts were made to generate awareness of the importance of practising citizenship values. The main ingredients of action programmes taken up by the CDS were:

(i) Strengthening Citizenship education at al levels of the educational ladder,
(ii) Developing training/orientation programmes for imparting Citizenship Values to persons in various walks of life,
(iii) Tuning and orienting the national ethos of good citizenship values and undertaking field work and rural development programmes.
(iv) Pressing and persuading the Planning Commission to lay stress on Citizenship Duties, Values and Citizenship Education.

3.3.9 CDS approached the Ministry of Information and Broadcasting to strengthen their programmes for fostering good citizenship on AIR and Doordarshan. The Ministry accepted their request to produce a series of films on good citizenship to promote citizenship values among masses. At the Society's instance, a documentary film entitled "Aaramb" was produced by the Ministry's Film Division, and the film was telecast in 1985.

3.3.10 A Project entitled "Production of Reading Material, Songs, Posters and Slogans", for fostering good citizenship among adult learners in the Union territory of Delhi was implemented in the 1985-86. Further reading material and visuals were prepared for use at the adult literacy and primary stages during 1986-88. Preparation and publication of Hindi booklets on citizenship duties for neo literates was also undertaken by the CDS.

3.3.11 A Centre for Research and Training in Citizenship Development (C.R.T.C) was established by the CDS with the following objects:

a. Research in various aspects of citizenship development
b. Designing training and orientation programmes for citizenship education
c. Preparation of course materials to impart education in citizenship duties
d. Providing consultation services for citizenship education

3.3.12 The CDS approached University of Mumbai to consider introducing Citizenship Development as one of the important areas of graduate studies. Their Board of Studies in Politics has accordingly drafted a syllabus of a Paper entitled "Citizens, Citizenship Awareness and Training in Citizenship". They have further informed that this Paper will be compulsory for all the students in the faculty of Arts, Commerce and Science at graduate level.

3.3.13 Taking lead from this initiative of Mumbai University, the CDS has taken up the subject of Citizenship Awareness and Training with other Universities in India. Unfortunately, University Grants Commission (UGC) have informed that they have no scheme under which funds could be provided for promoting Citizenship Awareness at the university level.

3.3.14 As a result of two Panel Discussions organised on the subject of the Citizenship Values enshrined in the Indian Constitution, it was decided to distil citizenship values enshrined in the Constitution and prepare a Book under the title "Citizens and the Constitution". At the request of the Society, the Publication Division of the Ministry of Information and Broadcasting, printed and published this path-breaking book. The book has been translated into some other Indian languages. A Symposium on this Book was organised on 2nd March, 1998 in collaboration with the India International Centre, Rashtriya Jagriti Sansthan and D.H. International Centre of Indic Research.

3.3.15 To this end, the CDS is committed to focus public attention on the following:

- Good citizenship deserves to be accorded the highest priority in national life.
- Citizenship development should be based on values of democracy, rule of law and social justice.
- Good citizenship should be founded on a civic culture of mutual consideration and accommodation between Citizens, State and Civil Society.
- Citizenship education in democratic governance is indispensable for each age group, for every vocation and for every station of life.
- Citizens who are called upon by election, nomination or appointment to fulfill public responsibilities should pledge themselves to respect the rights of fellow citizens and carry out Fundamental Duties in letter and spirit.

3.3.16 There are some other NGO's which are endeavouring through Seminars and workshops the inclusion of education for personality development as a course subject in Schools. Information and Inculcation of Fundamental Duties has been and can be, the predominant part of their projects.

3.3.17 Inculcation in Schools

To inculcate effectively the human values constituting development of the whole personality of the student, such measures as the following are necessary :-

1. A class for about one hour duration for men making education and for imparting the Fundamental Duties enshrined in article 51A of the Constitution and also fundamental values from all faiths, on three days a week.
2. A lecture to inculcate human values and Fundamental Duties by eminent persons or spiritual luminaries (followed by questions and answers) once in three months.
3. Periodical essay and elocution competition on value based topics.
4. Yearly awards to students who stand first in translating the values into reality.
5. Active involvement of parents in the inculcation of human values.
6. Annual meet of teachers to evaluate the performance of value based education.

3.3.18 It is only when devotion, dedication and determination to duties become a habit or a part of nature and chracter of the citizen that it will be implemented in daily life. Nature and chracter are formed, and the personality is developed, during the fomative period of life that is the age of 6 to 17 years. It is at this stage of life (and that is generally the period when boys and girls are at school that their nature and chracter are made by teachers. It is the teacher, with whom boys and girls are for six hours or so physically, but more than 10 hours a day mentally, that can construct the nature and character of the citizens in the making. It is the Guru (Teacher) whose prime duty is to inculcate human values in the SHISHYA (Pupil)

3.3.19 The role of parents is first to inclulcate Sanskars in their children; not only by precept but more so by practice; and, secondly, to cooperate with the teachers through vigilance that their child practices in daily what he learns in the school, particularly the lessons in all round development of personality.

3.3.20 The role of school management is to extend necessary support to the teachers and to provide necessary facilities for inculcation of human values in the students.

> "The greatest of all the means for ensuring the stability of the Constitution is the education of citizens in the spirit of the Constitution".
>
> Aristotle

3.3.21 It will be only appropriate if in all forms of oaths or affirmations prescribed under the Third Schedule to the Constitution, the following words be added:

> "…..and that, being fully conscious of the fact that I am first a citizen of India and then anything else, I shall sincerely discharge all the Fundamental Duties enshrined in Part-IVA of the Constitution".

And this pledge should be renewed every year on the 3rd day of January at an assembly of all persons holding public office, in all public institutions – legislative, judicial and executive.

3.4 Aspiration

3.4.1 Sincere and effective inculcation of Fundamental Duties particularly in the younger generation will automatically give rise to aspiration to translate them into daily life. The test whether inculcation has been sincere and effective is as to whether aspiration has arisen in the minds of the students, to implement the Fundamental Duties.

3.4.2 Inculcation precedes and implementation follows aspiration.

3.4.3 To make citizens aware of and to aspire for implementation of the Fundamental Duties in daily life must be the primary concern and obligation of the State. To that end, suitable provisions could be added in due course in Part IV of the Constitution.

3.4.4 In every educational institution whether public or private, the entire teaching staff and the students of the school or college or the university, as the case may be, should take the following pledge on the opening day and the closing day of each academic session:

> "I do solemnly and faithfully undertake to perform / discharge the entire Fundamental Duties enshrined in Part-IVA of the Constitution".

3.4.5 Every holder of a public office (whether political, academic, administrative, educational or otherwise rendering public services) is first a citizen and then office-holder. Every office holder should be conscious of his added responsibility of himself setting a good example of good citizenship by translating into daily life the Fundamental Duties enshrined in article 51A and thereby induce fellow citizens particularly those within the sphere of his power and influence, to do the same thing. And all this he should do particularly in the discharge of his official duties and also in his individual personal life as a citizen. For instance, the holders of political office like Prime Minister, Chief Ministers of States, Ministers and Members of Parliament, Members of Legislative Assemblies and Members of Legislative Councils should be persons who sincerely promote harmony and the spirit of common brotherhood amongst all the people in India transcending religion, linguistic and regional or sectional diversities. Such of them who thrive on caste and community – based electoral politics, whose outlook is sectarian and who regularly espouse the cause of the community or the other or who do not show equal respect to all religions and persons belonging to different religions, cannot set an example in the matter of discharging Fundamental Duties. Similarly leaders, who in the past had organized, violent demonstrations or indulged in destruction of public property or allowed depletion of forests and pollution of lakes and rivers or responsible for destruction of wild life cannot inspire other citizens to follow the Fundamental Duties. These illustrations apply with equal force to the teaching community and other public servants.

3.4.6 Every public servant before he assumes charge of his office shall take a pledge (standing before the entire staff of the office) :

"I solemnly pledge myself to discharge, as a citizen of India, all the Fundamental Duties enshrined in Part-IVA of the Constitution". And this shall be renewed every year on the 3rd January.

3.5 Implementation

3.5.1. The following suggestions for the amendment of the Constitution have been received to ensure the full implementation of the Fundamental Duties.

(I) The opening words of Article 51A should be reworded as follows :
"Every citizen of India shall implement in daily life the following duties":
(II) Article 51A should be shifted to Part II (Citizenship) of the Constitution.
(III) Suitable changes may be carried out to make Fundamental Duties to form a compendium with the Fundamental Rights.

3.5.2 It will be premature to think of amending the Constitution without making a determined effort to educate the citizens in the spirit of the Constitution. If the suggestions made above for effectuating the Fundamental Duties are effectively carried out a responsible citizenry may be expected to tackle successfully the basic problems at home and ensure that India occupies the rightful place abroad. The discussion in Part IV on enforcement brings out the legal and legislative support which is already available for practical actions and programmes to effectuate Citizenship Value.

PART – IV

Enforcement of Fundamental Duties

4.1.1 The Fundamental Rights in Part III, the Directive Principles of State Policy in Part IV and the Fundamental Duties in Part IVA form a compendium and have to be read together.

4.1.2 It is true that there is no legal sanction provided for violation or non-performance of Fundamental Duties. There is neither specific provision for enforceability nor any specific prohibition. However, Fundamental Duties have an inherent element of compulsion regarding compliance.

4.1.3 Out of the ten clauses in article 51A, five are positive duties and the other five are negative duties. Clauses (b), (d), (f), (h) and (j) require the citizens to perform these Fundamental Duties actively.

4.1.4 It is said that by their nature, it is not practicable to enforce the Fundamental Duties and they must be left to the will and aspiration of the citizens. However, in the case of citizens holding public office, each and all Fundamental Duties can be enforced by suitable legislation and departmental rules of conduct. Appropriate sanctions can be provided for lapse in respect of each Fundamental Duty and it is quite practicable to enforce the sanction against every citizen holding a public office; for instance, departmental promotions can be deferred, increments can be withheld, etc. If an officer takes part in a strike or stalls the proceedings of his institution, he can be made to forgo the salary for that day.

4.1.5 Likewise, sanctions can be provided for professional bodies such as the Bar Council of India, the Medical Council of India, the Institute of Chartered Accountants and the Institute of Engineers, etc.

4.1.6 It is no longer correct to say that Fundamental Duties enshrined in article 51A are not enforceable to ensure their implementation and are a mere reminder. Fundamental Duties have the element of compulsion regarding compliance. What is needed is to enact suitable legislation wherever necessary to require obedience of the duties by the citizens, with legal sanctions. There is need for comprehensive legislation in this area to ensure a faithful and effective implementation of the Fundamental Duties.

4.1.7 A number of judicial decisions are available towards the enforcement of certain clauses under Article 51A. Comprehensive legislation is needed for clauses (a), (c), (e), (g) and (i). The remaining 5 clauses, which are exhortation of basic human values, have to be developed amongst citizens through the education system by creating proper and graded curricular input from primary level of education to the higher and professional levels.

4.2 Judicial pronouncements

4.2.1 In Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Anr., (1969) 3 SCC 84, challenge was laid to a notification fixing minimum rates of wages, the problem posed before the court was to strike a balance between two propositions: one, should not a worker be paid, by way of minimum wages, an amount which would enable the two ends meet and to survive: and on the other hand, fixing of minimum wages may result in the industry or the unit being killed taking away its right to exist. The court held that freedom of trade does not mean freedom to exploit. Nor do the provisions of the Constitution are the barriers to progress. They provide a balance for orderly progress towards the social order contemplated by the Preamble of the Constitution. The court held:

> *"It is a fallacy to think that under our Constitution there are only rights and no duties. While rights conferred under Part-III are fundamental, the directives given under Part-IV are fundamental in the governance of the country. We see no conflict on the whole between the provisions contained in Part-III and Part-IV. They are complimentary and supplementary to each other. The provisions of Part-IV enable the legislatures and the Government to impose various duties on the citizens. The provisions therein are deliberately made elastic because the duties to be imposed on the citizens depend on the extent to which the Directive Principles are implemented. The mandate of the Constitution is to build a welfare society in which justice – social, economic and political, shall inform all institutions of our national life. The hopes and aspirations aroused by the Constitution will be belied if the minimum needs of the lowest of our citizens are not met."*

4.2.2 Officers in All-India Services (Administrative, Forest, Police, etc.) were not taking the training seriously resulting in deterioration of the services. Service Rules were amended so as to give weightage to the training and penalize the failure. On a challenge being laid to the constitutionality of the amendment in the Rules in Mohan Kumar Singhania & Ors. Vs. Union of India & Ors., (1992) Supp.1 SCC 594, in order to uphold the validity of the amendment, Ratnavel Pandian, J. drew strength from article 51A. Referring to clause (j), which commands every citizen of India to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement, it was held that the effort taken by the Government in giving utmost importance to the training programme of the selectees so that this higher civil service being the topmost service of the country is not wasted and does not become fruitless during the training period is in consonance with the provisions of article 51A (j). The constitutionality of the amendment was, thus, upheld.

4.2.3 In several cases, the Supreme Court has upheld the validity of laws relating to ecology and environment and has made directions binding the citizens and the State finding the source of power to do so in article 51A. In Rural Litigation and Entitlement Kendra & Ors. Vs. A State of Uttar Pradesh & Ors., (1986) Supp. SCC 517, Ranganath Misra, J. held.

> *"Preservation of the environment and keeping the ecological balance unaffected is task which not only governments but also every citizen must undertake. It is a social obligation and let us remind every Indian citizen that it is his Fundamental Duty as enshrined in Article 51A (g) of the Constitution."*

4.2.4 In Rural Litigation and Entitlement Kendra, Dehradun & Ors. Vs. State of U.P. & AIR 1985 SC 652, in order to prevent imbalance to ecology and hazard of healthy environment being created due to working of lime-stone quarries, the Supreme Court directed the quarries lessees being cancelled and lime-stone quarries being closed down permanently. The directions were issued in face of fundamental right to trade and business and the right to earn livelihood. Assigning paramount significance to Fundamental Duties and rather placing the Fundamental Duties owing to people at large above the

fundamental right of a few individuals the court held that such closure would undoubtedly cause hardship, "but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimum disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affectation of air, water and environment".

4.2.5 In Sachidanand Pandey & Anr. Vs. State of West Bengal & Ors., (1987) 2 SCC 295, the court expressed in unmistakable terms that whenever a problem of ecology is brought before the court, the court is bound to bear in mind article 48A of the Constitution and article 51A (g) which proclaims the Fundamental Duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. Policy decisions taken by State are not ordinarily to be interfered with by the courts. But if it is the question of giving effect to the Directive Principle and the Fundamental Duty, the court is not to shrug its shoulders and say that priorities are a matter of policy not to be touched by court, the court may always give necessary directions so as to secure implementation of Directive Principles and Fundamental Duties.

4.2.6 In State of Punjab & Ors. Vs. G.S.Gill and Anr., (1997) 6 SCC 129, kindling the spirit of clauses (e) and (j) of article 51A and the Directive Principle contained in article 38 (1), the court reminded the administrators of the government that they too are primarily the citizens and, therefore, their vision should be of national interest. "The primary responsibility of an administrator is to perform his functions in the services of the nation as an enlightened citizen to strengthen a new democratic state. The public administrator should get rid of all mental reservations on narrow considerations of caste, religion, sectional or regional. He should have a wider concern for society as a whole." Otherwise he is not worthy to be an administrator or enlightened citizen to work for others. In public administration, responsibility is of highly personal and moral quality and is not necessarily related to formal status of power, although it is probably true that greater power brings greater responsibility." In short, the court held that the Fundamental Duties oblige the administrators of the government to be good administrators.

4.2.7 In M.C.Mehta (II) Vs. Union of India & Ors., (1998) 1 SCC 471, article 51A containing Fundamental Duties of citizens was read casting duties on the government and for issuing certain directions consistently with article 51A. Directions were:-

(i) the Central Government shall direct to the educational institutions throughout India to teach at least for one hour in a week, lessons relating to protection and the improvement of the natural environment including forests, lakes, rivers and wild life in the first ten classes;

(ii) the Central Government shall get text books written for the said purpose and distribute them to the educational institutions free of cost;

(iii) the children shall be taught about the need for maintaining cleanliness and with the cleanliness of the house, both inside and outside and the street in which they live;

(iv) the Central Government shall consider training of teachers who teach this subject by the introduction of short-term courses for such training;

(v) the Central Government, the Government of the States and all the Union Territories shall consider desirability of organizing "Keep the city/town/village clean" week;

(vi) to create a national awareness of the problems faced by the people by the appalling all round deterioration of the environment.

4.2.8 In Vellore Citizens' Welfare Forum Vs. Union of India, (1996) 5 SCC 647 and Bandkhal and Surajkund Lakes matter, (1997) 3 SCC 715, the Supreme Court recognized 'The Precautionary Principle' and the 'The Polluter pays' principle as essential features of 'Sustainable Development' and part of the environment law of the country. Article 21, Directive Principles and Fundamental Duty clause (g) of article 51A were relied on by the Supreme Court for spelling out a clear mandate to the State to protect and improve the environment and to safeguard the forests and wild life of the country. The court held it mandatory for the State Government to anticipate, prevent and attack the causes of environment degradation.

4.2.9 State of U.P. Vs. Yamuna Shanker Misra & Anr., (1997) 4 SCC 7, is an interesting case where the object of writing the confidential reports and making entries in the character rolls were read in the light of article 51(j) as giving an opportunity to a public servant to improve excellence. The net of this

Fundamental Duty was spread so wide by the court as to spell out the eternal values of honesty, integrity, good conduct and efficiency getting improved in the performance of public duties and standard of excellence in services constantly rising to higher levels so as to be a successful tool to manage the services with officers of integrity, honesty, efficiency and devotion.

4.2.10 The State of A.P. appointed a person as Poet laureate in Telugu with an honorarium initially for five years and then for life accompanied by certain attractive perks. The successor government terminated the appointment. The learned poet challenged the termination. Though the High Court did not doubt the eminence and achievement of the petitioner, however, tracing the history of such appointments, the court found that it was not a recognition of merit but, in essence, a royal mirth-maker a reward for solemn flattery for the king. Referring to article 51A (j), Justice P.A.Chaudary said – "I have no hesitation in holding that the wild celestial fire that ever burns in the mortal frame of man should not be quenched either by indifference or mediocracy ..... But when the State undertakes to promote excellence it can do so only through the methods which our Constitution permits it to adopt. Rewarding of sycophancy only helps to retard the growth of efficiency and excellence. Conferment of poet Laureateship which more of less looks life conferment of a title may be a constitutional anathema". [Dr. Dasarathi Vs. State of Andhra Pradesh AIR 1985 AP 136].

4.2.11 Another interesting case is from Calcutta High Court. Syllabus was prescribed for readings in history in the State of West Bengal. West Bengal Head Masters' Association laid challenge to the syllabus as violative of inter-alia article 51A (b) of the Constitution inter alia. The grievance was that the syllabus lays emphasis on studying Bolshevik, Chinese and South-East Asia Revolutions but it does not specifically mention whatsoever on the social, literary, scientific, religious or political Indian Leaders, not the requisite emphasis on different phases of freedom movement in India. The association pleaded a fundamental right to read the Indian history. A Division Bench of the Calcutta High Court in West Bengal Head Masters' Association & Anr. Vs. Union of India & Ors., AIR 1983 Calcutta 448, held that there was no such Fundamental Right,

> "Article 51A(b) imposes a duty on every citizen of India to cherish and follow the noble ideals which inspired our national struggle for freedom. The performance of the duty is quite personal to every citizen of India. No duty has been imposed on the State, but on the citizens of India. There is much deference between right and duty. While a right can be claimed against another, duty has to be performed. It is not necessary for us to consider whether the duty imposed on every citizen of India under article 51A of the Constitution can enforced against a citizen or not. A citizen cannot claim that he must be properly equipped by the State so as to enable him to perform his duties under article 51A which does not confer rights but imposes certain duties. So a student cannot claim that he must be taught the Indian history in class VIII so that he can perform his duty under clause (b) of article 51A of the Constitution."

4.2.12 In Bijoe Emmanuel vs State of Kerala, AIR 1987 SC 8 at pp.751, 752 it has been held that there is no provision of law which obliges anyone to sing the National Anthem nor is it disrespectful to the National Anthem if a person who stands up respectfully when the National Anthem is sung does not join the singing. It is true that article 51A (a) of the Constitution enjoins a duty on every citizen of India "to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem". Proper respect is shown to the National Anthem by standing up when the National Anthem is sung. It will not be right to say that disrespect is shown by not joining in the singing. It was observed that there was no law enacted by Parliament making it obligatory to comply with article 51A(a). The Supreme Court allowed the petition filed by the children and directed the authorities to re-admit the children into the school. The court ended their judgment by adding – "our tradition teaches tolerance; our philosophy preaches tolerance; our constitution practices tolerance; let us not dilute it." In another matter the correctness of this decision has been doubted. The matter has been referred to a Constitution Bench of the Supreme Court, which would examine correctness of the decision and also many a relation aspects.

4.2.13 The Supreme Court in Vishaka and others Vs. State of Rajasthan (AIR 1997 SC 3011) found it necessary for protection of working women from sexual harassment to lay and by this the classical exercise of the law making powers under article 141 of the Constitution laid:

"It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

(1) The Duty of the Employer or other responsible persons in work places and other institutions:

It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

(2) Definition:

For this purpose, sexual harassment includes such unwelcome sexually determined behaviors (whether directly or by implication) as:

(a) physical contact and advances;
(b) a demand or request for sexual favours;
(c) sexually coloured remarks;
(d) showing pornography;
(e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances where under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in Government, public or private enterprises such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the women has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it created a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

(3) Preventive Steps:

All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

(a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
(b) The rules/regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
(c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

(4) Criminal Proceedings:

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In particular, it should ensure that

victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

(5) Disciplinary Action:

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, the employer in accordance with those rules should initiate appropriate disciplinary action.

(6) Complaint Mechanism:

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

(7) Complaints Committee:

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsel or other support service, including the maintenance of confidentiality.

A woman should head the Complaints Committee and not less half of its member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them.

The employers and person on charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

(8) Workers' Initiative:

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer-employee Meetings.

(9) Awareness:

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

(10) Third Party Harassment:

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

(11) The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private sector.

(12) These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These Writ Petitions are disposed of accordingly."

4.2.14 It was also observed that these guidelines would not prejudice any rights available under the Protection of Human Right Act, 1993. These were the most effective measures for enforcement of the Fundamental Duties; in particular to renounce practices derogatory to the dignity of women – a Fundamental Duty enshrined in clause (e) of article 51A, in the effectuation of that duty.

4.3 Justice Verma Committee

4.3.1 The Government of India announced the setting up of a Committee under the Chairpersonship of Justice J.S Verma, former Chief justice of India, and presently Chairman, National Human Rights Commission (NHRC), vide Order No. 16-23/98 sch. 1 dated 21 July 1998 "to work out a strategy as well as methodology of operationalizing a countrywide programme for teaching fundamental Duties in every educational institution as a measure of inservice training" in accordance with the Terms of Reference stated below:

4.3.2 The Terms of Reference of the Committee were as follows:

1. To develop a package for teaching Fundamental Duties at primary secondary, senior secondary and university levels.
2. To decide the activities as part of curriculum and co-curricular activities.
3. To review the exiting programme already being implemented by the NCERT under the national Curricular Framework and the need for identifying additional inputs into it.
4. To develop programme packages for the training of citizens through non-formal education / adult education programme / media (print, electronic, etc.)

4.3.3 The Committee attempted to analyze the issue of teaching of Fundamental Duties at all levels of education through improvement of the content and process, particularly of school education and teacher education, including interventions through curricular, co-curricular and media inputs, both print and electronic.

4.3.4 In order to devote its thinking on the issue of operationalization of the teaching of Fundamental Duties, the Committee decided to study this issue in its holistic perspective and came out with a report on October, 1999. The salient recommendations made in this report are detailed in Annexure I and cover aspects such as the following:

- General awareness and consciousness.
- Optimising benefits from existing schemes / programmes.
- Protection and improvement of environment.
- Reorienting approaches to school curriculum.
- Elimination of gender bias.
- Reorienting teacher education programmes.
- Incorporating Fundamental Duties in higher and professional education
- People's representatives from Panchayats to Parliament.
- Public administration and civil servants.
- Administration and justice.
- Business and industry.
- Media.

4.4 Available Legal Provisions

4.4.1 The Verma Committee was conscious of the fact that any non-operationalization of Fundamental Duties might not necessarily be the lack of concern or non-availability of legal and other enforceable provisions; but it was more a case of lacuna in the strategy of implementation. It, therefore, thought it appropriate to list in brief some of the legal provisions already available in regard to enforcement of Fundamental Duties. A summary of such legal provisions is given below:

i. In order to ensure that no disrespect is shown to the National Flag, Constitution of India and the National anthem, the Prevention of Insults to National Honour Act, 1971 was enacted.

ii. The Emblems and Names (Prevention of Improper Use) Act 1950 was enacted soon after independence, *inter alia*, to prevent improper use of the National Flag and the National Anthem.

iii. In order to ensure that the correct usage regarding the display of the National Flag is well understood, the instructions issued from time to time on the subject have been embodied in Flag Code of India, which has been made available to all the State Governments, and Union territory Administration (UTs).

iv. There are a number of provisions in the existing criminal laws to ensure that the activities which encourage enmity between different groups of people on grounds of religion, race, place of birth, residence, language, etc. are adequately punished. Writings, speeches, gestures, activities, exercise, drills, etc. aimed at creating a feeling of insecurity or ill-will among the members of other communities, etc. have been prohibited under Section 153A of the Indian Penal Code (IPC).

v. Imputations and assertions prejudicial to the national integration constitute a punishable offence under Section 153 B of the IPC.

vi. A Communal organization can be declared unlawful association under the provisions of Unlawful Activities (Prevention) Act 1967.

vii. Offences related to religion are covered in Sections 295-298 of the IPC (Chapter XV).

viii. Provisions of the Protection of Civil Rights Act, 1955 (earlier the Untouchability (Offences) Act 1955)

ix. Sections 123(3) and 123(3A) of the Representation of People Act, 1951 declares that soliciting of vote on the ground of religion and the promotion or attempt to promote feelings of enmity or hatred between different classes of citizens of India on the grounds of religion, race, caste, community or language is a corrupt practice. A person indulging in a corrupt practice can be disqualified for being a Member of Parliament or a State Legislature under Section 8A of the Representation of People Act, 1951.

4.5 Suggestions for Further Action

4.5.1 The recommendations made by Justice Verma Committee on Operationalisation of Fundamental Duties of Citizens (Annexure 1) deserve to be reiterated forcefully. In particular, it is suggested that there is imperative need for wider dissemination of information and generating greater awareness in regard to the Fundamental Duties of citizens and obligations of citizenship. This must assume the dimensions of a peaceful, nation wide, mass-based movement. This can be done through –

(a) organization of advocacy and sensitization programmes,
(b) display of the text of article 51A 'Fundamental Duties' prominently in government publications, diaries calendars, offices and at public places,
(c) radio and video spots highlighting important messages related to Fundamental Duties on AIR, Doordarshan and other channels,
(d) setting up an autonomous body to act like ombudsman on citizenship values and for overseeing operationalisation or effectuation of Fundamental Duties,
(e) publication of small booklets on various aspects of Fundamental Duties written in simple language and aimed at different levels of citizens through non-formal education, open schooling, adult education, and universalisation of literacy programmes
(f) circumspection by electronic media on programmes, serials, pictures, news and advertisement affecting morality, decency and cultural values and heritage of the country,

(g) activist role by electronic and print media in the matter of Fundamental Duties like protection of the environment,

(h) media avoiding the glorification of acts of violence, armed robberies, and terrorist activities, and

(i) the state machinery ensuring the effectuation of Fundamental Duties, where necessary, by prompt legislation.

4.5.2 The benefits from the already existing schemes need to be optimised by monitoring work of NGOs and other institutions operating government-funded schemes focussed on aspects of national integration, communal harmony, culture and values, and environment, in tune with the spirit of clauses (e), (f) and (g) of article 51A and making mid-course corrections where necessary.

4.5.3 The Directive Principle of State Policy in article 48A, the Fundamental Duty in article 51A (g) and the existing laws in the area need to be implemented and enforced in the light of the judgments of the Supreme Court.

4.5.4 There is need for fundamental transformation in the direction and approach to curricular and co-curricular activities for imparting education in schools and teacher training institutions. This can be done by –

(a) publishing the content of Fundamental Duties through books published by the NCERT and School Textbook Bureaus,

(b) presenting each clause of article 51A through anecdotal talks, at morning assemblies at schools,

(c) organising seminars, debates, competitions on different aspects of Fundamental Duties of citizens, and

(d) designing an instructional design for education in Fundamental Duties that fits into the present day multi-channel environment where learning accrues from a variety of sources at home, school, community, print and electronic media.

4.5.5 In order to ensure dignity of women, gender biases and sex-stereotyping must be eliminated from all textbooks both at state and national levels.

4.5.6 Programmes of education for school teachers and higher and professional courses have to be so designed as to enable communication of the content of Fundamental Duties of citizens and the value of abiding by them. What is needed is a vigorous advocacy with state educational agencies, teacher education institutions and university departments for inclusion of Fundamental Duties component in curricula. All courses in Human Rights should also include Fundamental Duties.

4.5.7 An independent comprehensive unit encompassing familiarisation with the Constitution of India and Fundamental Duties of citizens thereunder need to be incorporated in the elementary and secondary teacher education courses.

4.5.8 NCC should be made compulsory in all pre-service teacher education institutions. This would promote the values of sovereignty, unity and integrity of the nation.

4.5.9 The need to shift emphasis from rights to duties in all walks of life is indeed urgent. Undue emphasis on one's own rights without any awareness of one's duties is not a sign of good citizenship.

4.5.10 The Fundamental Duties set out in article 51A were not intended to be legally enforced by one citizen against the other. They are like the Ten Commandments which every citizen is expected to bear in mind and conduct himself towards the State and society accordingly. Therefore, the endeavour of the State should be not so much to give teeth to the Fundamental Duties but to spread awareness of the duties among the people.

4.5.11 The courts in India have been taking note of the Fundamental Duties in judicial decisions. Being provisions of the Constitution, the courts will have due regard to the Fundamental Duties in interpreting the text of the Constitution. They will also be justified in moulding relief in individual cases having regard to the antecedents of the person seeking relief, particularly judged by the yardstick of Fundamental Duties.

4.5.12 Some of the expressions used in the Fundamental Duties may be elaborated or explained to facilitate better understanding. For instance, "the noble ideals which inspired our national struggle for freedom", may be explained to include –

(a) putting an end to foreign rule,
(b) ushering in a Government of the people, by the people and for the people and
(c) securing to all citizens justice, liberty and equality, and promoting among them all fraternity and unity.

4.5.13 It is suggested that a few more Fundamental Duties, namely, duty to vote in an election, duty to pay taxes and duty to resist injustice may be added in due course to article 51A in Part IVA of the Constitution.

QUESTIONNAIRE
ON
EFFECTUATION OF FUNDAMENTAL DUTIES OF CITIZENS

1. Are you aware of article 51A of the Constitution of India which requires every citizen of India to discharge 10 Fundamental Duties?

Yes ☐ No ☐

2. Are you familiar with the ideals and institutions of the Constitution?

Yes ☐ No ☐

3. Are your neighbours and other citizens respecting the ideals and institutions of the Constitution?

Yes ☐ No ☐

4. Are your leaders who represent your Constituency, respecting the ideals and institutions of the Constitution?

Yes ☐ No ☐

5. Whether your neighbours/other citizens cherish and follow the noble ideals which inspired our national struggle for freedom?

Yes ☐ No ☐

6. Whether your leaders who represent your Constituency follow those noble ideals?

Yes ☐ No ☐

7. Is it necessary to inculcate those noble ideals in the school going children?

Yes ☐ No ☐

8. Do you believe in the sprit of common brotherhood amongst all the people of India with different languages, cultures, etc.?

Yes ☐ No ☐

9. Whether the solution is to select from school students belonging to Scheduled Castes and Scheduled Tribes and give them special education and special coaching so that they can be brought to the level of their fellow students in the general category and compete with them?

Yes ☐ No ☐

10. Whether by law practices derogatory to the dignity of women can be eradicated?

Yes ☐ No ☐

11. Whether punishment provided in the law for practices derogatory to the dignity of women are suitable and adequate?

Yes ☐ No ☐

12. Whether you value the rich heritage of our composite culture?

Yes ☐ No ☐

13. Whether there is onslaught of western culture on the minds of our younger generation?

Yes ☐ No ☐

14. Whether you are in favour of complete ban on scenes of violence, vices and vulgarity being depicted on the TV screen?

Yes ☐ No ☐

15. Whether you discourage or discourage your children from witnessing the scenes of violence, vice and vulgarity on the TV?

Yes ☐ No ☐

16. Whether you have taken determined resolution within yourself not to speak untruth, not to do "Hinsa"?

Yes ☐ No ☐

17. Whether you have taken a determined resolution within yourself not to take or give bribe?

Yes ☐ No ☐

18. Whether the laws have been able to eradicate corruption or to contain it?

Yes ☐ No ☐

19. Whether human values must be inculcated in school students by providing it as a subject of study?

Yes ☐ No ☐

20. Do you inculcate human values in your children so that excellence be always their aim in whatever duty/work is assigned to them?

Yes ☐ No ☐

21. Whether your neighbours are striving towards excellence in the spheres of their individual activity?

Yes ☐ No ☐

22. Whether Fundamental Duties under clause (b), (f) and (j) have the potential to raise our country to the highest level?

Yes ☐ No ☐

23. Whether the Fundamental Duties under clauses (b), (f) and (j) can be enforced by law?

Yes ☐ No ☐

24. Whether inculcation of human values is the solution?

Yes ☐ No ☐

25. Do you believe that organising advocacy and sensitization programmes will help create awareness and consciousness of Fundamental Duties among citizens?

Yes ☐ No ☐

26. Whether display of 10 clauses of article 51A on publications and public places be helpful in inculcation of Fundamental Duties?

Yes ☐ No ☐

27. Can important messages related to Fundamental Duties be effectively transmitted through radio and T.V. ?

Yes ☐ No ☐

28. Should Fundamental Duties they be observed in educational institutions and offices?

Yes ☐ No ☐

29. Should Fundamental Duties be included as separate curriculum area ?

Yes ☐ No ☐

30. Should environment issues get more space in the media and media should take the role of activist guard?

Yes ☐ No ☐

31. Do you believe in enacting more legislation to enforce Fundamental Duties can be helpful?

Yes ☐ No ☐

32. Given the ever spreading tentacles of multi channel learning environment and increasing globalization of mass media, do you think, education in Fundamental Duties can be tackled though media without affecting our cultural concerns ?

Yes ☐ No ☐

33. Will elimination of gender bias and sex stereotyping from school and college textbooks help in respecting the dignity of women ?

Yes ☐ No ☐

34. Should teacher education programmes be specially designed to teach Fundamental Duties with the hope that they will influence the students?

Yes ☐ No ☐

35. Should human rights and Fundamental Duties be included in professional and higher education courses?

Yes ☐ No ☐

36. Is there a need for special programme of training legislators to make them aware of the Fundamental Duties?

Yes ☐ No ☐

37. Please give details of any other suggestions/comments on which you would like to make on effectuation of Fundamental Duties (in nor more than 200 words)

Attach additional sheet if necessary

Annexure 1
(See paragraphs 4.3.4 and 4.5.1)

Report of Justice Verma Committee (1999)
on
Operationalisation of Fundamental Duties

Salient Recommendations

Operationalization Overview

The operationalization strategy is based on the maxim that to discharge Fundamental Duties, the onus is on every citizen and there is no one with higher credentials or superior authority to teach Fundamental Duties to others who alone may be required to imbibe these values and perform the duties.

The word 'operationalization' points out to action for discharging responsibility towards defined expectations. The concept of duty as an integral part of the personality of an individual should emanate from the deep concerns within the individual to discharge certain obligations and responsibilities towards the social system in which he/she lives. Duty consciousness is a virtue and a value. There should be no dichotomy between knowing the right value and manifesting it by internalizing it in one's behavior. It is in this context often said that the values are caught and not taught and that role models have a great significance in transmitting values..

Duties are observed by individuals as a result of dictates of the social system and the environment in which one lives, under the influence of role models, or on account of punitive provisions of law. It may be necessary to enact suitable legislation wherever necessary to require obedience of obligations by the citizens. If the existing laws are inadequate to enforce the needed discipline, the legislative vacuum needs to be filled. If legislation and judicial directions are available and still there are violations of Fundamental Duties by the citizens, this would call for other strategies for making them operational.

The desired enforceability can be better achieved by providing not merely for legal sanctions but also combining it with social sanctions and to facilitate the performance of the task through exemplar role models. The element of compulsion in legal sanction when combined with the natural urge for obedience of the norms to attract social approbation would make the citizens willing participants in the exercise. The real task, therefore, is to devise methods which are a combination of these aspects to ensure a ready acceptance of the programme by the general citizenry and the youth, in particular.

The Committee is strongly of the view that the significance of dignity of the individual in all its facets and the objective of overall development of the personality of the individual must be emphasized in the curriculum at all the stages of education... This requires consciousness of citizenship values which are a combination of rights and duties, and together give rise to social responsibilities. Methods must be devised to operationalize this concept as a constitutional value in our educational curriculum and in co-curricular activities, in schools and colleges.

Appropriate references are available in school curricula about the significance and importance of the National Flag and the National Anthem. Detailed accounts are also there in the curricula on the national struggle for freedom which ought to inculcate the patriotic fervour in the young minds so that they can always share the readiness to help and protect the sovereignty, unity and integrity of India. Perhaps no other concept has received as much attention in the curricula as the environmental concerns. Considering all these, one still finds that the products of the educational system do not adequately reflect the values sought to be acquired through curricular learnings. One can obviously draw a conclusion that perhaps the method and approach used in transmitting such ideas to young learners need more serious effort. A reference to a BBC–Produced programme called 'Land of the Tiger' is worth noting.

It is unfortunate that our educational system is largely involved in preparing the younger generation for developing their cognitive domain based on preponderance of public examinations, and unhealthy environment of competitiveness, at the cost of developing the more important affective domain. This is perhaps the reason that in spite of the students being exposed through curriculum to their duties, their manifested behavior may not necessarily exhibit the expected adherence and this is emerging as a social reality. The Committee, therefore, feels that there may be a need for fundamental change and

transformation in the direction and approach to 22 curricular transaction for achieving the desired results. Obviously the need is also to ensure in some manner practical and appropriate inputs in improving the quality of teachers and teaching. The commitment and concern on the part of the teachers can be the only bases for anything worthwhile happening in the educational system.

It must also be remembered that education is a sub-system of the total social system and it is in this context that the recommendations stated in this chapter should be viewed. Of course, a long term strategy for developing a value-based society can come only through the instrumentality of right education and training.

It would however, be necessary to create public awareness of the need to appreciate and internalize the concept and practice of Fundamental Duties with particular emphasis on the necessity of creating harmonious society with a scientific outlook, free from tensions and turmoils. Respect for discharging Fundamental Duties must enable in the citizens the understanding, tolerance and respect for differences and diversities. Of course, the discourse on Fundamental Duties cannot be divorced from Fundamental Rights or else we do disservice to both.

Optimizing Benefits from Existing Schemes / Programmes

Towards optimizing benefits from the existing schemes/programmes on national integration and communal harmony, culture and values, and environment, the Committee recommends the following:

Need to further activate and monitor the work of the institutions and NGOs who are sanctioned these schemes by the concerned ministries of Home, Human Resource Development and Environment and Forests.

While approving the financial assistance to the NGOs. the focus of their programmes must deal with aspects of national integration and communal harmony, culture and values, and environment which are in tune with the spirit of clauses (e), (f) and (g) of article 51A. Definitive evaluation of the work done under the existing schemes/programmes would be desirable, and the concerned Ministries/Agencies should take stock of the impact generated. If any mid-course corrections are called for, they should be incorporated forthwith.

Protection and Improvement of Environment

Towards protection and improvement of environment, the Committee recommends the following:

The Directorate of Trust emphasizes that there is no ownership in natural resources and that every generation should make a judicious use of them, as trustee for the future generations. Coordination between all the law enforcement agencies is essential to achieve the desired results. The constitution of India lays emphasis on this aspect by enacting article 48A as a Directive Principle of State Policy and article 51A (g) as a Fundamental Duty of every citizen.

To enforce strict compliance of the various legal provisions in this regard as available in the directions of the Supreme Court of India on article 51A. if the existing legislations are inadequate to enforce the needed discipline, such a legislative vacuum must be filled suitably to ensure enforceability.

(d) Reorienting Approaches to School Curriculum

Any exercise in curricular analysis alone is bound to offer only fragmented view of educational processes in Fundamental Duties. The entire range of issues related to affective inputs that ensure appreciation, respect, value, etc. emerge out of instructional processes and schooling as a holistic experience. For this angle, it is necessary to review education in Fundamental Duties from the point of view of pedagogical and androgogical processes.

Towards reorienting approaches to school curriculum, the Committee recommends the following:

There is a need for a fundamental transformation in the direction and approach to curricula for teaching Fundamental Duties in school and teacher education institutions. Citizenship values should be understood by all concerned as a combination of rights and duties. Appropriate steps in this regard need to be initiated through the educational process to achieve the desired results in the long run.

Preamble to the Constitution of India and the 10 clauses of article 51A of the Constitution on Fundamental Duties, to be printed in all school textbooks, supplementary materials and general publications brought out by the NCERT and the School Textbook Bureaus in the States/Union Territory Administrations. There is a pedagogical significance of this approach. Increasing understanding of androgogy alongside pedagogy reveals that knowledge of goals itself is a tool of learning. Hence when students understand their obligations, they are likely to learn their own way of fulfilling the obligations.

Presentation of the values inherent in each clause of article 51A through anecdotal talks at morning assemblies in schools.

Seminars, debates, competitions on different aspects related to Fundamental Duties to be made regular feature of the co-curricular activities of schools.

In designing a programme of education on Fundamental Duties, there has to be a conscious effort to develop an instructional design that fits into a multi-channel learning environment.

It is important to recognize that we are living in the multichannel learning environment where learning accrues from a large number of sources like home, school, community, print media, electronic mass media, knowledge networks, internet, etc. Given the ever spreading tentacles of multichannel learning environment and increasing globalization of mass media, the issue of education in Fundamental Duties, particularly as a school-dependent education, needs due consideration.

The points of view mentioned under Major issues in the Critique on School Curriculum are very relevant for reviewing of existing curricula and planning for newer strategies of teaching of Fundamental Duties. These suggestions should be referred to the NCERT and the SCERTs and the State Textbook Bureaus for taking them into account while a curricular renewal exercise is undertaken by them. The basic question is whether Fundamental Duties as such need to be highlighted as an independent curricular area or its natural integration should be planned in various areas of curriculum as exercises in value orientation. The net goals of both the approaches are the same but the nature of emphasis certainly becomes different. The flexibility to experiment with either approach can be left to curriculum developers.

Fundamental Duties across various primary and secondary classes should be provided in a spreadsheet which can be used to plan curricular coverage by mapping topics and themes from various subjects related to the clauses pertaining to Fundamental Duties. The curricular reorganization, particularly in formulating textbooks, should be done on the basis of such a spreadsheet. It may not demand a serious change in the curricular content but may require alternative treatment relating the content to the relevant Fundamental Duties. Linked to this is the shift of focus from merely teaching the content of the Constitution to the process of education necessary to internalize the values inherent in it. Curricular treatment of Fundamental Duties not only needs to cut across different subjects but should also increase in depth as one moves from one level of education to another.

(e) Elimination of Gender Bias

In order to ensure dignity of women, gender biases and sex-stereotyping must be eliminated from all school and colleges textbooks and this should be given as a mandate to all curriculum development agencies, both at national and state levels.

(f) Reorienting Teacher Education Programmes

It is not enough that the teachers are made aware of Fundamental Duties; it will also require educating them in communicating Fundamental Duties to the students and impressing on them the need to abide by the dictums of the same. For a serious business of education in Fundamental Duties at the school level, teachers of all subjects at all levels have to be oriented and trained. Accordingly, the curricular

coverage to Fundamental Duties have to be deliberate and pre-designed. It will be necessary to develop a blueprint indicating reflection of various clauses in various units and topics of various papers in teacher education curricula. Preparation of teachers through well designed teacher education programmes, would actually play a very significant role in ensuring understanding and internalizing of Fundamental Duties in our schools and communities.

Towards reorienting teacher education which is the most crucial input in operationalizing Fundamental Duties, the Committee recommends the following:

A sensitization module based on Fundamental Duties to be made an integral part of all teacher education programmes, organised by National, State and District level Institutions. Large scale teacher orientation programmes should be planned on this theme.

The NCERT, the NCTE, the NIEPA and other institutions around the country should organize seminars in various parts of the country to familiarize the teachers with the strategies for operationalizing the teaching of Fundamental Duties.

An effective way to institutionalize the concept of Fundamental Duties in the teacher education is to incorporate it in the elementary and secondary pre-service teacher education curriculum. This should be supplemented by a suitable co-curricular programme, which should aim at offsetting some of the shortcomings in the curricular approach especially in terms of attitude and value development.

In view of very little content on Fundamental Duties in the elementary and secondary teacher education curricula, as revealed by the Critique, what is needed is a vigorous advocacy with state educational agencies, teacher education institutions and university departments of education for conscious inclusion of this component in the curricula.

It should be possible for the NCTE with its status of a statutory body to influence teacher education curricula in different universities in a more substantial way, with reference to teaching of Fundamental Duties.

In order to overcome the disadvantage of fragmented treatment and discussion on Fundamental Duties, it is suggested that an independent comprehensive unit encompassing familiarization with the Constitution of India and Fundamental Duties of citizens thereunder should be incorporated in the elementary and secondary teacher education courses. In India, evaluation system influences the educational process specially the quality of classroom teaching significantly, and as such a separate unit on Fundamental Duties ensures due importance and weightage to the concept, in the classroom teaching.

Considering the importance of upholding and protecting sovereignty, unity and integrity of India, it is felt that NCC should be made compulsory in all the pre-service teacher education institution, both elementary and secondary.

Fundamental Duties Week may be observed in all teacher education institutions every year. The objective of this Week may be to create essential awareness and positive environment for the inculcation of attitudes and values as reflected in article 51A of the Constitution of India.

A great deal depends on the ingenuity and dedication of teachers. A nationwide movement to train and honour primary school teachers as builders of citizens, if launched with sincerity and purpose, could bring about impressive transformation in the educational system.

Incorporating Fundamental Duties in Higher and Professional Education

Towards incorporating Fundamental Duties in the courses and programmes of higher and professional education, the committee recommends the following:

The current Human Rights Education Initiative of the UGC should be referred to as 'Human Rights and Fundamental Duties Education Initiative'.

The UGC while considering giving grant and support to proposals received from universities and colleges under its ' Human Rights Education initiative' for introducing Degree/Diploma/ Certificate Courses and other programmes in Human Rights, may advise on incorporating Fundamental Duties as an essential component of their respective proposals.

Workshop on devising curriculum, evolving teaching methodologies and orienting faculty to make Fundamental Duties consciousness as the central focus of educational experience should be seriously considered by the University system. The UGC could consider issuing necessary instructions in this regard to the institutions under its control.

(h) People's Representatives from Panchayats to Parliament

Towards the responsibilities of people's representative, the Committee recommends the following:

Special efforts should be made to ensure that our legislators are aware of the Fundamental Duties as the same are also their duties as citizens. This would mean that special programmes may be organized at the parliamentary and state assembly levels. The Corporation, Town Area Committees and the Panchayati Raj institutions should also be involved in this effort as they alone can take the appropriate messages down to the grassroots.

Candidates seeking the mandate of the people must eschew arousing sectarian passions and take all practical steps to promote national unity and integrity.

Elected Representatives should refrain from interfering in the functioning of governmental and non-governmental institutions. They should observe the laws themselves and help law enforcing agencies in dealing with lawbreakers.

It should be the endeavour of the Elected Representatives to organize/strengthen a network of activities to gather support for small family norm, to protect and improve natural environment, to safeguard public property and to abjure violence.

Orientation programmes for new Members of Parliament and State Legislatures need to be strengthened to provide an adequate measure of understanding of Fundamental Duties and their application to the work of the Elected Representatives.

(i) Public Administration and Civil Servants

It is the duty of every citizen to obey the constitutional mandate. Every holder of a public office has superadded to his duties as a citizen, the additional duties imposed by virtue of the office she/he holds. Sensitivity of all enforcement agencies is essential for realizing the promise held out in the Constitution. Strict observance of codes of professional ethics by professional bodies has to become important in this regard, and such bodies must design their own programmes, which help operationalization of Fundamental Duties.

Towards the obligation of public administration and civil servants, the Committee recommends the following:

Module on Fundamental Duties should be adopted for inclusion in the Courses of different Training Institutions connected with the training of civil servants.

It should be the responsibility of the senior public servants to project the image of administration as people-friendly and responsive to the problems and sufferings of the citizens.

The Government should move towards giving greater access to information. Transparency and free supply of information will reduce corruption and ensure accountability.

Secretaries to Government, Managing Directors in the Public Sector, Heads of Departments, Heads of Offices/Field Units should be made squarely and personally responsible for taking detailed measures for rooting out corruption in their assigned areas of responsibility. A set of guidelines could be supplied to them for strict compliance.

There should be an in-built mechanism for handling cases of dereliction of duty by public servants where a public grievance has not been redressed within a stipulated time.

(j) Administration of Justice

Towards the administration of justice, the Committee recommends the following:

A Judicial Academy should be set up to provide facilities for continuing education of Judges, to focus their attention on Constitutional Values and Fundamental Duties, to foster constructive interaction between the Bar and the Bench and to facilitate application of modern techniques of management to the transaction of judicial business in the Court.

Bar Councils and their affiliated Bar Associations must share the responsibility for ensuring that their members not only appreciate the value of complying with Fundamental Duties but also strive to implement them while pursuing their professional work.

(k) Business and Industry

Towards the role of business and industry, the Committee recommends the following:

Business Leaders, Business Organizations and Management Schools have vital roles to play in internalizing basic values, in widening financial and technical support for community development programmes, and in ensuring that ethical codes become indispensable ingredients of business ethos.
Business and Industry have obligation to perform the duties, both implicit and explicit, enjoined by the Constitution. However, in discharging social responsibilities, only a small percentage of the Business Community has undertaken social welfare and development programmes. Important Chambers of Commerce and Industry Associations have taken initiative for formulating norms of ethical conduct for business dealings. But the action taken to secure compliance with the codes leaves much to be desired. This should be pursued more vigorously.

(l) Media

Media of any society are among the most important institutions. Democracy without free media is a contradiction in terms. Mass media should be the watchdog of democracy, and not the poodle of the establishment. Media have a greater responsibility today than they ever had to guide the nation and make every citizen conscious of his/her Fundamental Duties enshrined in the Constitution.

The powerful impact of media including electronic and print media has to be fully exploited to transmit messages on Fundamental Duties to all levels of citizenry.

The fundamental development problems facing the country are: achieving a high rate for economic growth, establishing a sense of legitimacy towards constitutional values and public institutions and creation of a sense of nationality among the diverse segments and layers of the society. It is true that these developmental problems cannot be solved by the mass media. But it is also true that these cannot be solved without the help of mass media. Solution of these problems would depend upon social mobilization. The media has to create awareness in this regard.

There is need for the media to make conscious effort to promote an awareness of the constitutional obligations among the citizens. Media has also to act as a watchdog to see that those who man the Legislature, the Executive and the Judiciary and various other public institutions and instrumentalities of the State do not misuse the same. Convenience or expediency is not a measure of constitutionality. Constitution would live as long as constitutional structure vested in various organs is protected and preserved. There can be no doubt that virtue is the bedrock of constitutional democracy.

Media should constantly educate people that Constitution and the symbols of sovereignty could only be preserved by the public spirit and vigilance of its citizens and these could also be destroyed by its citizens.

The potential of the media has to be harnessed for issues such as rural development, empowerment of women, distance education, environmental protection, civic consciousness and human rights awareness.

Media must be used as an important policy instrument in the social, educational and development planning and in fulfillment of constitutional goals of building a welfare society based on rule of law.

As media is both Government controlled and in Private Sector, there is all the more need to not only formulate a comprehensive media policy but also create vital communication link within the government and between the government and the people in the nation building activities.

Once market economy, divorced from social good becomes the dominant factor of media business, there is every chance of manipulation of mass response and mass culture to the detriment of public interest. Our values are apt to suffer eclipse if foreign domination of media committed to alien ethos, acculturation and political proselytization, culminating in contempt for Indian heritage and constitutional basis romps in and once in, cannot be reined in. There will be subversion of our founding faith implicit in our Sovereign Socialist Secular Democratic Polity. It is, therefore, media's bounden duty to be on the guard and resist sub-version for its very survival and the country's sovereignty.

Media should make special effort to highlight programmes which support and promote activities related to national integration, culture and values, and environment.



NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

REVIEW OF THE WORKING OF POLITICAL PARTIES SPECIALLY IN RELATION TO ELECTIONS AND REFORM OPTIONS

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating public debate and eliciting public response.

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CONTENTS

		Pages
1.	Introduction	427
2.	Constitutional and Legal Position	427
3.	Provisions for Recognition	429
4.	De-recognition of Parties	429
5.	Recent Trends in the Growth of Parties	430
6.	Problems in the Working of Parties	431
	6.1 Absence of Inner Party Democracy	431
	6.2 Representation of Women	432
	6.3 Training of Members	432
	6.4 Need for Funds	432
	6.5 Lack of Ideology and Values in Politics	432
	6.6 Leadership Quality	433
	6.7 Campaign Methods	433
	6.8 Regionalisation	433
	6.9 Casteism	433
	6.10 Communalism	434
	6.11 Criminalisation	434
	6.12 Growing Violence	435
	6.13 Fractionalization and Coalitions	435
	6.14 Political Parties and Governance	436
	6.15 Jumbo Council of Ministers	437
7.	Reform Options	438
	7.1 Areas of Concern	438
	7.2 Areas of Reform	438
	7.3 Suggestions for Reform	439
8.	Conclusions	446
	8.1 Need for a Legislation Governing Political Parties.	446
	8.2 Criteria for Registration	447
	8.3 Criteria for De-Registration	447
	8.4 Structural Requirements	447
	8.5 Educational Training and Development Activities	447
	8.6 Leadership Conventions	447
	8.7 Stabilising the Parliamentary System	448
	8.8 Curbing Criminalisation of Politics	448
	8.9 Checking Proliferation of Independent Candidates.	448
	8.10 Problem of Party Funding	449
	8.11 Regulating Political Contributions	450
	8.12 Controlling Electoral Expenditure	450
	8.13 Monitoring Election Expenditure	450
	8.14 Patrimony of Candidates and Politicians	451
	8.15 Strengthening of Anti-Defection Measures	451
	8.16 Party System and Governance	451
	8.17 Restoring Moral Standards in Public Life	452
	Questionnaire	453
	Select Bibliography	458
	Articles	466

1. Introduction

1.1 Political parties are indispensable to any democratic system and play the most crucial role in the electoral process – in setting up candidates and conducting election campaigns. In recent years, we have witnessed a succession of unstable governments, and the reason for such a recurring phenomenon is said to be the archaic and chaotic functioning of political parties. Alliances and coalitions are made, broken and changed at whim, and the balance of power seems to be held not by those at the Union level, but by minor parties on the fringes. There is no doubt that Indian political parties have fragmented over the years. Frequent party splits, mergers and counter splits have dramatically increased the number of parties that now contest elections. In 1952, 74 parties contested elections, whilst in recent years this number has swollen to more than 177, and has been consistently increasing since 1989. Can the instability at the Union level or in the States be attributed solely to the growing number of parties, or the malaise with which the political system suffers today lies in the functioning and the dynamics of the party system in India, apart of course, from the other causes in the working of the political system as a whole?

1.2 Political parties and the party system in India have been greatly influenced by cultural diversity, social, ethnic, caste, community and religious pluralism, traditions of the nationalist movement, contrasting style of party leadership, and clashing ideological perspectives. The two major categories of political parties in India are National and State, and are so recognized by the Election Commission of India on the basis of certain specified criteria. As of today , there are six national parties (seven after the split in the Janata Dal in August 1999) and 38 regional parties recognized as such by the Election Commission of India.

1.3 The National parties are Indian National Congress , Bharatiya Janata Party, Communist Party of India, Communist Party of India (Marxist), Bahujan Samaj Party, and Janata Dal. As per the latest notification (June 29, 2000) the Election Commission has decided to de-recognize seven regional parties in some Sates based on their poll performance. These are Haryana Vikas Party, NTR-TDP (Lakshmi Parvati), Rashtriya Janata Dal in Manipur, Shiv Sena in Dadar, Nagar and Haveli, United Minority Party in Assam; Samajwadi Janata Party in Chandigarh and Samta Party in Haryana. Meanwhile, the CPI (M) and the Republican Party of India have been served notices of de-recognition.

2. Constitutional and Legal Position

2.1 The legal and constitutional position of political parties varies from country to country. In most democratic countries, however, there is neither any direct constitutional provision regulating the functioning of political parties, nor any legal sanction establishing political parties as a necessary governmental institution, although there are some governmental systems which try to prescribe some conditions for the operation of party system. A very good example is furnished by the Constitution of the Fifth French Republic, which prescribes that Parliament (The French National Assembly) cannot make a law that may abridge the right of the political parties to carry on their activities freely. This is perhaps a tacit recognition of the existence of political parties as a *sine qua non* of a democratic system. Similarly, the basic law of Germany's Constitution includes political parties in its purview. Art. 21 of the Law guarantees the legitimacy of parties and their right to exist, if they accept the principle of democratic government. The Federal Government of Germany has thoroughly institutionalized the structure of political parties, by introducing the 5% clause, which makes it extremely difficult for minority or splinter parties to form and flourish.

2.2 The Canadian practice of Registration of Party or Party foundation is very comprehensive. Parties are registered on certain conditions and party leaders are selected through a national leadership convention composed of provincial party delegates voting as individuals rather than as a bloc. (See para 7.3.8)

2.3 Closer home, Nepalese Constitution (Art.12) provides freedom to form union and association, which has been enshrined as a fundamental right, and Art. 112 deals

specifically with the prohibition to ban political parties. Any law, arrangement or decision which allows for participation or involvement of only a single political organization or party or persons having a single political ideology in the elections or in the political system of the country shall be inconsistent with the Constitution. And there are conditions for registration of political parties for contesting elections; (a) they should adhere to the norms of democracy within the party (b) there must be provisions for election of the office bearers in the Constitution of the party at least once every five years (c) political parties must field at least 5% women candidates for election. (d) those parties which get at least three per cent of total votes cast in elections are qualified for registration as political parties. A member of parliament cannot change his party loyalty or abandon the party of which he was a candidate at the election. If he does so, he loses his seat in the House [Art. 49, Clause (1) (f)]. However, all the parliamentarians from a party which received less than three percent of the cast votes in the election to the House of Representatives are treated as Independents.

2.4 Political parties do not as such find any direct mention in the Constitution of India. However, there is one provision in the Constitution which is directly relevant to the functioning of political parties: the Tenth Schedule. The Tenth Schedule of the Constitution was added by the Constitution (Fifty-second Amendment) Act, 1985. It deals with the disqualification of a person for being a member of either House of Parliament [Art. 102(2)] or the Legislative Assembly or Legislative Council of a State [Art.191(2)], on ground of defection.

2.5 In the absence of a sufficiently detailed constitutional provisions, the major onus of framing and administering the rules and regulations governing political parties in India has fallen on the Election Commission, a constitutional body responsible for conduct of elections. The Election Commission of India has the ultimate power to accord recognition and status of political parties to "the association or body of citizens of India". The Election Commission has the power to decide whether or not to register an association or body of individuals as a political party.

2.6 According to Article 29A (1) and (2) of the R. P. Act, 1951 it is mandatory for any association or body of individuals of India calling itself a political party to make an application to the Election Commission for its registration as a political party, within thirty days following the date of its formation. Article 29A (5) requires that the application shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India, and to the principles of socialism, secularism and democracy and would uphold the sovereignty, unity and integrity and unity of India. And proviso to Sub-section (7) of Section 29A provides that no association or body shall be registered as a political party under this Section unless the memorandum or rules and regulations of such association or body conform to these provisions, i.e. the provisions of Sub-section (5) of Section 29A. The decision of the Commission in this matter is final.

2.7 The recognized political parties are accorded the status of a National or State political party in accordance with the provisions of Election Symbols (Reservation and Allotment) Order, 1968 as amended from time to time. These provisions are discussed in para 3 below. The number of National parties has been varying from 14 to 4 owing to continuous review of the status based on the performance of the parties. In 1951 there were 14 National parties while presently there are 7 National political parties. The number of National parties was: in 1957 (4); 1971(8), 1977 (5), 1980 (6), 1984(7), 1989 (8), 1991 (9), 1996 (8), 1998 and 1999 (7). There were no National parties in 1962 and 1967. [These were at that time called multi-State parties]

2.8 It may be noted that political parties in India are also sometimes categorized by observers, academics and political analysts on the basis of their territorial or geographical representation, such as: All India parties, Regional parties and Local parties. This is done by them only as a matter of convenience to argue a particular point, or identify them in a particular way, and does not in any way reflect either any official party classification recognized by the Government or by the Election Commission. Similarly any identification of a

party on the basis of its ideological orientation as a party of the left, right, center, socialist, communist, communalist or leader- centered etc. bears no official recognition.

3. Provisions for Recognition

3.1 According to Para 2 (h) of the Election Symbols (Reservation and Allotment) order 1968, Political party means an association or body of individual citizens of India registered with the Election Commission of India as a political party under Section 29A of the R. P. Act of 1951.

3.2 As per para 6A of the Election Symbols (Reservation and Allotment) Order, 1968, as recently amended, a political party shall be treated as a recognized National party, if, and only if, -

either (A)(i) the candidates set up by it, in any four or more States, at the last general election to the House of the People, or to the Legislative Assembly of the State concerned, have secured not less than six percent of the total valid votes polled in their respective States at that general election; and (ii) in addition, it has returned at least four members to the House of the People at the aforesaid last general election from any State or States;

or (B)(i) its candidates have been elected to the House of the People, at the last general election to that House, from at least two percent of the total number of parliamentary constituencies in India, any fraction exceeding one-half being counted as one; and (ii) the said candidates have been elected to that House from not less than three States.

3.3 According to para 6B of the aforesaid Order, a political party, other than a National party, shall be treated as a recognized State party in a State or States, if, and only if, -

either (A)(i) the candidates set up by it, at the last general election to the House of the People, or to the Legislative Assembly of the State concerned, have secured not less than six percent of the total valid votes polled in that STate at that general election; and (ii) in addition, it has returned at least two members to the Legislative Assembly of the State at the last general election to that Assembly;

or (B) it wins at least three percent of the total number of seats in the Legislative Assembly of the State, (any fraction exceeding one-half being counted as one), or at least three seats in the Assembly, whichever is more, at the aforesaid general election.

3.4 According to para 6C of the said Order if a political party is recognized as a National party under paragraph 6A, or as a State party under paragraph 6B, the question whether it shall continue to be so recognized after any subsequent general election to the House of the People or, as the case may be, to the Legislative Assembly of the State concerned, shall be dependent upon the fulfillment by it of the conditions specified in the said paragraphs on the results of that general election.

4. De-recognition of Parties

4.1 Section 29A of R. P. Act, 1951 makes it mandatory for the political parties to provide specifically in their constitutions that they bear true faith and allegiance to the principles of secularism, socialism, and democracy besides to the Constitution of India, to gain registration by the Election Commission. However, the sanctity of the provision is diluted by the fact that the parties who do not subscribe to secularism, socialism and democracy would be denied registration but they can contest election. Also the Election Commission has held that a political party duly registered under the R. P. Act, 1951 cannot be de-registered by the Commission on the allegation that the party had violated the law or has ceased to function in accordance with the undertaking that it would abide by the principles of secularism. The only case where the Commission could de-register a party was when it was found later that a party had obtained, through fraudulent means its registration, or it was declared by the Government as unlawful. It could also be de-registered if the party itself intimated the Commission that it

had ceased to function or had changed its party constitution, or that it would not function in accordance with the provisions of the law.

5. Recent Trends in the Growth of Parties

5.1 The history of origin and growth of political parties in India can be traced to the days of India's struggle for freedom. The Indian National Congress was perhaps our first political party; it came into existence in the year 1885. There were some groups formed by patriotic Indians before that, but they did not converge into becoming a political party. The Indian National Congress was the natural and inevitable outcome of a national awakening. The evolution of the party system after Independence presents a study of transformation from one-party dominant system to a complex of multi-party configuration, in which presently strong trends of fragmentation, factionalism, and regionalism, coupled with the desire to form alliances for seeking a share in the pie of power (irrespective of any strong ideological or programmatic commitments) are being increasingly witnessed.

5.2 Elections held for the tenth Lok Sabha held in May-June 1991 produced a 'hung' house. The Congress (I) occupied the position of the single largest party with 220 seats followed by BJP and the Janata Dal. A minority government under the leadership of the Congress (I) President Mr. P. V. Narasimha Rao, who succeeded the assassinated leader Rajiv Gandhi was installed. The fractured verdict of the Eleventh Lok Sabha elections also produced a hung parliament. The BJP formed a minority government under the leadership of A. B. Vajpayee. But the Prime Minister had to relinquish office only after thirteen days. When he was not sure of proving his majority in the House, he resigned. The fall of the BJP government paved the pay for installation of the UF government first under H. D. Deve Gowda and then I. K. Gujral on 1 June 1996 and 21 April 1997 respectively. Even then the Lok Sabha could not complete its full tenure of five years.

5.3 In 1998, the BJP changed its strategy of fighting alone and entered into alliances with a number of regional parties. This strategy helped the BJP to improve its own score and also that of the alliance. The contest was mainly between two major pre-poll alliances. One was led by BJP and consisted of Samata Party, Harayana Vikas Party, Lok Shakti, Shiv Sena, Biju Janata Dal, Akali Dal, AIADMK, MDMK, Janata Party, PMK, Tamil Nadu Rajiv Congress, Loktantrik Congress, Jantantrik BSP, Janata Party (Rajaram), Trinamul Congress etc. The other alliance was led by the Congress Party and was composed of RJD, Samajavadi Party, Republican Party of India, BSP, TUTS, TNP, BKKP, Muslim Majlis etc.

5.4 The results of the 1998 elections gave the message that electorate of India had endorsed a two-party or two national alliances system to dominate the country's political scene. On the basis of the voting pattern, it could be said that the voters in almost every State hinted that they did not want their preferences to be divided only between the two major poles of alliances. They identified the two major contenders and confined their preferences to this either-or option. Both BJP and Congress could do well only in those States where they had struck alliance with some parties. This was an interesting phenomenon which was likely to continue and usher in the country an era of polarization between two parties/alliances. The defeat of the BJP led alliance government by a single vote in the Lok Sabha in May 1999 when the AIADMK suddenly withdrew support paved the way for the 13th General Elections, which were held in August/September 1999. The election results again went in favour of the BJP-led National Democratic Alliance (NDA), consisting of 24 partners led by Atal Behari Vajpayee who comfortably formed the new Government in October 1999.

5.5 The present phase in the evolution of the party system is noted for two features. One, the general trend amongst both the national and regional parties to move away from the strict ideological framework of the party of the left or the right. Although in general, they do profess to stick to their party ideology or at least are known by certain ideological labels. But in their actual programmatic support they seem to be more pragmatic inasmuch as they are not reluctant to give up their ideological instance or put it on back burner, if that helps gain them a share of political power. Such trend has been witnessed both at the national as well as at the State level and parties are less inhibited to share power or coalesce in government formation with the groups, who till the other day were their bitter political opponents.

Secondly, since the resultant coalition alliances are neither 'ideological' nor have any common objective to cement them together, they are merely short term tactical arrangements established by ambitious politicians that are rooted in the exchange of mutual benefits and compulsions of power, the mobilization of electorate is done through a strategy of support to regional cum segmental or ethnic issues without giving overriding support either to national or primarily local issues.

5.6 The last decade of the 20th century saw a sharp rise in political mobilization on the basis of social cleavages based on ascriptive identities, in particular of religion and caste. Casteism, communalism and personality domination have been the main planks around which the fragmentation of political parties has taken place, which has resulted in more caste and class-based political violence in the society. Political parties have invariably exploited these sentiments for gaining electoral support and political mobilisation of the voters.

5.7 There was another significant development after the 1989 elections affecting the party system. The coalition politics gained a new trend: Parties' tended to lend support to Government from outside without formally joining it, thus ostensibly sharing power without assuming any responsibility. Article 75 (3) only says that the Council of 'Ministers shall be' collectively responsible to the House of the People. The manner in which this condition is met from coalition partners or from those outside it, is of no constitutional significance. However, the experience of government formation with outside support both at the national and state level has invariably created instability in Indian politics. A corollary to these developments has been emergence of an environment of 'blackmail' within the party alliances, where not only a minority government or an alliance of parties felt insecure to implement its minimum election program or polices but also faced considerable hindrances in taking hard executive or routine administrative decisions in matters of appointments to council of ministers or representing a particular interest, constituency or any party's viewpoint in any policy move.

6. Problems in the Working of Parties

6.1 *Absence of Inner Party Democracy:* Over the last fifty years of Independence, no political party has been able to observe the basic norms of inner party democracy. The authority in organizational matters has always been from the top to the bottom through successive layers of party structures. Leaders of political parties in Independent India have not always emerged through a process of democratic elections and promotion from the lower levels to the higher and the top. Thus leadership in most political parties in India may be democratic in appearance but highly oligarchic in reality. Frequent rifts between the National and State party organizations in almost all national parties suggest that highly integrated party structures may soon no longer be appropriate and we may be led to the realisation that a national party should not be over-centralized, still less personalized Fear of party disintegration has led many political leaders to worry about preventing it from being reduced to the status of a State or regional party. Strong leaders with support from their States have been by-passed in favour of loyalists. Instances are galore when the party presidents have appointed party chiefs in the States just before the organizational elections were to take place despite the protests of the central election authority chairmen. Even when the elections to State party chiefs were to take place after a gap of almost two decades, the President of the party was "authorized" to nominate a majority of the State party chiefs. These trends are likely to boomerang on the party's strength and capability. A modern party is a public institution, not a personal fief. Without intra-party elections, without ministers who enjoy strong regional support, and without the encouragement of a variety of opinions, political parties are like to wither away.

Undemocratic parties cannot contribute to constitutional and democratic government. It is suggested by some scholars that enforcement of party constitution through legal and judicial action may be necessary. Regular organizational elections should be mandatory. In order to control bossism in parties, many analysts have suggested the introduction of a more democratic process of nominating party candidates by a primary election by the party membership. An alternative suggestion is to authorize each local party unit to have a significant say in nominating the party candidates in that area for legislative offices.

6.2 *Representation of Wo...* Political parties cannot remain indifferent towards women who constitute nearly 50% of the ...ctorate. Although almost all parties have attempted to build women organizations to secure their support and make their organization more broad - based, but in practice they have fielded much less proportion of women candidates in the elections giving them proportionately much less representation in the legislative bodies than their actual population strength. In recent times this has been a matter of crucial concern in view of the controversy over reservation of 30%or so of the seats in these bodies.

6.3 *Training of Members:* Training and orientation of new members is one of the important functions of political parties. The parties which are organized on the model of cadre party systematically develop appropriate agencies of training for members. But most Indian parties, except for the Communist parties and the BJP have not followed this model. Parties in India do not have a permanent system of training of their members ,and whatever arrangements for training are done are done on ad-hoc basis by national or state level organization.

6.4 *Need for Funds:* To perform various functions and contest elections in an effective manner, every political party requires huge funds. Apart from expenditure of office establishment, full time-workers, agitations, propaganda and travel, parties have to organize election campaigns. But the financial matters of party are kept secret while other aspects of organization are known to people. Very little is known about finances of political parties. In fact, secrecy is maintained even within a party. Only a few leaders at the higher level know the truth about the total funds and expenditure. Parties do not publish statements of accounts , income and expenditure, though financial matters are discussed at conventions and conferences or in meetings of higher bodies like working committee or the executive committee. Many political parties and candidates have been found to be using dubious methods in raising funds, like kickbacks, funds from foreign countries and even from donations by mafia gangs and other non-desirable elements. How to let the parties get honest funding from legitimate sources for their basic and continuing political activities has emerged as one of the most crucial contemporary concerns of the reform agenda in respect of the functioning of political parties in India.

Most observers of political scene have stressed the need to ensure accounting and auditing of party finances at various levels of party organization. Transparent sources of party finances are a must.

6.5 *Lack of Ideology and Values in Politics:* There has been a very sharp erosion in the ideological orientation of political parties. Party dynamics in India has led to the emergence of valueless politics much against the ideals of the father of the nation, Mahatma Gandhi, who suggested that the Congress party should be disbanded after the achievement of Independence and its members should engage themselves in the service of the people. While Gandhiji taught us tremendous selflessness, self sacrifice and service to the people, such inspirational values, the democratic norms and institutions have been destroyed systematically over the last fifty years of the working of the Constitution. In the process, both the politicians and political parties have lost their credibility, the ultimate value that should bind them with the masses. There seems to be a crisis of character amongst the politicians, as the system does not encourage the honest leader. Because of the falling moral standards both in the public and among the leaders, criminalisation of politics and politicization of criminals has become the norm. Due to degeneration of leadership, parties have been entangled in power struggle for the sake of personal ends.

In amoral pursuit of power politics, every major player seems to be playing a no holds barred game. Astronomical sums of tainted money have come to play an important role both in the pre and post-election scenario. The entry of criminal elements within the folds of political parties and later their elevation to the portals of peoples representative chambers and the executive positions of ministers have resulted in an environment of declining moral standards of public life and the emergence of value-less politics for personal gains. Unfortunately this trend has penetrated to all walks of public life and no political leader or political party seems to care for value-based politics and upholding of moral standards. The Gandhian value of the spirit of service to the nation has become completely extinct from the present day

politics. So untrammelled by moral values has politics become that there are instances of the importance and claim to high office of a politician being measured not in terms of what he can contribute to the state or public weal, but the size of the funds he can covertly raise and the necessary 'criminal' power to win elections he can provide.

6.6 *Leadership Quality:* The older political leadership had risen from the ranks. The rise was neither sudden nor irrational, and their adherence and commitment to party ideals and ideology was unflinching. They respected party discipline. The present day political leadership seems to be in a tremendous hurry to reach upto the top, and is not averse to use short cuts, dubious methods, money or muscle power to achieve their objective. The entry of the toughs and persons with criminal background to the portals of the legislature is a very serious consequence of these trends.

Such incumbents thrive on the use of their lung power or aggressive instance to disrupt or withhold the proceedings of the legislature for days on thereby causing a tremendous drain on the public exchequer and the valuable time of the House. The result is that the more important issues facing the nation do not get discussed or passed and policy making and the process of good governance suffer.

6.7 *Campaign methods:* The campaign methods used by parties in the days of electronic media, high-tech advertisement, projecting images through the glamour of models and the film / TV idols have taken away the element of serenity and the spirit of public service from the political leadership. The election campaigns both at the regional and national levels these days have become kinds of stage shows in which the matinee idols are paraded to attract voters in support of their candidates by the rival parties without seriously discussing or educating the electorate about the issues at stake in the election.

6.8 *Regionalisation:* The regionalisation of political parties has compelled many of the parties to orient their highly centralized organization and decision-making structure to suit the new demands of party at the state level, thus adopting a confederation like approach for the party organization. This has resulted in a lesser assertion of national control over state units.

Secondly, regionalism and regional parties have made 'ethnicity' acquire a growing respectability at home and abroad.

Thirdly, as national politics has now entered a coalition phase, regional parties are being grouped together to provide a working majority at the center. At the same time, differences in the economic, educational and social interests of regional middle classes, intermediate castes and the new classes are bound to overwhelm the unifying capacity of regional pride. Moreover, as concerns of the national polity move away from egalitarian restructuring, the regional parties too are likely to fall prey to the new economic forces represented by liberalisation, globalization and the NRIs.

Fourthly, India in strict legal terms is a union of states, rather than a constitutional federation. In practice, it has some characteristics of federalism, and the states do enjoy a certain amount of autonomy, but the popular perception is one of a centrally governed country. If India has entered a plural-polity situation, in which several parties govern the country, one or more at the center and others in the states, a question is raised time and again whether a stable regime at the center can cope with a plurality of regimes in the states, some of them basically unstable. And, if the regime at the Center is itself unstable, what would happen to the process of governance, and the popular perception of India as one of a centrally governed country. This is perhaps the greatest dilemma facing the growth of political parties today, and needs some serious consideration for devising strategies towards harmonizing the regional with national interests.

6.9 *Casteism:* Although there is hardly any instance in India of a political party being totally identified with any particular caste group, yet there are cases of certain castes lending strong support to particular political parties. Thus while political parties struggle among themselves to win different caste groups in their favour by making offers to them, caste groups too try to pressurize parties to choose its members for candidature in elections. If the

caste group is dominant and the political party is an important one, this interaction is all the more prominent. In many political parties, in place of ideological polarization there occur the determination of policies and programmes as well as the nomination of electoral candidates and the extension of support to them on caste consideration. Caste exercises its impact in the political field by specific caste groups coming together to vote *en bloc* for a candidate of their own caste, without considering the merits and demerits of the candidate, by appointing the members of influential caste or caste group or groups in the party as well as in the constituency and to offices of profits. A caste, wishing to exercise political power must have a considerable number of its members elected. This involves putting pressure on some particular party and different castes struggling against each other in a bid to have a majority of their caste candidates elected. The electoral field witnesses both competition as well as alliances between various caste groups in order to get a substantial number of their caste-men elected. Caste, therefore dominates the political field, especially at the lower level.

The emergence of regional parties and the 'withering away of national outlook and spirit' thus sets off another crisis. Candidates come to be selected not in terms of accomplishments, ability and merit but on the appendages of caste, creed and community. Ultimately caste becomes the deciding factor on selection. When 'disparate' political groups with caste-based ideologies compete for space in governance, national goals take a back seat. The more serious repercussion of this development is the political violence that has resulted in many parts of the country, particularly in Bihar, where dominating caste groups openly clash with minority groups resulting in a spate of caste-wars and massacres of innocent people. One caste, in its attempt to obtain political power is committing aggression on the other. The talk of minority interests (especially of a community only) by regional parties is only a smoke-screen to hide caste and regional interests. Caste based politics and casteism are eroding the 'unity' principle in the name of regional autonomy.

6.10 *Communalism:* The partition of the former united India in 1947 in two independent nations had its origin in the forces of communalism that swept the sub-continent during the first half of the last century. Despite the emergence of India as a 'secular ' state, the politics of communalism and religious fundamentalism in the post independence period has led to a number of separate movements in various states and regions of the country. Communal polarization, rather multi-polarization, has posed a threat to the Indian political ethos of pluralism, parliamentarianism and federalism. Despite the adoption of the principle of 'secularism' as a constitutional creed, which ironically allows communal parties to compete, the trend towards communalism and fundamentalism in Indian politics have been growing day by day. The spirit of tolerance that is essential for a 'secular' society seems to have completely vanished from the body politic of India. The covert communalism practiced by every political party, in pursuit of electoral politics and vote banks has earned it the epitaph of 'pseudo-secularism' or 'minorityism". The dynamics of national and state politics of the last decade is a mute witness of the clashes and conflicts between the so-called 'secularist' and the 'communalist'. Although a comprehensive constitutional amendment Bill (80th Amendment Bill) and Representation of the People (Amendment) Bill 1993 were introduced to de-link politics from communalism, casteism, and linguism etc. by the minority Government, these could not pass through the Parliament.

Caste and religion have in recent years emerged as rallying points to gain electoral support. Unfortunately there is a tendency to play upon caste and religious sentiments and field candidates in elections with an eagle eye on the caste equations and communal configurations. (See S.K. Jha in Politics India, Oct. 1998). Exploiting caste sentiments and playing off one caste combination against the other with a political axe to grind, perhaps even more than religious bigotry is the very anti-thesis of rationalism, but the monster of casteism has all of a sudden mysteriously gained wide respectability as a means of empowerment of the subaltern India! Some politicians, well known for their 'communally sensitive' disposition, taking a cue from communalism have gone to the extent of demanding a 'fair' representation of the minorities in the bureaucracy, police and para military forces. (Jha, op. cit.)

6.11 *Criminalisation:* Although the influence of muscle power in Indian politics has long been a fact of political life since the First General Elections of 1952, when some feeble allegations were made about the use of outlaws by the politicians to further their electoral

prospects, the intensity and frequency of such allegations, have increased in more recent times, and the criminalisation of politics and the persons known to have criminal past becoming legislators and ministers has not only become very common but is being openly defended by the party leaders. A stage has now reached when the politicians openly boast of their criminal connections. A Bihar minister's statement in the Assembly that he patronized and would continue to patronize gangsters to fight and win elections is a pointer to the growing phenomena where criminal background has become an invisible requisite to win elections. Despite the country-wide debate that was generated by the Vohra Committee Report on criminalisation of politics, the system has changed only to the worse. Earlier in the 1960s, the criminal was only content to playing second fiddle to the politician to enable him win the election and in turn to get protection from him. The roles have now reversed. It is the politician now, who seeks protection from the criminals. The latter seek direct access to power and become legislators and ministers. The Election Commission's observations that nearly 40 members of the 11th Lok Sabha and 700 members of the state assemblies had a criminal past proves this. The Election Commission's requirement that prospective candidates file an affidavit listing the criminal charges that they face had hardly made any dent on the growing criminalisation of politics. Some radical reform in the existing structure of law needs to be taken urgently. Until this is done, political parties could have taken certain initiative in curbing this trend, that is by refusing tickets to politicians with a criminal background. Far from it, the party leaders invariably seek out those candidates for party tickets, who can, not only win elections themselves, but can also help other party candidates to win, irrespective of their past criminal history or background. The Election Commission is powerless in preventing criminals from contesting the elections. The Representation of People Act allows it to debar candidates convicted of certain crimes, but it cannot stop those under trial, or whose appeals from their earlier convictions are pending for disposal before the higher judiciary for multiple murders or rape, or corruption or theft from the public exchequer, from sitting in the country's highest legislative forums. There have been a number of cases where persons under trial have contested elections , while being lodged in jail, and have won. Unfortunately no political party has taken any concrete steps to curb this menace.

6.12 *Growing Violence:* The growth of political parties and emergence of various political groups in India has brought into focus a very disturbing and serious phenomena in the body politic of India. There are some sections of the population and highly organized political groups and parties, who do not like to remain within the orbit of the Indian Constitution and work outside the existing political apparatus and party norms, and in the process have taken to political violence and terrorism in a big way, as the only method for political participation. This has not only spread panic amongst the general population in some areas of the country, but people seem to have lost confidence in the efficacy of government in ensuring security for the general populace. Criminals now call the shots. They dictate and the Governments obey. Whether it is the hijackers of a plane or kidnappers of a film star, their writ runs supreme.

6.13 *Fractionalization and coalitions:* A spate of minority and coalition governments at the Center due to the fragmentation of the party system has laid bare the vulnerability of the process of governance due to political uncertainty and instability of governments. Efforts were made by the coalition partners or allying parties to establish some sort of institutional mechanism to evolve a consensus on the minimum governmental programme for action and to affect coordination between the different constituents of the government both vertically as well as horizontally by instituting multi-layered coalitional structures and a variety of steering and coordinating committees both for inter-party and party-government consultations and/or to resolve major differences through personal emissaries of the Prime Minister. At best, however, these efforts remained merely *ad hoc* in nature and did not quite result in the establishment of some effective permanent institutional devices to bring about a rapprochment amongst the coalescing partners. The efforts were not quite successful .

A significant impact of the trend towards coalition governments in India has been its effect on the policy outcomes. A generic characteristic of the public policies adopted in India over the last decade is the short time horizons embodied in them as most coalitions of party system are committed to providing short term benefits to their constituents. One important facet of this is the well known crisis of public finance plaguing most state governments in India, in

particular the larger states., which has been aided by the short-term mismanagement of the exchequer. Examples include writing off loans, sometime even the full amount of the original loans.

The present phase of the evolution of parties in India has revealed a number of grey areas of party functioning having serious repercussions for the political system, policy issues and process of governance. The party manifestos, which are supposed to provide an indication of the direction of policy perspectives have in most cases become a set of promises, something for everybody so that more votes can be garnered. Most party manifestoes have ignored the burning policy issues like population growth, pollution, rising prices, illiteracy,, unemployment , empowerment of women and the integrity and security of the nation. It is time that these deficiencies are sought to be overcome if the country is to maintain a semblance of continued economic progress with stable democratic framework of government.

In a significant study conducted by Oliver Heath in 1998, it has been demonstrated that on the whole there had been remarkable continuity between the degree of fractionalization shown at the state and constituency level. The relationship between the two is very close. Fractionalization operates on essentially two levels in India. The top level, and most fractionalized is the national level.. The dynamics of party competition at state level has shown little sign of increased fractionalization in the 1990s. This indicates that the fragmentation at the national level is not representative of the actual types of contest that exist in the direct competition between parties. Thus one cannot say that the fractionalization at the national level represents a fractured mandate, as on the whole the mandate of the people is fairly clear, it is just that the clarity only exists within the context of state rather than national politics.

The implication of these two conflicting patterns of fractionalization makes the possibility of a single party securing an overall majority in the Lok Sabha in the near future very remote. The lack of disruption that increased ineffective parties at national level has had on state contests indicates that the growth of one party has been evenly matched by the decline of another. The transformation in the composition of parties at state level has been almost seemless. In this instance, it is regional parties that have prospered and the national parties, like the Congress that have suffered.

Thus we are left in a position where politics only makes sense at the state level. A reversal of this situation is not likely to happen overnight, and any move towards fewer effective parties at national level is only likely to happen at the cost of an increased fractionalization at state level. It would therefore seem that the major issue of facing any party that hopes to form a government at the Union level, is not how to win an overall majority, but how to form strong and secure inter-state alliances.

Today, the regional political parties have come to play a very effective role in the formation and deformation of governments leading to political instability and frequent elections. However, there is a need to conceptualize the role of regional political parties in a democracy like India. The regional parties come into power because of some popular stand that they take up on some local issues. The national political parties have aligned with them for political reasons without commitment in detail to every thing that regional parties may profess. But a problem continues in the relationship between national and regional parties as a national party has to cater to national issues and causes which should naturally admit of no regional barriers; while regional parties by their very nature have to take up only local issues. Hence, the national party too tends to become 'regional' as it adopts a regional platform.

6.14 *Political Parties and Governance:* Atul Kohli defines the concept of governability as the capacity of the rulers to do three things: maintain coalitional support; initiate solution to problems perceived to be important, and resolve political conflicts without force and violence. Thus, a democratic developing country is well governed if its government can simultaneously sustain legitimacy; promote socioeconomic development, and maintain order without coercion. The growing incapacity of India to perform these tasks is what has been conceptualized by him as the manifestation of crisis of governability. According to him four

major factors have influenced the nature of political change in India: (1) the de-institutionalizing role of national and regional leaders; (2) the impact of weak political parties; (3) the undisciplined political mobilization of various caste, ethnic, religious, and other types of groups; and (4) the increasing conflicts between the haves and have-nots in the civil society. If these trends continue unchecked, India's political crisis is likely to get worse.

Given the emphasis on the structural origins of the crisis in governance, the kinds of leadership actions that could halt or reverse India's erosion of authority would have to involve two major changes: (1) the need to strengthen the organizations of the major parties, and (2) the need to narrow the gap between the state's commitments and capacities. If one had to predict the most likely outcome over the next decade, it would be, policy ineffectiveness and continuing turmoil, encouraging further centralization and use of force, punctuated by occasional bursts of hope created by elections and electoral gimmicks. If one were to set out to alter the current political trends, then strengthening the party organizations would be an important area for action. The ongoing populist posturing of India's political parties, without the capacity to deliver on promises, has become a serious political problem.

Another study under the auspices of Center for Policy Research by Lok Raj Baral also supports such trends. He notes that since the national parties in India started fast loosening their grip on local institutions, and the elites were preparing grounds for regional and local organizations, problems of governance increased as a result of the lack of accord between the emerging local realities and the rigid approach of the national elites to such burgeoning trends of governance. Other issues concerning the diminished role of national parties are also related to ideological contradictions and functional gaps between commitments and practices manifesting them in election campaigns or in their opportunistic alliances formed for political aggrandizement. India's governability has been greatly affected by the pulls and pressures of the ruling party at the Center or by positions taken by parties supporting the government. The Prime Minister's position under a loose coalitional arrangement has been perennially precarious owning either to his diminutive position in his own party or to his act of balancing of disparate groups whose incongruous motivations and tactic al lines may not be in the larger interest of the government.

The manner in which political parties in India are increasingly becoming anarchical in both their behavioural norms and functions suggests that too much compromise for staying in power would result in bad governance. If members of parliament and State Assemblies themselves become rowdy in their behaviour as is demonstrated by frequent walkouts, sit ins into the well of the house, installing the proceedings of the house on filmsical grounds for days on and on without regard to the staggering financial burden that it is causing to the public exchequer, apart from the precious waste of time and energy of the political elites, breaking furniture, communication equipment, using these as weapons to beat and hurt the opponents within the precincts of the house, prompting the Speaker to frequently remark that it was "a mindless mockery of the people who have returned us to Parliament", it is shameful not only to the people of India but also to those who look upon Indian democracy for inspiration. The politics of splits, defection, violence and 'subterfuge' has taken over the governance of the country thus showing no deference to norms, rules and procedures. Such trends are likely to be routine affairs if parties continue to stoop too low for grabbing power by force or by foul means.

6.15 *Jumbo Council of Ministers:* The experience of minority and coalition governments has also resulted in the practice of creating abnormally large or what is known as jumbo size council of ministers in order to accommodate the coalition partners in the government. It has given rise to serious impediments in the process of governance. Besides the inherent problem of conflicting jurisdictions of the various ministers, both vertically and horizontally, personality clashes and egos, and the woefully inadequate physical facilities and assistance for their effective and efficient functioning, it has been observed that many of the incumbents of the offices lack the basic capabilities to govern. Most of the time they are interested in their privileges and perks as being the ministers of the government, making speeches, cutting ribbons at inauguration functions, laying foundation stones, and making trips to foreign countries on government expense. A majority of these seem to be interested in the politics of transfers and making all sorts of recommendations for their relations and favourites.

The consequences are not only a tremendous drain on the meagre government exchequer, but inefficiency, delays and slackness because of the inflated governmental machinery, hence increase in malpractices and corruption.

It is thus important that political parties and legislators need to be educated, socialized, disciplined and sensitized to public welfare for becoming effective partners in the process of governance.

7. Reform Options

7.1 *Areas of Concern:* In the background of the foregoing analysis of the functioning of the party system in India, it is evident that the parties in India face a number of challenges. Not only they have declined in terms of their ideological orientations and commitment to the welfare of the masses, but in the recent past they have shown tendencies of factionalism, doggedness in terms of opposition for opposition sake, and agitational politics. At times they have displayed behaviour, which tends to be unprincipled and unconcerned for the welfare of the masses. Many of their leaders have been affected by communalism, caste, community or religious biases and have known to have links with mafia groups, criminals, senas, and militant or fundamentalist organizations. Changing of party or group loyalty is endemic in party organizations in India, and almost everyone is willing to defect at the drop of the hat, if the grass seems to be greener on the other side. Parties make and break political alliances to maintain their influence within the party and government, and to remain in power with the aim to keep the rivals out. Most of these factional groups are non-ideological and have no vision of the good of the people nor any capability to govern or undertake party responsibilities.

The political parties in India face organizational problems in regard to discipline, defections, intra-party organizations, elections within the parties, and splits in the party. Raising of adequate funds for party organizations and activities by legitimate means and their appropriate and effective utilization during non-election and election periods is a perennial problem. criminalisation of politics and politicization of criminals and the maintenance of public ethics is another area of concern in respect of party functioning.

7.2 *Areas of Reform:* Thus in the perspective of the evolution of political parties in India during the last fifty years as described above, the following are some of the areas of reform which should be of immediate concern:

1. Institutionalization of Political Parties - Need for a Comprehensive Legislation to regulate party activities. Criteria for Registration as a National or State Party - De-recognition of Parties
2. Structural and organizational Reforms - Party organizations – National, State and local levels - Inner Party democracy - Regular Party Elections, recruitment of party cadres, socialization, develop-ment and training, research, thinking and policy planning activities of the party.
3. Problems of Party Funding -Need for a Legislation to regulate party funds - distribution and spending of party funds during non-election and election times.
4. Maintenance of Regular Accounts by the Political Parties-Auditing and publishing – making audited accounts available for open inspection.
5. Party system and Electoral system - To what extent and in what way the electoral system could be reformed so as to pave the way for the establishment of stable governments based on the concept of two party system or dual party alliance system - Do we need to change the system of single member constituencies to a mixed system or a proportional method of representation along with the simple majority system ?
6. Steps to check criminalisation of political parties .
7. Steps to curb the role of casteism and communalism.
8. Problem of proliferation of independent candidates.
9. Strengthening of Anti-Defection Measures.- Amendments in Anti- defection Law
10. Party system and governance - How to make parties as viable instruments for good governance?
11. Restoration of values and morality in public life.

7.3 *Suggestions for Reform*: A number of academic and research Institutions, political observers and analysts, Committees and Commissions appointed by the Government of India from time to time and concerned scholars, journalists and academicians in their individual capacities have made a number of proposals for reforms in the party system in India. Some of the most significant of these are culled here in order to provide a perspective for framing recommendations for party reforms.

7.3.1 *President K R Narayanan*

Political parties should ensure that criminals are denied tickets for elections. Entry of criminals can be prevented without passing any law. It is within the powers of the political parties to see that no criminal or people with the reputation of being in criminal activities are selected as candidates. There is no need for any amendment in People's Representation Act or in the Constitution for that.

Anti-Defection Law, under which one-third members of the total strength of a party are allowed to split it, is not working well. If anybody wants to change his party after being elected on that party's ticket, he should resign from Parliament or the Legislature and face electorate.. If there is a rule like that, may be very few defections will take place.

7.3.2 *Center for Policy Research Study (Lok Raj Baral) on Party Reforms (2000):*

1. Reforming the first-past-the-post system of election. The German model that accepts a preferential voting system can be examined for insuring proportionate representation of parties in parliament.
2. Since all parties work in tandem with unscrupulous business lobbies and gangsters or use state power for determining the outcome of elections, these cancerous trends need to be checked for good governance.
3. Political parties should have minimum principles for forming a coalition government rather than forge alliances only to be in government. Unprincipled political alignment should be discouraged by law urging political parties to be more homogenous in their joint endeavours of running the coalition government.
4. Support to be rendered to any government from "outside", i.e. without joining the coalition government,, should be legally barred. Only a party having at least 25 per cent seats in the Lower House of parliament or Assembly should have a chance to form the government.
5. No government should be removed from office if the opposition parties or others involved in the toppling game fail to come out with a clear alternative arrangement and programme.
6. The kind of coalitional arrangements that the parties make should be clear before forming the government. Developments so far show that the big parties themselves prefer to play second fiddle to the regional and smaller parties whose immediate interests are determined by 'regional and parochial' issues rather than long term national programmes.
7. Parties need to strengthen their managerial and crisis management capacity. If the party organizations are better managed and democratized, their efficiency would increase. More autonomy to all layers and more inner-party democracy would help circulate leaders on the basis of their qualities. The criterion of achievement rather than ascription should be accepted by all parties. Unless parties are broad based in accommodating all segments of society, they continue to become status quoist, exclusivist, regional and sectarian.
8. Parties' own code of conduct and self-initiated reforms, rather than state-imposed reforms are likely to improve the working of parties. [Lok Raj Baral, "Political Parties and Governance in South Asia" in V. A. Pai Panandikar, *Problems of Governance in South Asia (* Delhi, Konark Publishers Pvt. Ltd.,2000), pp. 155-199.]

7.3.3 *V. M. Tarakunde Committee (1974-75)*

The Tarakunde Committee on Electoral Reforms was appointed by Jayaprakash Narayan on behalf of the Citizens of Democracy, an independent organization. An important recommendation of this committee was that there should be a law requiring all recognized

political parties to keep audited accounts and sources of all income and details of expenditure, with false accounts being a punishable offence.

7.3.4 *Dinesh Goswami Committee Report (1990)*

The main recommendations of the Committee were as follows:

- a three-member election commission and appointment of the Chief Election commissioner in consultation with the Chief Justice of India and the leader of the opposition and the appointment of other Election commissioners in consultation with CEC;
- a fresh de-limitation of the constituencies on the basis of 1981 census and rotation of seats reserved for SCs and STs;
- issuing of multi-purpose photo identity cards to voters;
- disallowance of contesting by candidates from more than two constituencies;
- the raising of security deposits of independent candidates and forfeiture of security deposits of all candidates failing to secure at least ¼th of the votes polled;
- a statutory status to the model code of conduct formulated by the Election Commission;
- introduction of electronic voting machine;
- legislative measures against booth-capturing, rigging and intimidation of voters;
- limited state-funding in kind to recognized political parties, to begin with;
- transportation of voters, carrying of fire arms, sale and distribution of liquor on poll day to be cognizable electoral offence in law;
- restriction of disqualification under the anti-defection law to voluntary resignation and violation of party whips only in cases of vote of confidence, money bills and vote of thanks to the President;
- a review of the electoral system by a standing Committee of the Parliament and by an expert Committee.

Chapter 5 of the Goswami Committee Report also made some recommendations relating to political parties and candidates. The main reform proposed was the deletion of Section 29(A) of the RP Act concerning registration of parties. The matter, instead should be delegated to be solely decided by the Election Commission under the Election Symbols (Reservation and Allotment, 1968). The Committee did not feel the necessity for recognizing electoral alliances of political parties or changing present procedure of allotment of symbols.

7.3.5 *Justice V. R. Krishna Iyer Committee (1994)*

The Iyer Committee recommended that a law should ensure inner-party democracy in all political parties. It also reiterated a legal sanction for proper audit and accounts. Besides it proposed the institution of a Commissioner to examine and decide whether a political party was promoting communalism or in any way acting against the Constitution.

Law Commission's Report (1998)

The recommendations of the Law Commission could be summed up as follows:

- Independent candidates be barred from contesting elections to the Lok Sabha and legislative assemblies.
- Full five year term for the legislatures.
- In order to contain defections, a "pre-poll coalition" or front of political parties should be treated as a "political party".
- Inclusion in the RPA to regulate the formation, functioning and income-expenditure accounts of political parties and to avoid their splintering and ensure internal democracy.
- Scrapping of explanation I to section 77(1) of the RPA to make the electoral system more representative, fair and transparent - making it obligatory for every candidate to declare his/her assets and of his/ her spouse and dependent relations as well as provide particulars regarding criminal cases pending against them.
- On state of funding of political parties, recommendations of the Indrajit Gupta Committee subject to certain changes, be adopted.

- In case of electoral offences and certain other serious offences, framing of a charge by the court should itself be a ground for disqualification in addition to conviction. Relevant provisions of the Criminal Procedure be amended to check false complaints.
- Only a candidate obtaining 50 percent or more votes be declared elected, holding of "run off" elections wherever necessary.
- Any party, which receives less than five percent of the total vote in elections to the Lok Sabha and Assemblies "shall not be entitled to any seat".
- Use of electronic voting machine.
- Restriction on frequency of "no-confidence motions"
- List system on the German model for 25% or 50% additional seats and concept of negative vote.

7.3.7 *Justice Kuleep Singh Panel:*

1. To prevent criminalisation of politics, the candidates with a criminal background or those facing substantial criminal charges framed by a court be debarred from contesting elections.

2. Just as government servants facing criminal proceedings are placed under suspension until cleared by the courts, the same yardstick should be applied to politicians as well.

3. Election Commission should bring effective changes in the model code of conduct to exclude candidates from contesting elections who have criminal proceedings pending against them. And, if the Election Commission cannot do this, Parliament must do it.

4. More effective laws be created that will prevent criminals from entering the political process. The legal reforms can push criminals out of the system. New legal initiatives such as amendments in Section 8 of the Representation of the People Act 1951 could empower the Election Commission to deal with crime-tainted politicians.

5. If we cannot bar criminals from contesting elections until they are convicted by the courts, then the next best course would be to get speedy verdicts in their cases. Special courts and benches to try cases against legislators and other high profile people should be set up for speedy trials.

7.3.8 *Suggestions by Academics/ Scholars/ Journalists etc.:*

In Canada, a Royal Commission on electoral Reform and Party Financing appointed by the Government of Canada in November 1989 which sponsored a score of academic studies on the problem and held hearings, submitted its recommendations in four volumes in 1993. Some of the recommendations of this Commission as well as some Canadian practice in this regard in vogue since the early years of this century may be considered for adoption in India. Volume 3 of the Report which is presented in the form of a model legislation has some interesting ideas about political parties, constituency associations and party foundations. The proposed legislation lays downs detailed legal requirements for registration of parties, their constituency association, and party foundations under this parliamentary law. Each of these organizations is registered under Section 24 of the model Act on the condition that they must have a constitution that shall:

(a) promote democratic values and practices in a manner consistent with the spirit and intent of the Canadian Charter of rights and freedoms;
(b) provide clear and consistent rules on the selection of candida[illegible] leaders, delegates if any, and officers;
(c) provide that members of the party who select the party's candi[illegible]tes, delegates to a leadership convention or a party leader must be voters.

The proposed legislation also provides other legal requirements to facilitate smooth functioning of these organizations and procedure for settlement of disputes. A party foundation may be registered under this Act by a recognized party as "a distinct and permanent institution":

1207 LJ&CA/2002—29A.

(a) to develop and promote public policy options,
(b) educate party members on matters of public policy, and
(c) provide the party with research and advise on policy.

These party foundations are to be incorporated under the Canada Corporation's Act. The Canadian Royal Commission believed in full disclosure of the size and source of contributions to parties and candidates to forestall any undue influence on elected officials by contributors of large amounts. It recommended submission of interim unaudited report of all contributions by registered parties and their ancillary organizations for the first six months of the year and a "full audited return on their financial activities for the entire year".

Indian parties should seriously consider adopting the leadership convention system. This will have the following positive results. First, it would make the leadership selection process more democratic and federal. Second, the nation would introduce a nationally aggregative mechanism in major parties and curb the tendency of regionalisation and fragmentation. If the national is found too expensive, a series of state conventions may be held by major parties with their respective slates of candidates (common for all the states in one party). This will go a long way in making parties aggregative and thus more functional in a parliamentary federal system of governance. The continued fragmentation of the party system, confederalization of all-India parties and, mushrooming of regional parties, besides causing Governmental instability, also presage the sinister prospect of making any parliamentary government well nigh impossible.[M. P. Singh, Towards Greater Federalism, *The Pioneer*, 16 December 1997.]

The Joint Committee of Parliament on Amendments to Electoral Laws (1971-72) considered and rejected the proposal for changing the First –past- the- post (FPTP) system, but recommended the formation of an expert committee to review it. V. M. Tarakunde Committee argued for adopting a variant of the German system. S. L. Shakdher, the then Election Commissioner and L. P. Singh supported the view. Goswami Committee failed to reach any conclusion. No body has argued for a pure PR system but a mix of PR and plurality system. The precise composition of the mixture varies. The Tarakunde Committee recommended two alternative formulae for consideration. The first was the German formula (double vote, half of the seats by direct plurality system, 'top-up' on the basis of the second vote, provision for additional members) modified, if necessary, to change the mix of direct and list seats from ½ : ½ to 2/3 : 1/3.

The second involved an innovative suggestion: single vote polling as in the present system, all candidates who secure a majority of votes to be declared elected directly, the rest of the seats to be filled from party lists according to the proportion of votes for each party (top-up procedure) with some relaxation for independents.

The measures suggested by various committees and ECs only reflect a mechanist approach. The idea that candidates who stand no chance of winning election through the electoral process and are thus a nuisance is to take a narrow view of the political process. The electoral arena is a training ground for political participation. Even if the independent candidates file the nomination and then withdraw it, or contest and then retire midway through the campaign, they have done their job. Moreover, unrestricted opportunity to contest is a virtue in itself even if it serves no purpose. As for the multiplicity of candidates, the answer would lie in strengthening the contingent arrangements of the election machinery. Steps to discourage 'dummy' candidates are surely in order. The recent experiment of denying facilities to those candidates who have made public declarations to support another is a useful step in that direction. It would be justified, perhaps necessary, to ban the practice of a candidate contesting simultaneously from more than one constituency of the same category.

There should be some minimal external regulation to ensure that there is a minimal level of democracy in the party. But this should not be linked to registration or eligibility to contest elections.

On the role of money in elections, the concern cannot be confined within the agenda of electoral reform, it must relate to larger questions of transforming the structure of economy, the model of development and the institutional design of democracy. At a more concrete plane, the question refers to the direct relationship between the monetary resources of a candidate/ party and capacity to win an election. Although this direct relationship exists in today's India, it is not yet a decisive factor in the electoral outcome. Those with greater monetary resources do enjoy an edge in registering their presence in the electoral campaign. More importantly, those without resources often fail to cross the minimal threshold of publicity for this reason. But we must refrain from drawing an extreme picture of a direct causal relationship, for candidates and parties with virtually unlimited resources routinely lose the elections to those who cannot match them in these terms.

The law on ceiling should be changed in one of the following ways: (a) either the statutory limit should be scrapped altogether and replaced by a selective ban on certain kinds of expenditure. Or the existing provisions should be amended to provide for: (i) much higher ceiling than what currently exists; (ii) regular revision of the ceiling before every general election; (iii) all the expenditure, irrespective of who paid for it, to be brought within the purview of this provision; (iv) mechanism for routine verification /auditing of the return of the expenditure; and (v) publicity of the returns filed by the candidate in the local press. The most effective measure and the only guarantee lies in a political culture of simplicity, so that any ostentatious expenditure can be expected to work against the candidate's electoral prospects.

On political funding, Pai Panandikar and Ramashray Roy proposals that the basic framework of state-sponsored election Fund is to be apportioned according to vote share of different parties/ candidates is sound and needs to be accepted immediately with the proviso that all state funding should be only in kind. However a principal objective is to discourage 'non-serious' parties and candidates. The suggestions made by the two scholars are:

- state funding should not be exclusive; parties and candidates should be free to raise funds from other sources subject to an overall ceiling of expenditure.
- The amount should be given to parties, which should be left free to disburse it to the candidates/party offices.
- The party must spend at least 50% of the funds during the election campaign and it should be allowed to spend the remaining amount (upto 50%) during the next five years before the subsequent general election.
- The entire amount should be accounted for and audited without any restriction on internal budgeting.
- The eligibility threshold should operate at the state level and be reduced to bare minimum (say2% of the vote share in a state or 5% in a constituency, in the case of an independent) so as to exclude only the dummy candidates or paper organizations.
- The payment should be made conditional upon regular democratic election of the highest decision making body and office bearers of the party (the EC and the Supreme Court should have the power to adjudicate any dispute in this regard).

The basic idea is to bring nearly every serious party within the ambit of state funding, provide them with some minimum financial resources to contest election and carry out regular political work in between elections, and to link this assistance to internal democratic functioning.

Panandikar-Roy proposals on State Funding recommend (i) state funding of elections on an exclusive basis ; (ii) the creation of an election fund at Rs. 10 per vote polled throughout the country; (iii) a special funding agency or the EC to administer the fund; (iv) the fund to be apportioned on the basis of votes secured by candidates in the election, subject to a ceiling of Rs. 1 million per seat contested; (v) the amount to be released to individual candidates (and not political parties) on the basis of nominations made; (vi) 50 percent to be released as an advance, before elections, on the basis of previous performance; (vii) the minimum threshold for eligibility for state subvention to be 20 percent of national votes for national or major parties (10% for minor or new parties) and (viii) detailed account of the candidate to be audited by the EC.

[Yogendra Yadav, CSDS, in M. P. Singh and Rekha Saxena, *Ideologies and Institutions in Indian Politics pp. 416-444]*

The Government of India should identify some of the major contours of policy for curbing the incidence of political violence and terrorism:

a. There should be a clearly enunciated set of policies on these issues indicating 'thus far and no further', for the understanding of the militants and Naxalites as also for the democratic regimes within the States.
b. It would be desirable to have a loose federation instead of a centralized feoeration of the earlier days. This would make autonomy worthwhile for the groups concerned.
c. It would also be worthwhile to adopt a loose federal union with a decentralized political order which would mean more autonomy to the States from the Union and from the States to the local bodies within a State. This has not happened so far as the Central Government is concerned.
d. Alternative forms of autonomous units within India, like Gorkhaland in Darjeeling district in West Bengal, should be experimented with all earnestness.
e. It should be made clear to all and sundry that violence would not be tolerated or accepted as a basis of settlement of problems. At the same time it would be worthwhile to admit mistakes of the past, and to provide a constructive basis for lasting solution of outstanding problems. This would provide some solace to those persons who have suffered unnecessarily in the violence and a hope for the future.
f. Military and police may be used to the least possible extent against the Naxalites or militants, thereby avoiding confrontation as also encouraging them to come to the discussion table.
g. While taking the measures needed, the issues at stake must be currently understood and solutions sought so that eventually, they can become part and parcel of the national mainstream.

[Iqbal Narain, "The Party system", in Upendra Baxi, Alice Jacob, and Tarlok Singh, *Reconstructing the Republic* (New Delhi, Har-Anand Publications, 1999), pp. 311-318.]

The existing requirement of the four percent of the total number of valid votes polled or the recognition of political parties as contained in Clause (B) of Sub-Paragraph (2) of Paragraph 6 of the Election Symbols (Reservation and Allotment) Order, 1968 is certainly low. It should be increased to ten per cent. However, the best way to reduce the number of parties, would be to encourage and regulate through law mergers of groups in larger parties or alliances having the same or similar ideologies and/or programmes. This would eliminate duplication of effort and promote the chances of a clearer electoral verdict.

It is very necessary that political parties, especially the well organized and well established parties, such as the National Parties and the State Parties should take special care in selecting and setting up as candidates only those persons who, if elected, could be able to discharge their most responsible and onerous jobs as members of such representative institutions. They should be persons of high qualities of mind, heart, and character. They should be persons possessing intelligence, breadth of vision, warm human sympathies, receptiveness to new ideas without any inhibition, balanced judgement, capacity for hard work, mastery of detail and above all sterling character.

In order to ensure a free and fair poll it is necessary that the electoral code of conduct should be observed by all the political parties. As it is found that the code of conduct is of little practical value since no party or candidate observes the various rules and instructions laid down in such Code of Conduct, the model Code of Conduct should be given legal teeth. And in addition to legal teeth behind the code, it is education of the electorate and discouragement of selfish leaders that would help more to remove the problem.

There should be express provision for de-recognition of political parties, if there is violation of Sub-Section (5) of Section 29 A of R. P. Act 1951.9 relating to upholding of the allegiance to the Constitution of India and to the principles of socialism, secularism and democracy and the sovereignty, unity and integrity of India. It is to be noted that a recent draft Bill on electoral reform provides for de-registration of political parties. However, there is a provision for appeal

in Courts. [Raisa Ali, *Representative Democracy and Concept of Free and Fair Elections* (New Delhi, Deep & Deep, 1996)]

Under the Indian system, where everyone from a poor peon to the secretary in the ministry, has to possess some minimum qualification, from a mere matriculation to a degree, the honourable members of Parliament are an exception. So are the ministers. And despite this, they are acceptable. Today, a person can be a Law Minister without even a nodding familiarity with law and an Education Minister without any formal education. During the last 50 years, there have been several such instances all over the country. Should we not lay down some qualifications: Impeccable integrity, Proven ability, Academic standards in consonance with the requirements of the job, otherwise leaders can be a liability. And surely,, rule of the majority does not mean rule by the illiterate. [Jawaharlal Gupta, While the worst are full of passion, in the *Hindustan Times*, 28 June 2000.]

Chief Election Commissioner M S Gill's proposal to make it mandatory for all political parties to nominate at least a third of women candidates for the seats contested by them deserves to be commended. If they are not prepared to accept the principle of representation within their own parties, what moral right do they have to advocate reserving parliamentary constituencies for women?

Reservations have not always benefited the disadvantaged for whom they were intended -- usually, the more powerful in a particular section which has got reservation benefits from it [Times of India, 14 June 2000, p. 14]

There is need for a law to make it compulsory for every recognized political party to annually declare and publish, along with its constitution and list of duly elected office bearers, the list of its primary members and the subscriptions collected from them, among all other sources. Registration and renewal of such registration should be subject to a reasonable verification of the facts stated. The party constitution itself must be totally democratic in content and spirit, quite transparent and must provide for periodic elections by the primary members. Non-compliance of provisions in this behalf should render the party disqualified from contesting elections.

As Jha (op.cit.) puts it:

Today no political party, within its own ranks and cadres, is uniformly representative of the society. Yet, each party, for its own political compulsions, has its own readymade stand on all contentious issues concerning representations for this, that or the other section of the society.

If people want their representatives to be worthy of their trust they must choose them on their individual merit. There is an acute dearth of genuinely, public-spirited performers among the country's new rulers.

The form of nomination paper to be filed by the candidates in an election should have adequate space for mandatory enumeration of the record of voluntary and selfless public service rendered so far by the candidate, and it should be properly authenticated, documented and publicized for the benefit of the electors.

Criminals can be effectively kept out by having the polls in two rounds. The final round should take place after a gap of two weeks in which only the two best achievers of the first round should be permitted to contest. There should be no countermanding of polls in the event of the death of a candidate unless he happens to be one of the two finalists. That will be the end of bogus, dummy, transparently fraudulent so called "non-serious" candidates and the size of the ballot paper would be never more than a small slip of paper, thus resulting in considerable economy in cost of paper and printing as well as its handling and transport throughout the election process. People know who's who in the constituency best, and no criminal can hope to get more than 50% of votes in a virtual 100% poll, nor hope to win solely on the basis of appeals in the name of caste, religion, etc.

While there is every reason to revise the ceiling on poll expenditure by candidates and their parties, the right people to finance an election are obviously those who support the candidate or his party. There can be designated accounts in specified banks in all parts of the constituency where the supporters can deposit their contributions, subject to disclosing their full identity, proof of their status as an elector of the constituency and the last income tax return filed by them. Political parties can have the arrangements over an extended area subject to reasonable conditions and could operate such accounts throughout the year whereas the individual candidate's accounts ought to be opened on filing nominations and closed on declaration of results. [Shivendra K. Sinha, "Toward a People Centered Polity: Political Parties, Legislators and Electoral Reforms" in *Politics India*, October 1998, pp. 24-28.]

8. Conclusion:

8.1 *Need for a Legislation governing political parties*

There is a need for a comprehensive legislation (may be named Political Parties (Regulation) Act) regulating the functioning of political parties in India. The legislation should provide conditions for the constitution of a political party and for recognition, registration and de-registration. Until now the recognition and registration of political parties is done only for the limited purpose of allocating symbols. The new law, however, should prescribe not only the conditions for the establishment of the political party, but also provisions for regulating the functioning of political parties after establishment. It should be made compulsory for every political party to get registered under the proposed Act. Any party so constituted under the proposed Act should declare its allegiance to the provisions to the Constitution and the sovereignty and integrity of the nation. The legislation should also prescribe that every political party should abide by the spirit of democracy in its internal management and operation and should observe inner party democracy in its decision making process. It should provide that elections to the various levels of party organs should be held at least once in three years. It should also make it mandatory for political parties to provide for a representation of at least 30 percent of its organizational positions at every level for women. The leaders of political parties should also make sure that at least 30 percent of their party tickets are distributed amongst the women at the time of elections. The legislation should make it compulsory for the parties to maintain accounts about the receipts of funds and expenditures in a systematic and regular way. The form of accounts of receipt and expenditure and declaration about the sources of funds may be prescribed by an independent body of Accounts & Audit experts, created under this proposed Act . The accounts should also be audited by the same independent body, created under the legislation who should also prepare a report on the financial status of the political party which should be open and available to public for study and inspection. The proposed law should make it compulsory for the political parties to make their candidates declare their assets and liabilities at the time of their nomination being filed before the returning officers for elections to any office at any level of government. It should provide for limiting the expenditures of the political parties in relation to holding public rallies and large scale demonstrations and protests which hardly serve any effective purpose in these days of high tech electronic media, which is far more effective and economical and causes least inconvenience to public than the very frequent huge public rallies and large protests in capital cities. In this way the political parties would also be spared the burden of huge expenditure on all sorts of illegitimate or dubious means adopted to raise that amount of money for that kind of expenditure. [Malaysia has imposed a total ban on large scale rallies for political demonstration and/or for election purposes.] The money saved could be more fruitfully employed in other more important activities of political parties, such as educating the voters through door to door contacts and /or sensitizing their own party-men in respect of various controversial issues facing the nation.

Only those parties, which are registered under the proposed Act be allowed to contest elections.

8.2 *Criteria for Registration*

(a) The law should define the criteria of registration of political parties. Every political party or a pre-poll alliance of political parties should be compulsorily registered under the proposed Act. The Registration authority can be the Election Commission of India.

(b) The criteria for registration as a national party be revised to at least securing of 10% of the valid votes polled by all the candidates in at least one half of the states.

(c) The parties be designated as State parties if they secure the required percentage of at least 10% of total votes cast in any of the states.

(d) Only parties or a pre-poll alliance of political parties registered as National parties with the Election Commission be allowed to contest for the Lok Sabha. State parties may contest for State Legislatures and the Council of States (Rajya Sabha).

8.3 *Criteria for De-Registration*

The law should define the criteria and conditions for de-registration of political parties, and the decision of the Election Commission in this respect should be final,, subject to the judicial appeal to High Court/Supreme Court on points of law. For example, one of the criteria for de-registration could be the non-adherence to the conditions prescribed for registration or obtaining of registration in the first instance by fraudulent means or wrong declarations.

8.4 *Structural requirements*

The constitution of the parties submitted for Registration under the law should provide for:

(a) a declaration to the adherence to the democratic values and norms of Constitution in their inner party organizations
(b) a declaration to shun violence for political gains
(c) a declaration not to resort to casteism and communalism for political mobilisation, but to adhere to the principles of secularism in the achievement of their objectives
(d) provision for party conventions to nominate and select candidates for political offices at the grass root and state level
(e) representation to the women and weaker sections of the society in party offices and candidates for contesting of polls.

8.5 *Educational Training and Developmental Activities*

Political parties should in their constitution provide for establishing some institutional mechanism for planning, thinking and research on crucial socio-economic issues facing the nation and educational cells for socializing their party cadres and preparing them for responsibilities of governance.

8.6 *Leadership conventions*

Indian parties should seriously consider adopting the leadership convention system, as is practiced in countries like Canada, and the USA. This would have the advantage first, of making the leadership election process more open, democratic, and federal. Second, the people will know in advance of the prospective Prime Ministerial candidates. Third, it would introduce a nationally aggregative mechanism in major parties and curb the tendency of regionalisation and fragmentation. If the national convention is found too expensive, a series of staggered state conventions may be held by major parties with their respective slates of candidates (common for all the states in one party). This will go a long way in making parties aggregative and thus more functional in a parliamentary federal system of governance.

8.7 *Stabilising the Parliamentary System*

Following suggestions may be considered

(a.) Rules of procedure may provide for the election of the Leader of the House by the Lok Sabha along with the election of the Speaker and in the like manner. The Second Ballot system be adopted, in case no candidate secures a majority in the first round. The Leader may then be appointed as the Prime Minister. The same procedure may be followed for the Chief Minister.

(b.) Adoption of a system of constructive vote of no confidence. For a motion of no-confidence to be brought out against a government at least 20% of the total number of members of the House should give notice. Also, the motion should be accompanied by a proposal of alternative Leader to be voted simultaneously.

(c.) Under the present system of "first -past -the -post", candidates can get elected on a minority of votes. No candidate should be declared elected unless he or she secures more than 50% of the votes cast. If no candidate gets 50% of votes in the first run, a second run off election be held immediately the next day of the first ballot. These days of electronic voting and counting make it possible to adopt such a system without incurring heavy expenditure or need for fresh security and administrative arrangements.

(d.) Candidates should not be allowed to contest election simultaneously for the same office from more than one constituency.

(e.) Candidates contesting elections should be familiar with the Constitution and should be able to read, write and understand its provisions.

(f.) The election code of conduct which should come into operation as soon as the elections are announced, is only a guideline. It should be given the sanctity of law and its violation should attract penal action. Political parties should also evolve their own codes for fair and violence free polls.

8.8 *Curbing Criminalisation of Politics*

The entry of criminals in politics is a matter of great concern. Although it can be prevented by laws, but more than that it is within the powers of political parties to see that no criminals or persons with the reputation of being in criminal activities are selected as candidates. The proposed law on political parties should provide that no political party would be able to sponsor and provide ticket to a candidate who has been convicted by any court for any criminal offences or if the courts have framed criminal charges. In case of conviction, the bar should apply for six years after the completion of the period of the sentence. If any party violates this provision, the candidate involved should be disqualified and the party deregistered forthwith.

Any person convicted for any heinous crime like rape, murder, etc. should be permanently debarred from contesting for any political office.

Criminal cases against politicians pending before Courts either for trial or in appeal must be disposed off speedily by appointing Special Courts.

8.9 *Checking Proliferation of Independent candidates*

Vide the Representation of People (Amendment) Act, 1996, security deposit for independent candidates was enhanced to twenty times of the earlier limit, number of proposers for independent candidates increased and it had been provided that the names of the independent candidates would be listed in the ballot paper below the names of the candidates set up by the political parties. These measures to some extent succeeded in reducing the number of non-serious independent candidates. But, more needs to be done.

In order to check the proliferation of the number of the independent candidates and the malpracticas that enter into the election process because of the influx of the independent candidates, the security deposits in respect of independent candidates may be raised further.

The security deposits should be doubled progressively every year for those independent candidates who fail to win and still keep contesting every election.

If any independent candidate has failed to get at least five percent of the total number of votes cast in his constituency, he/she should not be allowed to contest as independent candidate for the same office again at least for 6 years.

Any independent candidate who looses election three times consecutively for the same office as an independent candidate should be permanently debarred to contest election to that office.

An independent candidate should be nominated at least by twenty elected members of Panchayats, Minicipalities or other local bodies spread out in majority of electoral districts in his constituency.

8.10 *Problem of Party Funding*

The problem of political funding is a complex and undeniable reality, and that there are no panaceas to remedy it. In effect, the premise that there are no absolute truths or ideal solutions in electoral matters has gained even more strength with regard to funding for two main reasons. One because of the close link that exists between this issue and the specific characteristics of the political system as a whole, as well as with the characteristics of the political party system in particular. Another reason is the permanent relationship posed by this subject with the values of political culture, which may mean that any solution can be evaluated in completely different ways in different contexts. For instance, whereas in Scandinavian countries the disclosure of electoral expenses and sources of funding is perceived as a violation of the fundamental principle of the right to voter secrecy, in other countries, such as Germany and Canada, these practises are viewed as exactly the opposite, as a guarantee of transparency in political activity and of the citizens' right to be duly informed.

Two other considerations deserve attention. The first one has to do with emphasising the importance of reviewing the funding system, not only in terms of the aims of the reform effort and its desired effects on the political system and system of political parties, but also with respect to the degree of effectiveness of regulations as well as their undesirable or immoral effects. The second expresses the need to insist that not every reform to the funding system must be analysed separately, but rather as an integral part of political/electoral reforms as a whole. This is so because the consequences of such an analysis affect very important aspects, such as competition among parties, conditions for competition, the system of political parties and, consequently, the very credibility and legitimacy of democracy itself.

Moreover, every reform on this issue must be aimed at achieving greater and improved levels of transparency with respect to party revenues and expenditures. In fact, the issue of transparency and public disclosure is crucial to the fight against political corruption. In principle, this need would seem more fitting with regard to hefty contributions than for small ones, since greater the contribution, the greater the risk of dependence and the greater the danger of corruption. Thus, there is a need for greater transparency and public disclosure in respect of party funding. This demand for transparency must be conceived, rather, as a democratic value in itself, a tool designed to avoid any wrongful influences of money in politics that might lead to corruption.

If laws are intended to be effective with regard to transparency, they should be very general in nature and be enforced with respect to everyone, and not just political parties or candidates, but also to the donors as well. Otherwise, alternate or indirect ways to evade control will be devised. In fact, while it is essential to strengthen regulation, the mechanisms and capabilities of supervision and controlling entities, this only addresses part of the problem. Quite often, funding and commitments do not reach the parties, but rather go directly to the candidate and his/her inner circle of supporters. This is truer today in the context of the image and credibility crisis that partisan organisations have been undergoing, and the emergence of regional leaders due to the decentralisation process. This usually tends to make transactions between

donors and beneficiaries become even more secretive. Hence, the main leaders or party members are often not aware of private contributions (many of them dubious in origin and in quite large sums), but only the candidate and his/her inner circle, which frequently consists of private contributors and/or individuals not involved in the party.

Consequently, any proposals for reforms concerning political funding should revolve, among other things, around the following five main objectives: (i) reducing the influence of money by diminishing its impact (by shortening campaigns, establishing ceilings on expenditure and limiting individual contributions); (ii) improving the use of money by investing it on more productive activities for the sake of democracy, and not just squandering it on propaganda and negative campaigns; (iii) stopping, or at least curtailing, as much as possible, current levels of influence peddling and political corruption; (iv) strengthening public disclosure and transparency mechanisms with respect to both the origin and the use of funds; and (v) promoting fairer requirements for elections, particularly concerning access to the media.

8.11 *Regulating political contributions*

There is a need for one comprehensive legislation regarding the regulation of political contributions to political parties and towards election expenses. The various existing provisions in different Acts need to be consolidated into a single law regulating the flow of funds to political parties both from the internal as well as external sources.

Legislation should provide for compulsory auditing of the accounts of all political parties registered with the Election Commission by an independent authority specified under the new law regulating the functioning of political parties, publishing of audited party account, and immediate de-recognition and enforcement of penalties for filing false or incorrect election returns. Accounts should be made available for public inspection.

Legislation should also contain provisions for making both donors and receivers of political funds accountable.

Individuals and corporate agency be permitted to make contributions to the political parties upto a certain ceiling higher than the present 5% of profits and an incentive be provided in terms of tax concessions.

The Government. should encourage the corporate bodies and agencies to establish an electoral trust which should be able to finance political parties on an equitable basis at the time of elections.

8.12 *Controlling Electoral Expenditure*

In view of the increasing cost of the election campaigns, it is desirable that the existing ceiling on election expenses for the various legislative bodies be suitably raised to a reasonable level reflecting the increasing costs. However, this ceiling should include all the expenses by the candidate as well as by his political party or his friends and his well-wishers or any other expenses incurred in any political activity sponsored on behalf of the candidate by an individual or a corporate entity. Such a provision should be the part of a legislation regulating political funding in India.

8.13 *Monitoring Election Expenditure*

The Election Commission should devise specific format(s) for filing of election returns by the candidates as well as political parties in such a manner that the fudging of accounts be made difficult. These accounts should be monitored through a system of checking and cross-checking through the income-tax returns filed by the candidates, parties and their well-wishers.

The Election Commission should organize training-cum-orientation workshops for the candidates and party agents to enable them to manage party accounts and election expenses in the format prescribed by the Election Commission, especially on the eve of elections.

A suitable law should be enacted providing penalties against damaging or desecrating public or private property by candidates, political parties or the agents, through painting of slogans or erecting cutouts and hoarding or putting banners and buntings. The law should also provide for special courts to ensure strict compliance of these regulations, should any dispute arise in respect of the alleged violations of such regulations by any candidate, political party or his agents and well-wishers.

8.14 *Patrimony of candidates and politicians*

A useful tool in the fight against corruption would be legislation to make it possible to ascertain details about the patrimony of candidates by means of public affidavits reporting on it. Such affidavits should be audited by the Special Authority created by the proposed law on Political Parties. During their term of office, elected officials should also submit audited reports on a yearly basis, as well as a final audited statement at the end of their term of office. This type of measures would serve to keep the public fully informed about the patrimony and lifestyle of politicians before they assume power, during their term of office and at its conclusion, thereby avoiding any unlawful acquisition of wealth.

8.15 *Strengthening of Anti-Defection Measures*

In order to curb the insidious practice of defection, the law should be amended to specifically provide that all persons defecting from the party or the alliance of party, on whose tickets they had been elected must resign from their parliamentary or assembly seats and must contest fresh elections. In other words, they should lose their membership and the protection under the provision of split etc. should be scrapped. The defectors should also be debarred to hold any public office of a minister or any other remunerative political post for at least the duration of the remaining term of the existing legislature or until, the next fresh elections whichever is shorter.

8.16 *Party System and Governance*

1. As the parties provide the necessary political leadership for governance, it is necessary that the incumbent to public offices must be chosen on the basis of their integrity and capacity to administer. If the political parties have a continuous program of grooming the potential members of their parties for different types of assignments corresponding to the ministries and departments of the government, things would become easier and a smooth transition of the government could take place. At the same time, the parties could contribute effectively to the processes of policy formulation, implementation and governance even while remaining in opposition.

2. The practice of political parties extending support to the government from the parliamentary floor from outside is an amoral exercise of power without responsibility. This inhibits the process of governance and has been the immediate cause of premature collapse of all the governments since 1989. This must be disallowed, if the coalition governments have to survive and carry on their task of governance.

3. The practice of bloating the Council of Ministers must be stopped. A ceiling on the number of Ministers in any state or the Union government be fixed at the maximum of 10% of the total strength of the lower house of the legislature.

4. The practice of creating a number of political offices equivalent to the position or privileges of a minister should also be stopped. Any new administrative organization should only be created through regular administrative procedures and only if the provisions have been made in the regular budget estimates of the government concerned.

5. The think tanks in various political parties' organizations should occasionally come out with alternative policy perspectives in the form of a "Green Paper" for want of a better term on some of the crucial issues facing the nation at a given moment and be widely

circulated amongst the public, the media, intellectuals and others to elicit alternative opinions on the subject.

6. In times of emergencies, or national calamities, the parties should not eschew taking specific responsibilities in assisting governments in their activities to tie over the crisis.

8.17 *Restoring Moral Standards in Public Life*

To the question what can be done for the restoration of moral standards and ethical values in public life, there is no simple answer. In the context of the current feeling of resignation to corruption and unethical and criminal practices in public life, and the disposition to consider them as inevitable and, therefore, acceptable, it may be well to remember Gandhiji's observation that "Life is an aspiration...the ideal must not be lowered because of our weakness and imperfections", and the fact of his life long resistance to evil in many forms - from racialism and imperialism to untouchablility.

Thus, in addition to measures like the proposed legislation to effectively curb defections and operation of black money, break the nexus between electoral politics, economic resources and criminal support, and establishing the institution of Lok Pal, it is necessary that a rigorous Code of Conduct be drawn for both Ministers/Legislators and important functionaries of all political parties, which should incorporate what the Nolan Committee in the U.K. has suggested as the seven principles of public life-- *viz.*, selflessness, integrity, objectivity, accountability, openness,, honesty and leadership.

A Public Ethics Committee consisting of representatives of all Political Parties and some eminent public persons of impecable integrity and acceptability may be constituted to oversee, monitor and enforce the adherence to this code.

QUESTIONNAIRE
ON
REVIEW OF THE WORKING OF POLITICAL PARTIES SPECIALLY IN RELATION TO ELECTIONS AND REFORM OPTIONS

1. Are political parties necessary in a democracy?

   Yes ☐ No ☐

2. Do you think that political parties in India have been performing their functions effectively?

   Yes ☐ No ☐

3. Do you think that political parties should have ideological stance in their policies and programmes?

   Yes ☐ No ☐

4. Have the political parties in India stuck to their ideological perspective?

   Yes ☐ No ☐

5. Do you think it is good for the political parties not to be ideologically rigid but should have a pragmatic view about the programmes and policies of the government?

   Yes ☐ No ☐

6. Do you approve of political parties following the following approach?

   Pragmatic ☐ Programmatic ☐ Populist ☐

7. Do you subscribe to the view that there is a need for comprehensive legislation for regulating the functioning and conduct of political parties in India as suggested in para 6.1 of the paper.

   Yes ☐ No ☐

8. Do you think that state should continually oversee the performance of the political parties with a view to regulate their activities?

   Yes ☐ No ☐

9. Do you think that parties should be de-registered or de-recognized if they fail to observe necessary prescription by the constituent authority as suggested in para 6.3 of the paper?

   Yes ☐ No ☐

10. Do you think that the political parties in India are not systematically organized?

    Yes ☐ No ☐

11. Do you think that party leadership should emerge from bottom to the top instead of being imposed from top to the bottom?

    Yes ☐ No ☐

12. Do you think that the problems of inner democracy and party organization could be solved by devolution and delegation of powers by the top leadership?

Yes ☐ No ☐

13. Do you think that party cadres/members need to be regularly sensitized or given adequate training for their political education and preparation for undertaking higher responsibility?

Yes ☐ No ☐

14. Do you think that there should be more planning cum research centers so that the functioning of political parties may exercise their minds?

Yes ☐ No ☐

15. Do you think that every political party or a pre-poll alliance of political parties should be compulsorily registered under the proposed law on political parties?

Yes ☐ No ☐

16. The criteria for registration as a national party may be securing the following percentage of votes polled by its candidates at the preceding elections

5% ☐ 10% ☐ 15% ☐

17. The parties to be designated as State parties should secure the following percentage

5% ☐ 10% ☐ 15% ☐

18. Do you agree that only parties or pre-poll alliance of parties registered as national parties be allowed to contest seats to Lok Sabha with the State parties contesting for State Legislatures and the Council of States?

Yes ☐ No ☐

19. Do you approve of the structural requirements for registration of parties as suggested in para 6.4 of the paper?

Yes ☐ No ☐

20. Are you in favour of election expenses of political parties being borne by the state either partly or fully?

Yes ☐ No ☐

21. Do you agree that political parties should maintain their accounts, get them audited and make them open for public scrutiny?

Yes ☐ No ☐

22. Are you in favour of strengthening anti-defection measures as suggested in para 6.15 of the paper in order to make it more stringent in respect of providing stable government as also ensuring stability in government?

Yes ☐ No ☐

23. Do you agree that particularly in a situation where no single party or pre-poll alliance commands a clear majority in the House, the question as to which leader commands the support of the majority of the members of House should better be decided only on the

floor of the House and, therefore, it would be best to elect the leader of the House along with the Speaker so that the same leader of the House is appointed as the Prime Minister/Chief Minister without any need for subsequent vote of confidence or the like?

Yes ☐ No ☐

24. Do you agree that the Prime Minister/Council of Ministers should be removable on a vote of no-confidence only if the motion of no-confidence also includes a proposal of alternative leader to head the new Government?

Yes ☐ No ☐

25. At present under the first-past-the-post a large number of the winning candidates are elected by minority of votes. Do you agree that no candidate should be declared elected unless he or she secures more than 50% of the votes cast and if necessary, immediately following run off elections be held among the two candidates securing the largest and the second largest number of votes?

Yes ☐ No ☐

26. Should candidates be allowed to contest elections simultaneously for the same office from more than one constituency?

Yes ☐ No ☐

27. Should qualification of the candidates include ability to read, write and understand some basic provisions of the Constitution?

Yes ☐ No ☐

28. Should the code of conduct be given the sanctity with its violation attracting penal action?

Yes ☐ No ☐

29. Should the code of conduct come into operation on:

Announcement of the Election ☐ Notification of the Election ☐

30. Do you agree that political parties should be prevented by law from sponsoring candidates who have been convicted by any court for some specified criminal offences or against whom court may have framed such criminal charges as suggested in para 6.8 of the paper?

Yes ☐ No ☐

31. Do you agree that any person convicted of heinous crime like rape, murder, etc. should be permanently debarred from contesting for any political office?

Yes ☐ No ☐

32. Do you favour appointment of Special Courts for considering the prima facie eligibility of candidates charged with criminal offences by any court with a view to speedy decision on eligibility without affecting decision on merits by the trial court in the normal course?

Yes ☐ No ☐

33. In order to check the number of non-serious independent candidates should the security deposits in case of independent candidates be raised to three times that required by party candidates as per details in para 6.9 of the paper?

Yes ☐ No ☐

34. Should it not be necessary for an independent candidate to have either secured at least 5% of the total votes cast in an earlier election or to be nominated at least by 20 elected members of Panchayats, Municipality or other representative bodies of the concerned area?

Yes ☐ No ☐

35. Do you agree that there is a need for greater transparency, public disclosure in respect of party funds including details of receipts and expenditure as suggested in para 6.10 of the paper?

Yes ☐ No ☐

36. Do you agree that the first requirement is to reduce the expenditure on political activity and election campaigns by political parties and their candidates by shortening campaign periods to the minimum establishing enforceable ceilings on all expenditure?

Yes ☐ No ☐

37. Should there be a comprehensive legislation regarding regulation of political contributions to political parties and towards election expenses?

Yes ☐ No ☐

38. Should the proposed law provide for compulsory auditing of the accounts of all political parties by an independent authority, publishing of audited party accounts and immediate de-recognition and enforcement of penalties for filing false election returns?

Yes ☐ No ☐

39. Should individual and corporate agency be permitted to make contributions to the political parties upto a certain ceiling with an incentive by way of tax concessions?

Yes ☐ No ☐

40. Would you agree that the existing ceiling on election expenses should be suitably raised periodically to reflect the increasing costs?

Yes ☐ No ☐

41. Should the ceiling on election expenses cover all expenses incurred by the candidate as well as political party friends, well-wishers, etc. as suggested in para 6.12 and 6.13 of the paper?

Yes ☐ No ☐

42. Should it be made binding on all candidates to submit affidavits in regard to assets and liabilities at the time of filing their nomination papers?

Yes ☐ No ☐

43. Should it be made necessary for all elected officials including members of the legislatures, ministers, etc. to submit audited reports on a yearly basis in regard to their receipt of funds, expenditure, assets and liabilities?

Yes ☐ No ☐

44. Would you suggest that the practice of political parties extending support to a Government from outside should not be allowed as it encourages power without responsibility and causes instability of coalition Government?

Yes ☐ No ☐

45. Do you agree that the practice of having jumbo sized Council of Ministers should be prevented by law and the number of Ministers in any State or the Union Government should be limited to a maximum of 10% of the total strength of the lower house of the legislature?

Yes ☐ No ☐

46. The practice of creating a number of political offices equivalent to that of a Minister should be stopped. Do you agree?

Yes ☐ No ☐

47. It has been suggested that in addition to measures like the proposed legislation to effectively curb defections and operation of black money, we must break the nexus between electoral politics, economic resources and criminal support, and establish the institution of Lok Pal. Also, it is necessary that a rigorous and enforceable Code of Conduct be drawn for all Ministers, Legislators and party functionaries based on principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership norms. Do you agree?

Yes ☐ No ☐

48. Do you agree that an Ethics Committee consisting of representatives of Political Parties and some eminent public persons of impeccable integrity and acceptability may be constituted to monitor, oversee and enforce adherence to the Code of Conduct?

Yes ☐ No ☐

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NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper
on

REVIEW OF ELECTION LAW, PROCESSES AND REFORM OPTIONS

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating public debate and eliciting public response.

January 8, 2001

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CONTENTS

	Pages
ABSTRACT AND PROLOGUE	481
PART I	483
Introduction	483
Electoral Laws	483
The Magnitude of the Electoral Exercise	487
Our Experience with Elections	487
The Problems	488
The Suggested Reform Options	489
PART II	491
Electoral Rolls and Voter ID	491
Electronic Voting Machines	494
Booth Capturing and Rigging	495
President's Rule During Elections	495
Communal and Caste Hatred	498
Use of Muscle Power	496
Criminalisation of the Electoral Process	496
Election Expenditure – The Money Power	498
Disqualification on Ground of Corrupt Practices – **Election Petitions**	502
The Question of Representation and Winning on **Minority Vote**	503
Compulsory Voting	507
Negative Voting	507
Defections and the Tenth Schedule	508
Delimitation of Constituencies	509
Problems of Instability	509
Issues of Political Morality	511
Miscellaneous Suggestions	512
SUMMARY	514
SELECT BIBLIOGRAPHY	521
QUESTIONNAIRE	532

ABSTRACT AND PROLOGUE

A general election in India is a gigantic exercise. It is equal to holding polls in Europe, the United States, Canada and Australia all put together. General elections to Lok Sabha and State Legislative Assemblies in India are held under the supervision, direction and control of a constitutional body - the Election Commission of India. Elections to local bodies – Panchayats and Nagarpalikas – are the responsibility of State Election Commissioners.

Nearly fifty years of experience has brought to fore many distortions, some very serious, that have crept into the conduct of India's elections generating a deep concern in most quarters. There are constant references to 3 MPs, viz. money power, muscle power and mafia power and to 4Cs, viz. criminalisation, corruption, communalism, and casteism. Also, majority of our representatives are elected by a minority of votes cast thereby making their representative credentials doubtful. The result is that the legitimacy of our political process gets seriously compromised.

After a review of various reports, research papers by activist organisations and concerned citizens, newspaper reports and analyses, and other literature available on the subject of elections, this paper attempts to create a discussion and consultation agenda.

The paper emphasizes that the basics of an electoral system i.e., the preparation and maintenance of electoral rolls and a foolproof voter ID needs the highest and resolute attention which by itself has the potential to help take care of some of the serious problems such as impersonation and rigging. Also, it addresses the divisive nature of our electoral campaigns and criminalisation of the process and attempts to find ways that would help contain these.

The paper raises the fundamental question of the high cost of elections and legitimate sources of funding political activity and election campaigns. In this connection the need for drastically bringing down the costs and the Gandhian model of decentralization and a bottom-up instead of the present top down approach are also mentioned.

It is felt that it would be necessary to impart effective political education in democracy and for democracy and in citizenship responsibilities so that the right kind of representatives are elected and kept fully accountable to the people. For, in the ultimate analysis, the objective of all electoral laws and processes is to provide to the nation truly representative legislators of good quality who in turn can give us a good and development oriented governance and a citizen friendly administration.

The paper reflects on some of the more important electoral reform options and treats them in a way that should help the readers form their own informed views. The purpose basically is to generate a national debate and elicit reactions and not to advocate any particular course of action or reform agenda.

Summary of the suggestions made and options offered in the paper is given at the end.

PART I

1. Introduction

1.1 Basic to democratic polity is the concept of sovereign powers vesting in the "people". In modern democracies, the people govern themselves through their elected representatives. In a parliamentary system, the executive comes out of the legislature and remains part of it and responsible to it. The election of members to the houses of legislatures is conducted through an institutionalised electoral process. This electoral process therefore, no matter how it is designed and conducted, forms the foundation of a parliamentary democracy. Elections are critical to the maintenance and development of democratic tradition because at one level, these are influenced by the political culture in which they operate, but at another, they also generate strong influences that can improve or distort this political culture.

1.2 As a representative parliamentary democracy, India has a well-established system of direct and indirect elections to man its institutions. This may be described briefly as follows:

1. *Direct Elections*:

   a. Of the two Houses of Parliament, the Lok-Sabha is directly elected from defined single member territorial constituencies under universal adult suffrage (above 18 years) and on the basis of first-past the post system (FPTP). Similarly, adult voters directly elect all State Legislative Assemblies from territorial constituencies within their respective States.

2. *Indirect Elections:*

   (a) The constitutional Head of the State, the President of India, is indirectly elected by an electoral college. Other indirect elections elect the Vice-President, the Rajya-Sabha and the Legislative Councils at State level.

3. *Elections to Local Bodies:*

   (a) Elections to the Panchayat Raj Institutions (PRIs) that have been made mandatory by the 73rd and 74th Amendments to the Constitution are governed by the constitutional provisions of Part IX and Part IX A (articles 243 to 243 ZG) and State laws on PRIs.

All of these elections, except item 3 above, are under the supervision, direction and control of an independent constitutional body called the Election Commission of India (article 324). Elections under item 3 are under the supervision and control of the State Election Commissioners (article 243 K & 243 ZA).

1.3 Since the commencement of the Constitution on 26 January 1950, there have been thirteen general elections to the Lok Sabha and many more to State Assemblies.

2. Electoral laws

2.1 India has a comprehensive structure of laws to administer and conduct its elections. The formal legal framework for all these elections rests on certain provisions of the Constitution, the Representation of the People Act 1950, the Representation of the People Act 1951, the Presidential and Vice-Presidential Elections Act 1952, the Delimitation Act 1972, and the various rules and regulations framed and orders issued under these statutes. In addition, certain provisions of the Indian Penal Code and a few other acts are relied upon to

provide for punishment as well as disqualification of candidates and members of the various Houses.

2.2 The more important provisions in the Constitution relating to elections are:

Articles 54-58, 62, 66-68 and 71 which prescribe the terms of office and manner of electing the President and the Vice-President.[1]

Articles 80-83 lay down the composition and duration of the Rajya-Sabha[2] and the Lok Sabha.

Article 84 prescribes the minimum qualification for a member of Parliament in terms of citizenship and age.[3]

Article 101 states that no person can be a member of both Houses of the Parliament or of the Parliament and a State legislature.

Article 102 lays down disqualifications for membership of Parliament.[4]

Articles 168-173 and 190-192 contain similar provisions for the Constitution, composition, duration and qualifications and disqualifications for membership of State legislatures.

Article 324 provides for the appointment of the Election Commission and its functions.[5]

Article 326 provides that elections to the House of the People and to the Legislative Assemblies of the States shall be on the basis of adult suffrage i.e., citizens of minimum 18 years of age (this was reduced from 21 years by a constitutional amendment w.e.f. 18th March, 1989).

Article 329 lays down a bar to interference by courts in electoral matters inasmuch as any law relating to delimitation of constituencies or allotment of seats cannot be questioned in a court of law and no election to a House of the Legislature can be called in question except by an election petition.

2.3 The Representation of the People Act 1950 and Representation of the People Act 1951 between them provide for the allocation of seats, delimitation of constituencies,

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[1] The President is elected for a five-year term by an electoral college consisting of the elected members of both Houses of Parliament and the State Legislative Assemblies through a structured system of weighted votes. The election is held in accordance with the system of proportional representation by means of the single transferable vote by secret ballot. The Vice President is also elected for a five-year term, by an electoral college consisting of the members of both Houses of Parliament.

[2] The Lok-Sabha is to consist of no more than 530 members chosen by direct election from territorial constituencies in the various States and no more than 20 members to represent Union territories. The number of members from each State is based on the population of the State concerned. Between States the ratio of member to population, as far as practicable, should be the same. (This is not true currently as all inter-state delimitation has been frozen till 2025). From each State, the members of Rajya-Sabha – the Council of States – are elected by members of its legislative assembly in accordance with the system of proportional representation by means of a single transferable vote. The Rajya Sabha consists of not more than 230 members from various states and another 12 nominated by the President from the fields of literature, science, arts and social service.

[3] Must be a citizen of India and not less than 30 years of age for Rajya Sabha and 25 years for Lok-Sabha.

[4] A member is disqualified for: (a) holding any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder; (b) being of unsound mind and so declared by a competent court; (c) being an undischarged insolvent; (d) being not a citizen of India or having voluntarily acquired citizenship of a foreign state or being under any acknowledgement of allegiance or adherence to a foreign state; or (e) if so disqualified by or under any law made by the Parliament.

[5] The superintendence, direction and control of elections is vested in the Election Commission. It inter alia covers the responsibility for preparing electoral rolls. The appointment of Chief Election Commissioner and such number of other Election Commissioners as determined by the President is made by the President subject to the provisions of any law made in that respect by the Parliament. The Chief Election Commissioner cannot be removed except in the same manner as a judge of Supreme Court.

preparation of electoral rolls and conduct of elections. The important provisions of the former relevant to this consultation paper are:

Sections 13A – 13CC which deal with the electoral organisation at the State and district level.[6]
Sections 14-25 provide for the preparation of electoral rolls for each constituency under the supervision, direction and control of the Election Commission and cover the qualifications and disqualifications for registration of an elector and other conditions applicable to the preparation and revision of the electoral rolls.
Section 32 deals with punishment in case of breach of official duty in connection with the preparation of electoral rolls.[7]

2.4 Similarly, the relevant provisions of the Representation of the People Act 1951 (R.P.A.) are:

Sections 3-6 which deal with qualification of candidates for Parliament as well as State Legislative Assemblies and Legislative Councils.
Section 7-11 dealing with disqualification of candidates on grounds of their being convicted for certain offences under the Indian Penal Code or some other Acts of Parliament, electoral offences like impersonation, bribery as well as on grounds of corrupt practices and for failure to lodge account of election expenses.[8]
Sections 19-25 provide details of the administrative machinery for conducting elections.
Section 29A deals with the registration of political parties.
Section 58A empowers the Election Commission for suspension of a poll or for countermanding of elections.[9]

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[6] There is a Chief Electoral Officer for each State, a district Election Officer for each district, Electoral Registration Officers and Assistant Electoral Registration Officers for preparation and revision of electoral rolls. All of them are deemed to be on deputation to the Election Commission.

[7] Breach of duty in this connection is punishable with imprisonment for a term which shall not be less than three months but which may extend to two years and with fine. In addition, under section 31, any person guilty of making a false declaration in this respect is punishable with imprisonment for a term which may extend to one year or with fine or both.

[8] Some of the offences under I.P.C. are: a) promoting enmity between different groups on grounds of religion, race, place of birth, residence, language etc., and for doing acts prejudicial to maintenance of harmony (section 153A); (b) offence of bribery which means that if a bribe is offered by anyone with the object of inducing others to vote or refrain from voting (section 171E) or offence of undue influence or impersonation at an election which means that if undue influence in the form of direct or indirect threats is attempted toward influencing the election or a voter impersonates another to cast a false vote (section 171F); (c) offence relating to rape (sections/subsections 376 to 376D); (d) offence of cruelty towards a woman by husband or relative of the husband (section 498A); (e) offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies (subsection 2 or 3 of section 505).

In addition, the following offences also invited disqualification for six years from the date of conviction: (a) preaching untouchability (Protection of Civil Rights Act, 1955); (b) being a member of an association declared unlawful (Unlawful Activities (Prevention) Act, 1987); (c) offences under the Foreign Exchange Regulations Act, 1973, the Narcotics Drugs and Psychotropic Substances Act, 1895; section 3 or section 4 of the Terrorist and Disruptive Activities (Prevention) Act, 1987; section 7 of the Religious Institutions (Prevention of Misuse) Act, 1988; (d) offences under the R.P.A. 1951 such as promoting enmity or hatred between classes in connection with elections (Section 125); removal of ballot papers from polling stations (section 135), fraudulently defacing or fraudulently destroying any nomination paper (clause (a) of sub-section (2) of section 136) Places of Worship (Special Provisions) Act, 1991 and, Prevention of insults to National Honour Act 1971.

[9] Under section 58A R.P.A. 1951, the Election Commission is empowered to adjourn a poll or countermand the elction on grounds of booth capturing. The procedure is that the returning officer reports the matter to the Election Commission. Upon receipt of such a report and then taking all

Section 77 lays down that an accurate account of all expenditure by the candidate and his election agent is kept but explanation (1) excludes expenditure made by his political party or any others from such account.[10]

Section 79-122 lay down the procedure for dealing with electoral disputes and disposal of election petitions.[11].

Sections 123-136 specify in detail corrupt practices and electoral offences and punishments prescribed for the same.[12]

2.5 The Indian Penal Code, 1860 is used to categorise certain actions in connection with elections as punishable offences. There are two sets of disqualifications envisaged. The first is a disqualification for six years from the date of conviction for certain offences.[13] The second set of disqualification, when convicted for certain other listed offences, is also for a period of six years but not from the date of conviction. It is for a period of six years from the date of the release of the person from such conviction.[14] In addition, any persons convicted of any offence and sentenced to imprisonment for not less than two years also attract a six year disqualification from the date of release from such conviction. However, the Act (section 8(4)) provides that if this conviction is against an MP or an MLA in any State, the disqualification shall not take effect for three months or if within this period there is an appeal, then till the appeal is disposed of by the court.

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material circumstances into account, Election Commission may either have a repoll at that polling station or if many polling stations are involved in the constituency, countermand the election in that constituency leading to a totally new election there. Booth capturing is defined in section 135A of R.P.A. 1951 and applies to the intimidation or prevention of voters, seizure of polling stations as well as of the counting stations and use of force to allow only their supporters to vote.

[10] Currently these are fixed at Rs. 15 lakhs for Parliamentary and Rs. 6 lakhs for an assembly constituency. This applies to most constituencies with a few exceptions.

[11] Under R.P.A. 1951, elections can only be questioned through election petitions. The court having jurisdiction is the High Court and the Act states that the High Courts will try election petitions expeditiously and endeavour to conclude the trial within six months from the date of petition.

[12][12][12] There is a long list of offences here mostly inviting imprisonment and those which are cognizable are listed herein: a) *Disturbances at election meetings*: This is a cognizable offence and is punishable by imprisonment up to six months or a fine or both; b) *No canvassing in or near polling stations*: If anyone is caught canvassing within a distance of 100 metres of a polling station, this is punishable with fine which may extend to Rs.250 and this offence is cognizable; c) *Penalty for disorderly conduct or misconduct in or near polling stations:* Here if anyone is removed from a polling station but reenters the area the offence becomes cognizable. It is punishable with up to three months imprisonment or fine or both; d) *Breaches of official duty in connection with elections:* If an official, district election officers, returning officers, presiding officers, polling officers or any other staff assigned official election duty acts in omission of his duties this is a cognizable offence, punishable by a fine of up to five hundred rupees; e) *Prohibition of going armed to a polling station:* This is again a cognizable offence and it is punishable with imprisonment up to two years or a fine or both; f) *Removal of ballot papers from polling station:* This too is a cognizable offence and punishable with an imprisonment up to one year or a fine or both; g) *Offence of Booth Capturing:* This has also been made a cognizable offence and is punishable with a imprisonment of one year extending up to three years. But if this offence is made by a government servant, the punishment is minimum three years extending to five years; h) Other electoral offences such as fraudulently defacing or fraudulently destroying any nomination paper or fraudulent defacing, destruction or removal of any list, notice or other document affixed by or under the authority of returning officer or fraudulently defacing or fraudulently destroying any ballot paper or the official mark on any ballot paper or any declaration of identity or official envelop used in connection with voting by postal ballot etc, if committed by an election official become cognizable and are punishable with imprisonment which may extend to two years.

[13] As listed in footnote 8.

[14] These include a) any law providing for the prevention of hoarding or profiteering; b) law relating to the adulteration of Food or Drugs; c) provisions of the Dowry Prohibition Act, 1961 or any provisions of the Commission of Sati (Prevention) Act, 1987. Persons sentenced to imprisonment of not less than six months under any of these invite disqualification.

2.6 As for the Delimitation Act 1972, the duty of the Delimitation Commission was to readjust on the basis of the 1971 census figures the allocation of seats between different States in the House of the People and the division of each State into territorial constituencies. According to the Act, the Delimitation Commission was made up of three members two of whom, appointed by the Union government, should be or should have been judges of the Supreme Court or of a High Court and the Chief Election Commissioner was to be an *ex officio* member. However, the Constitution Amendment Act, 1976 placed an embargo on fresh delimitation – both inter-state and intra-state till publication of census figures taken after the year 2000. There have been no revisions of constituencies because of this embargo which is now sought to be extended further.

2.7 With regard to the administrative machinery required for the elections, each State has a Chief Electoral Officer (CEO) under the supervision, direction and control of the Election Commission. These CEOs in turn have District Election Officers in each district. The Election Commission may nominate an observer to watch the conduct of elections in a constituency or a group of constituencies. For every constituency, for every election to fill a seat or seats in the Rajya Sabha, and for every election by the members of the Legislative Assembly of a State to fill a seat or seats in the Legislative Council of the State, the Election Commission, in consultation with the Government of the State, designates or nominates a returning officer who is an officer of Government or of a local authority. The Election Commission may also appoint assistant returning officers and subject them to the control of the returning officer. Conducting the election is the duty of the returning officer. In addition, the Election Commission requisitions from the State government staff for appointing as presiding officers at polling stations and polling officers to assist these presiding officers. In fact, the staff deployed for elections not only consists of employees of Central Government and the State Governments but also of local authorities, autonomous bodies, Government Companies, etc. All these staff including the returning officer are deemed to be on deputation to Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly such officers are during that period, subject to the control, superintendence and discipline of the Election Commission.

3. The Magnitude of the Electoral Exercise

3.1 A general election in India is a gigantic exercise. It has been said that holding general elections in India is equal to holding polls in Europe, the United States, Canada and Australia all put together. Statistically, the number of voters in India is in excess of 600 million (60 crores). The number of polling booths all over the country adds up to about 900,000 (9 lakhs), making an average of 667 voters for each booth. However, the population is not so uniformly spread over unequal territorial constituencies and usually a polling booth caters to no more than 1200 voters even in highly populated metropolitan areas. Five persons are needed for each polling booth making a total of 4.5 to 5 million election personnel to be mobilized and administered. These polling personnel are drawn from the Central and State governments and other bodies. In addition to this about 2 million security personnel need to be used to maintain law and order on polling day. These basic figures give some idea about the enormity of the exercise to elect some 545 members of parliament. Once you take state and local elections into account the figures become truly staggering. India has upwards of about 3.2 million (32 lakhs) directly elected peoples' representatives spread over various tiers of governance.

4. Our Experience with Elections

4.1 Our fifty years of experience with successive elections at various levels has highlighted that generally people are able to deliver electoral verdicts in a democratic way. But this general statement hides substantial irregularities at the micro level. In fact, our experience with elections has also brought out to fore many distortions, some very serious,

that have crept in either due to loopholes in the electoral laws or due to the incapacity of the system to punish deviant and in many ways unacceptable behaviour. There have been constant references to 3 MPs – money power, muscle power and mafia power – and to 4 Cs – criminalization, communalism, corruption, and casteism. Basically all of this has vitiated the political atmosphere in the country and even compromised the legitimacy of the political process.

4.2 In recent years, in full recognition of the problems that the malformation of our electoral system has created, there have been many exercises aimed at reforming it. In the last ten years, there have been at least three major formal exercises by the government addressed to electoral reforms. These are:

1. The Goswami Committee on Electoral Reforms (1990)
2. The Indrajit Gupta Committee on State Funding of Elections (1998)
3. The Law Commission's report on Reform of the Electoral Laws (1999).
4. In addition, the Election commission has also documented its own thoughts based on the recommendations of these three organizations as well as based on their own experience of ground realities.

A resolution on electoral reforms was unanimously passed by the Lok-Sabha. This was moved by L K Advani and based itself to an extent on the Goswami Committee's recommendations.

4.3 There have also been many voluntary organizations and activists who have written extensively on the need for electoral reforms. And, there are a significant number of articles by many eminent citizens and columnists in newspapers and journals creating a sizeable literature on the subject. (See Select Bibliography) The suggestions made in this literature run into several hundreds and range from the very basic to the very radical. The Commission proposes to tabulate the suggestions received from public.

5. The Problems

5.1 In all of the above reports and literature, the main problems that have been generally recognized and debated are as follows:

1. Increasingly money hungry elections leading to unethical, illegal and even mafia provided electoral funding. The terribly high cost of elections in turn, has led to increased corruption, criminalisation and black money generation in various forms.
2. With the constituents/electors being the same for all directly elected representatives from the lowest Panchayat level to the Lok Sabha level, there are competing role expectations and conflict of perception *e.g.* the constituents expect even members of the Union Parliament to attend to their purely local problems.
3. With the electorate having no role in the selection of candidates and with majority of candidates being elected by minority of votes under the first-past-the-post system, the representative character of the representatives itself becomes doubtful or so to say their representational legitimacy is seriously eroded. In many cases, more votes are cast against the winning candidates than for them. One of the significant probable causes may be the mismatch between the majoritarian or first-past-the-post system and the multiplicity of parties and large number of independents.
4. The question of defections and the Tenth Schedule.
5. Inaccurate and flawed electoral rolls and voter ID leading to rigging and denial of voting right to a large number of citizens.
6. Problems in the conduct of elections:
    a. Booth capturing and fraudulent voting by rigging and impersonation.
    b. Flagrant use of raw muscle power in the form of intimidating voters either to vote against their will or not to vote at all, thus taking away the right of free voting from large sections of society and distorting the result thereby.

c. Involvement of officials and local administration in subverting the electoral process
d. Engineered mistakes in counting of votes

7. Criminalisation of the electoral process - increasing number of contestants with serious criminal antecedents.
8. Divisive and disruptive tendencies including the misuse of religion and caste in the process of political mobilization of group identities on non-ideological lines.
9. An ineffective and slow process of dealing with election petitions, rendering the whole process meaningless.
10. Fake and non-serious candidates who create major practical difficulties and are also used to indirectly subvert the electoral process.
11. Incongruities in delimitation of constituencies resulting in poor representation.
12. Problems of instability, hung legislative houses and their relation to the electoral laws and processes.
13. Last but not the least, loss of systemic legitimacy due to decay in the standards of political morality and decline in the spirit of service and sacrifice in public life.

5.2 Elections in parts of the country have become synonymous with intimidation of voters specially poorer sections, rigging, booth capturing, violence against and even killing of candidates and political workers, connivance of officials at the polling stations and at times a complete hijacking of the polling process by unruly and criminal elements. Unfortunately, over a period of time local police forces have also allegedly become involved in the above by becoming partisan and by being guided by local loyalties, caste considerations, as well as by being easily bribed for connivance. What is disturbing are the sporadic allegations of even the central forces acting in a partisan way in some places. Reports of above irregularities in the conduct of elections have become so commonplace that these are not news anymore. Many suggestions have been made to address these issues and most relate to implementing our existing rules and laws effectively. But experience has shown that laws in a low accountability society like India are known more for violation than for any degree of compliance.

6. The Suggested Reform Options

6.1 The suggestions for reform can generally be placed into three broad categories. The first category attempts to tackle the problems within the boundaries of the current electoral system. The second category goes a bit further and takes a stand that the present electoral system itself needs to be modified. (*The emphasis is on modification or reform and not on altering the basic framework of the system*). Both of these categories have to be dealt with together because there is considerable overlapping between the two and we have to view reform suggestions as an integrated package and not piecemeal.

6.2 There is a third approach which seeks to strike at the root of the problem which is that of the terrible high costs of elections and the question of finding legitimate funds for the purpose. The suggestion is to cut down the costs drastically by following the Gandhian principles of decentralization of power down to the grassroots levels and building multitiers of Government from below in a bottom-up instead of the present topdown approach. It is stated by those advocating this approach that the only way to conduct a meaningful electoral exercise in this country is to have direct elections only at local levels with the upper tiers filled by representatives indirectly elected by an electoral college consisting of the representatives manning the lower tiers.

A true democracy as advocated by Gandhi ensures that local, state and national representatives are accountable to the people for local, State and national matters respectively through effective transparency. Such one-to- one accountability may promote responsible politics and attract patriotic and competent professionals and social workers to politics. Our present system based on diffused accountability breeds corruption and attracts self-seekers to politics. For this breed, interests of national development, welfare of the people and needs of god governance take lower priorities, if any.

The elected representative is too far removed from the people as there are an average of one million voters for each Lok-Sabha constituency spread over a large geographical area. To influence the choice of such a large and geographically dispersed number of voters, social action on the part of the candidate is totally inadequate. And, this creates space and scope for using both money and muscle power. It is no surprise therefore that the candidates have to spend huge amounts of money at the time of campaigning to "purchase" the votes of these distant voters. And this is done mostly through a host of intermediary brokers who become the link in this transaction. These huge election expenses breed huge corruption. This also means that the electors are in no position to hold the candidate accountable nor does the candidate consider himself accountable to these people.

6.3 Based on the Indian ethos, Gandhi had advocated a low-expense election system linked with watchdog councils and separate elected chief executives at each local level. He proposed a highly democratic and, what is more important, a highly accountable system. More thought out and more in keeping with the evolution of political culture in our country, many scholars have in recent years adapted these thoughts in their work and advocated a system of direct elections only at the grassroots of the Indian democracy. They propose that without in anyway interfering with the basic structure or features of the Constitution and while fully continuing the parliamentary system, some reforms be brought in the electoral system. Direct elections should be held on the basis of adult franchise at the level of Panchayats and other local bodies. Panchayats and other local bodies could elect the zila parishads and they could together elect the State legislature. These three could elect the Parliament and in the last analysis the four of these could elect the President. The Prime Minister and the Chief Ministers could be elected by the Parliament and the State Legislatures concerned. The President, the Prime Minister and the Chief Ministers in order to be elected should each necessarily secure no less that 50%+1 of the votes cast. Once elected, the Prime Minister or a Chief Minister should be removable only by a constructive vote of no-confidence.

The fact that the directly elected representatives are all at the grassroots level where they are in contact with their electors on a daily basis, would mean that their accountability to the people will always be high. Corruption will not get the kind of boost and inducement that it gets presently because of an unaccountable remote representative doing what he pleases.

6.4 The representatives elected at the grassroots level will also have to win on a 50%+1 vote principle so that their appeal is more universal than parochial. They would then be truly legitimate representatives of their people. In the alternative, at the lowest tier double-member or multiple member constituencies could be considered. Local elections do not entail heavy costs. The cost to political parties of indirect State and national elections will be low. Since the national and State governments will handle only higher-level infrastructure and coordination, indirect elections backed by party primaries will facilitate emergence of the best leadership. The ills in the present "first-past-the-post" system will be eliminated because local governments will handle all social issues and State and national governments shall be accountable to local governments as advocated by Gandhi who will have elected them. This will nurture culture, education and values and gradually eliminate social discords. Also, this election process, it is claimed, has the greatest potential to bring public service spirited and sacrifice oriented people to the fore.

6.5 There are strong arguments in favour of this Gandhian model and it would be worthwhile that this option is studied deeply and debated widely.* Part II, however, discusses

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* Those oppose to this approach, however feel that it may become easier to purchase/terrorise electors if their number is small and that it would be debatable if the cost of elections would increase or decrease on adoption of the proposed model of elections. They would like it to be examined if increased importance of local elections and small number of electors in the proposed system would lead to high cost of local elections; increased incidents of violence in local elections; and increased incidents of bribery, coercion, intimidation, winning the votes on sectorial considerations of caste, religion, etc. Thus, much can be argued on either side.

some reform options that may be possible and found necessary within the four walls of the existing system of elections.

PART II

7. Electoral Rolls and Voter ID

7.1 The beginning of the electoral system is the preparation of electoral rolls. It is, by now, a well-established reality that electoral rolls in India have large-scale errors in them. The Goswami Committee on Electoral Reforms also formally acknowledged it and stated rather tactfully that there *were acts of "omissions and commissions" on the part of officials in addition to the flaws in the system itself.* An indirect way of stating that the system was being subverted.

The Dinesh Goswami Committee recommended a more stringent punishment for breach of official duty in connection with preparation of electoral rolls (see para 1.3, chapter 4, 'Electoral Rolls' of the Report of the Dinesh Goswami Committee). The said recommendation made by Dinesh Goswami Committee has since been implemented with the enactment of Representation of People's (Amendment) Act, 1996.

Activist organizations like for example the Hyderabad based Lok Satta have conducted sample household surveys and found an incredible 40% to 50% errors in urban electoral rolls. According to them, even a casual glance at electoral rolls in urban areas shows the obvious discrepancies and inaccuracies. Taking advantage of these defects, political parties and influential persons manage large-scale registration of bogus voters, or large-scale deletion of names of "unfriendly" voters. It is quite possible that in the rural areas there may be fewer errors, but informal estimates by most observers put these errors at 15% to 20%. These are all educated guesses and the real position is not known. What is known, however, is that there are serious irregularities and a large number of electorate is disenfranchised partly by default and partly by impersonation that is made easy by the current flawed electoral rolls. Given that large swings in seats that are won are caused by small swings in voting percentages, and again given that the margins of victory are generally narrow, the need to have accurate electoral rolls becomes all the more critical. This apart, electoral rolls are very close to people and the irregularities in them are exposed very quickly at the grassroots level. There have been cases of entire sections of villages disenfranchised leading to immense cynicism. Therefore, the legitimacy of the whole electoral process is compromised because of faulty electoral rolls.

7.2 It is easy to see that any serious attempt at electoral reform in India must tackle the question of faulty electoral rolls at the very outset. If this is set right, at least some of the other problems will thin out. Why are the electoral rolls everywhere full of inaccuracies? Some of it may be the result of inefficiency and a flawed system but certainly, as pointed out by the Goswami Committee, some of it is also the result of purposeful tampering which may happen due to partisan attitude of the local officials who may have their own local affinities and/or may be bought over by vested interests. The many rules and laws to punish erring officials in this respect have been totally ineffective. Recognising this, the Goswami Committee had recommended that more stringent punishment should be provided for breach of official duty in this regard. While commending the 1996 Amendment to RPA we need to recognize that punishment is not a substitute for systemic corrections.

Basically we should have a reasonably fool proof method of preparing the electoral roll right at the lowest constituency of a voter and we should supplement this further by creating a foolproof voter ID. And both should be related to each other. The benefits of this exercise at the bottom level of our democracy would be immediate in the sense that it would serve the objective of contributing to cleaning up the electoral process and curbing impersonation and rigging. In the long run, it would create widespread belief in the fairness of our electoral process thereby providing it a high degree of institutional legitimacy. We would do well to

remember that significant political change happens at the lower levels first and only then spreads to higher levels.

7.3 The Goswami Committee had suggested that Post offices should be made the focal point of *preparation* and maintenance of electoral rolls as well as keeping of electoral rolls up to date and the upkeep of records. This may or may not be the solution particularly because in this case the responsibility is diffused over different organisations, which usually makes it nobody's responsibility. If there is non-compliance, there is no way of pinning it on any one organisation because there will always be insurmountable problems of coordination and there will be no way of taking any stringent action against anyone. The work will automatically stabilize at a low level of efficiency. Also, post offices today do not enjoy the credibility that they did earlier. Their efficiency stands seriously eroded.

7.4 In today's technological age we should not be talking about a generally antiquated post office structure of the country, where government servants work to their own notions of efficiency. Given the technology today, it is not a difficult task to create a good scheme of things, systemically sound; for the preparation and maintenance of electoral rolls and voter ID cards. The Election Commission says it is alive to these problems and in May 2000 it has issued instructions for a new voter ID card numbering system with a unique code for each of the 4072 assembly constituencies of the country. Some of what is suggested below may be already at least partially in the action pipeline by the Election Commission. To take the scheme of things a few logical steps forward, it is felt that the effort should not limit itself to Assembly constituencies and through them to Parliament constituencies only.

7.5 In this scheme of things, it is most essential that there is a coordinated effort at preparing accurate electoral rolls beginning at the lowest constituency that a voter belongs to. If this is done well, everything else will fall into place. At the moment the EC is responsible for preparing the electoral rolls for assembly and parliamentary constituencies. The State Election Commissioners are responsible for electoral rolls for local body elections. In some States, the EC and State Election Commissioners have agreed to coordinate the preparation of electoral rolls. This is as it should be. There should be no duplication of effort and a single exercise should be enough for preparing electoral rolls covering the lowest to the highest constituency that a voter belongs to. This makes perfect administrative sense. The task could be handled by the E.C. or by the SECs or by the two in coordination. This means that at the level of gram panchayat (or the relevant local level), a voter must have his/her name properly placed on the electoral roll. This would automatically identify the voter to be a part of the electoral roll of the assembly constituency, which contains this particular panchayat. Likewise, the voter would be automatically identified on the electoral roll of a particular Lok Sabha constituency, in which both his assembly constituency and panchayat are included. In addition the identity of the voter could easily be linked to his polling station.

7.6 The electoral rolls should be updated constantly and not just at election time. Every 1st of April, the electoral roll as of previous 31st December should be made available. This information should be posted on the web site of the Election Commission and CD ROMs should be available to all political parties or anyone interested, at a reasonable price. In any case, the cost of this will only be a fraction of a printed list. (It is understood that this has been already initiated by the EC). Prior to elections these rolls should be printed and publicly displayed at the post offices in each constituency, as well as at the panchayats or relevant constituency HQs. This would improve public access to this information which today, even though theoretically available, is very hard to get in practice. As corrections take place, the rolls would be updated through addendums on the web and therefore be available straightaway to interested parties. At the time of elections it is these latest rolls that will be made available at polling stations. We may use the help of post offices covering various polling stations in preparation of these rolls as well as to display and make available to general public these rolls at election time, but the responsibility for accurate execution will remain with the EC/SEC.

7.7 Electoral rolls are intrinsically linked to the question of Voter ID. Election Commission is said to have taken action to help in issuing of proper voter ID cards in various States and these are reportedly at varying stages of completion in most States at the moment. The pity is that these have been issued to an old design that does not create a unique ID number for each voter. The new cards to be issued now will incorporate the constituency code as designed by the EC but as mentioned earlier this is an assembly constituency upward exercise only. It appears from the records at the EC that about 2/3rd of the voters in the entire country have already been issued the old voter ID cards. Haryana with a reported 88% and Bihar with a reported 37% are at the head and the tail of the table of performance of all States in this regard. The exercise for identification of voters is said to have worked well in the last elections in Haryana where some identification document was made mandatory for voting. Most, though not all, voters brought their voter ID cards.

7.8 The Goswami Committee had recommended a scheme of a multi purpose photo identity card in coordination with other ministries and government departments so that the possession of this card would become compulsory for all adult citizens. In their view, this citizenship card could be used as an ID for many benefits that are provided by government agencies. For example the issuance of a ration card, a passport, driving licence, any agricultural inputs that are distributed either free or at a subsidized rate, telephones for individuals, applications for a government or even private sector jobs, admission of wards to schools or colleges, for opening bank accounts, for transfer of one's property and many such things. In other words, the possession of this identity card would be in the citizen's own interest and therefore he/she would make sure that this was applied for in the proper format. Because the present voter ID card, in various stages of preparation in different States, is not a multipurpose card, whatever number of cards have been issued, further issue of the same should be put on a hold until these are redesigned in the fashion outlined below. After all the remaining cards are issued, the older ones should also be replaced over a period of time.

7.9 This ID card apart from all necessary personal details should list one visible identification mark. This is necessary as with age the photo can look very different after a while. If it is an old photograph then sometimes the likeness is missing. Also a visible identification mark is difficult to reproduce even if the photograph is fraudulently changed on the card. For an electorate of about 600 million on an all-India basis, an automated and well-designed online system, broken down to district level, can be created without much hassle. As already stated, the basic work in this direction has been done by the EC, so the learning curve is already favourable. It just needs to be extended to the lowest level constituency. PRIs and local post offices should be involved to help with the creation and distribution of these IDs, but only to help not to control. When the ID is right at the Panchayat level, it will be by design, right for each higher constituency.

7.10 But, of course, if the card is multipurpose and required compulsorily, the implementation of this suggestion would also make it obligatory for the government to create an agency that would do this job in a citizen friendly way. The idea here is not to create one more agency, which can extort money from the hapless citizen just to issue him/her the ID card. This is a real possibility if we have to go by our experience of the last few decades, which indicates that even for a ration card a citizen, particularly from lower economic classes, must pay money. It is better to recognize it at the outset and work our way around it.

This job may be carried out by a professional agency/ies appointed by the Election Commission. There should be a pre-qualified consultancy company appointed to draw up specifications in consultation with the EC. This pre-qualified consultant would also oversee that the contracted companies do their job efficiently. When private agencies are doing this job and persons responsible can be held accountable for not doing it accurately, the results will contain only a tiny percent of acceptable human errors. The database containing these electoral rolls would be centrally computerized by the EC (this is already being done) and each Voter would have a unique bar-coded ID number. The card would also have a number/code that would indicate the holder's base constituency e.g., the panchayat level or the relevant local constituency, leading to the next higher level of constituencies till the

parliamentary constituency. Any change of address would automatically change everything else except his unique ID Number. This ID number would be for life and in the long run the best bet against any impersonation. The consultancy organization and through it the EC would maintain a database of all polling stations with their respective association to the relevant constituency *i.e.*, Panchayat, Nagar-Palika, Municipal Corporation, Assembly or Parliament. With technology available today this can be easily done. There is enough expertise available within the Election Commission, if we go by their web site, to guide this exercise. In any case India is in the forefront of information technology and this is an easy job. The first time exercise may be a large one but subsequently it will fall into a routine.

7.11 Like in the USA, the penalty for false declaration for this purpose, or any tampering with the card or impersonation based on a stolen or fraudulently prepared card should be heavy with a prompt mandatory prison sentence and a heavy fine. The law should take this into account. If it is a multipurpose card, it may even be feasible to charge a small amount for its issuance, say Rs. 10 in urban areas and Rs. 5 in rural areas. This would make it partly self-financing and would add personal value leading to voters taking more care of it rather than keep applying for duplicates.

7.12 The benefits of a ID card designed in a technology-friendly way are immeasurable because in future it might even be possible to have hand held devices at each polling station, beginning with sensitive constituencies straightaway, which would eliminate any invalid card automatically. This would include any and all fraudulent duplicates because the ID card numbers will never match. There is already a high degree of urbanization in India and in all likelihood it will accelerate. All changes of constituencies for adults, moving from rural to urban areas or from one place to another as economic opportunities change within regions, will become easy with every citizen having an ID with a unique number.

7.13 An extension of the arguments above is that all elections should be under an integrated institutional electoral machinery. The local level elections have been made the responsibility of State Election Commissioners. And, different States have different rules of the game. This may need to be reviewed because in reality the local elections are a lot more important for cultivating our grassroots democracy. If democracy is subverted at the local level, it is subverted all the way up. We also need to remember that it is the local elections that really can make a difference to people's lives. The fear of going to polling stations with an independent mind and free spirit must be eradicated first of all at this local level. Only then can we remove it for other far removed elections.

7.14 The impact of proper electoral rolls and voter ID together with Electronic Voting Machines (EVMs) will be first felt at the local level and will help create a level playing ground for State and national elections. It will send a message through the system that the country takes all electoral exercises seriously, which are by definition designed to give people voice.

8. Electronic Voting Machines

8.1 Introduction of Electronic Voting Machines in all constituencies to counter the possibilities of booth capturing may deserve consideration. In case of the sensitive constituencies particularly, this could be done straightaway. It is suggested that as a matter of policy, the use of EVMs should be increased at as rapid a rate as possible. The movement in this direction has already started as a result of the EC's initiative and EVMs are already being used successfully in limited constituencies and all bye-elections. Any doubts about this technology were amply removed during the deliberations of the Goswami Committee. Not only were the EVMs satisfactorily demonstrated to all politician members, several electronic experts of the Government of India also testified that the machines could be used at our elections without any misgivings. The advantages of EVMs in preventing large-scale rigging are quite apparent as the machine locks up and will permit only one hit every so many seconds. Currently this has been set at five seconds but it can easily be changed if so required making the process of even keying in a few bogus votes rather time-consuming at each polling station. This by itself would prevent rigging on a large-scale due to time

constraints. This is borne out by ground level experience wherever these EVMs have been used in urban and in rural areas. This also makes counting easy and non-contestable and theoretically the results could be available within a very short time if the system wanted to make prompt announcements of the winning candidates.

9. Booth Capturing and Rigging

9.1 On the questions of booth capturing, rigging and intimidation of the voters, the proposals of the Goswami Committee to the effect that EC should be empowered to take more stringent action should be accepted and implemented in full.

Vide Representation of People (Amendment) Act, 1996, in addition to returning officers, observers appointed by the Election Commission of India have also been empowered to send report to the Election Commission in respect of booth capturing, etc., and the Election Commission authorized to issue appropriate directions for countermanding the elections or order repelling in certain polling stations where booth capturing has taken place, on the basis of such reports (see Section 20B of R.P. Act, 1951).

Other proposals of the Committee included the following:

(i) Under section 58A of the Act, the Election Commission should not only be empowered to countermand the election and order a fresh election as now provided under the law, but also should be empowered to declare the earlier poll to be void and order only a re-poll in the entire constituency, instead of a re-election there, depending on the nature and seriousness of each case.

(ii) Election Commission may also be empowered to initiate investigations of booth capturing and other violations of the electoral law through the Central or State police investigating agency and/or by the establishment of special courts and/or by appointment of public prosecutors.

To further discourage booth capturing/the EC might consider having some form of tamper-proof video cameras or surveillance equipment as a deterrent in sensitive areas. But, if this is done, the punishment to offenders should be swift and heavy.

10. President's Rule during Elections

10.1 Chief Election Commissioner Shri Gill has for sometime been suggesting that in order to free the electoral processes from the partisan influence of political parties in power and the misuse by them of official machinery in the States, President's rule should be promulgated over all the States for the duration of elections, say for about two months. Shri Gill perhaps has the Bangladesh experience in view. The analogy however is phoney. (1) There is no provision for President's rule over India. (2) President's rule over the States would in effect mean removal of the elected Government of the majority party in the State and in its place rule by the Government or the party or parties in power at the Union level acting through Governors. (3) Nominated Governors acting at the behest of the Government in Delhi are not likely to be more impartial or above board. Before any such proposals can even be considered it may be necessary to review the procedure and criteria for appointment of Governors. (4) Absolute power in any hands is bad. The proposals of the Chief Election Commissioner, pushed to their logical conclusions, might imply that – with the President's rule imposed during the elections all over the country – the primacy of the powers of the Chief Election Commissioner, though technically confined to election process, might tend towards its own ascendancy in the governing process. These possible consequences might have to be contemplated before any such proposal is accepted. However, to the extent of making the power of superintendence of the Chief Election Commissioner effective to ensure the purity of the electoral process, appropriate alternative proposals need to be examined.

11. Communal and Caste Hatred

11.1 Campaigns which are crafted to create or exacerbate tensions between communities and/or to incite feelings of hatred on the basis of caste , community, religion, race, or language attract disqualification at present but effective implementation of laws is lacking. This deserves the highest degree of attention and in addition these offences should be punishable with mandatory imprisonment for three years instead of discretionary as currently provided under section 125 of Representation of the People Act, 1951. This should be within the powers of special courts for election petitions proposed later in this paper. However, if the suggestion to only have winning candidates on the basis of 50%+1 vote also made elsewhere in this paper is accepted, candidates and political parties would have to broaden their appeal and in their own self-interest their agenda and rhetoric will change.

12. Use of Muscle Power



12.1 To curb muscle power, it is important that fire-arms are not allowed to be carried on polling days anywhere in the vicinity of the polling stations. Not only the present law in this respect which makes it a cognizable offence needs to be effectively implemented, but imprisonment in this case should be made mandatory and stiff. The Election Commission should increase the number of observers in sensitive constituencies and take rapid action on their request under Section 20B of the RPA as amended in 1996.

13. Criminalisation of the electoral process

13.1 "A candidate contesting in Bihar has 174 criminal cases against him and he is on the most wanted list not only in Bihar but in Delhi, Mumbai and Uttar Pradesh. Yet flouting all rules and regulations he is openly campaigning" ..... "a sitting MLA is now contesting as an independent while he is still serving a life term in jail. He was convicted in a kidnapping case but an appeal has been entered in the high court." (*Times of India,* 11.2.2000).

The above is just one of the many "no longer shocking" quotations from a newspaper with regard to well-known criminals contesting elections with impunity. Due to reasons that need not be listed here, politics and therefore elections in India have progressively attracted criminal elements. During the election period, particularly in the states of Bihar and U.P., newspapers are usually full of information about the number of criminals in the field sponsored by every party. It is a disgrace for the country that several hardened criminals who may have many cases of murder, rape and dacoity against them are actually occupying the seats in the highest representative forums of this country namely the State assemblies and the Lok Sabha.

13.2 Vohra Committee appointed by the Government had stated in strong terms that the nexus between crime syndicates and political personalities was very deep. According to the CBI report to the Vohra Committee: "all over India, crime syndicates have become a law unto themselves." ..... "Even in the smaller towns and rural areas, muscle-men have become the order of the day. Hired assassins have become part of these organizations. The nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country. The existing criminal justice system, which was essentially designed to deal with the individual offences/crimes, is unable to deal with the activities of the Mafia; the provisions of law in regard to economic offences are weak; there are insurmountable legal difficulties in attaching/confiscation of the property acquired through Mafia activities". The committee quoted other agencies to state that the Mafia network is "virtually running a parallel government, pushing the State apparatus into irrelevance." The report also says "in certain States like Bihar, Haryana and Uttar Pradesh, these gangs enjoy the patronage of local politicians cutting across party lines and the protection of the functionaries. Some political leaders become the leaders of these gangs/armed *senas* and over the years get themselves elected to local bodies, State assemblies and national parliament. Resultantly, such elements have acquired considerable political clout seriously

jeopardizing the smooth functioning of the administration and the safety of life and property of the common man causing a sense of despair and alienation among people."

13.3 The visible presence of many criminals is in fact a very large factor in the loss of legitimacy for politicians as a whole. This is also extremely dangerous for the country because apart from distorting the political culture of the country, criminal elements progressively get to influence leadership and governance. The spectacular success of some criminals in politics invites emulation. The signal to the society by such a process is that it is acceptable to muscle your way through everything because in the last analysis the system rewards you. A petty *dada* soon becomes a respectable and feared representative of the people. And many become ministers with power to distribute spoils and parade themselves as rulers. It is a surefire recipe for long-term disaster.

13.4 Although the exact numbers of criminals in political positions are not known, the EC at one time was reported to have stated that the number of candidates with criminal records who contested Lok Sabha 1998 elections was around 1500 out of a total of 13952. They were under prosecution for crimes like murder, dacoity, rape, theft and extortion. As many as 820 of these 1500, came from Bihar and U.P. If the objective of this public statement was to even moderately influence political parties to stay away from criminals, the EC failed because parties simply shrugged off this information and continued to induct criminals. Of course, the *raison d'être* being that it was these criminals who the parties thought could win the election for them.

13.5 From the side of the administration there has been a half-hearted attempt to stop these criminals because of the fact that all political parties use these criminals in their attempt to ensure themselves a certain number of seats in the State Legislative Assemblies as well as in the Lok Sabha. But this issue really needs to be tackled head-on. The Law Commission suggests unambiguously that if charges relating to certain crimes have been framed by a competent court against a person then this particular person should not be permitted to contest elections. This suggestion may pose problems of misuse but it needs to be considered, may be with some modifications.

13.6 There is a school of thought that fears that such a regulation might be used against innocent candidates who are perceived to be a threat to those in power. Also, fears are expressed that such regulations might be used against dalits and members of other socially backward and poor communities or against political workers participating in movements and agitations. Given India's record of corruption, it is conceivable that false framing of charges may happen. Therefore, a suggestion of having special electoral courts set up by the Election Commission for pronouncing summary decisions in regard to eligibility may be considered. If there is a candidate against whom charges have been framed by the police and he wishes to contest an election, he may take the matter to this special electoral court. The decision need have no bearing on the actual case, which as we know might go on for years. This may help to keep habitual and hardened criminals away. But, the suggestion merits further discussion from a judicial point of view.

13.7 In 1997, The EC issued an order that candidates for election to State Assemblies and Parliament need to submit an affidavit about their convictions in cases covered by Section 8 of the Representation of the People Act 1951. The EC held that even if the trial court had convicted the candidate, this was enough to attract disqualification. But there are other issues. The Election Commission wrote a letter to the Prime Minister in September 1997 that there were grave incongruities in the existing provisions of sub-sections (1), (2) and (3) of the said Section 8 of the Representation of the People Act, 1951, illustrating the case of a rapist, convicted and sentenced to ten years imprisonment, being disqualified only for six years under sub-section (1) and being free to contest elections, even while in prison serving the last four years of his sentence. The Commission had suggested that the law may be simplified by amending said Section 8 to provide that whoever is convicted of any offence by a Court of law and sentenced to imprisonment for six months or more should be debarred from contesting elections, for a period totalling the sentence imposed plus an additional six years. This

suggestion has been supported by several other organisations and concerned citizens and therefore merits full consideration.

13.8 Currently, if a member of any House is convicted, there is no action for three months and if the case goes for an appeal within this time, then no action is taken till the appeal is disposed off. This may not be very justified. If an elected representative gets convicted on charges related to specific crimes, he should be required to withdraw until he is cleared. It is also worth considering that when political parties are seen to abet criminalization by fielding criminals, there should be some provisions to enable action against them including their derecognition.

14. Election expenditure – the money power

14.1 This is one of the most critical problems facing the Indian electoral system. As against the limits prescribed by our electoral laws, the campaign expenditure by candidates is in the range of about twenty to thirty times the said limits. As a result contesting elections is becoming a very costly affair, which keeps many good candidates out and it also creates a high degree of compulsion for corruption in the political arena. This has progressively polluted our entire system. Corruption, because it erodes performance, becomes one of the leading reasons for non-performance and compromised governance in the country.

14.2 The sources of some of the election funds are believed to be unaccounted criminal money in return for protection, unaccounted funds from business groups who expect a high return on this investment, kickbacks or commissions on contracts etc. No matter how we look at it, citizens are directly affected by it because apart from compromised governance, the huge money spent on elections pushes up the cost of everything in the country. It also leads to unbridled corruption and the consequences of wide spread corruption are even more serious than many imagine. When people find progressively that they are trapped in a corrupt environment of no hope, this will provide a possible burning ground that can ignite given a spark. Electoral compulsions for funds are really the foundation of this whole super structure of corruption.

14.3 In the ultimate analysis, the reality seems to be that political parties and serious contenders have a single point agenda "to win" and then to remain in power. Everything else, whether issues of good governance or even long term national interest, come second. Once we accept this, we realize that political parties as well as candidates will take all those actions that contribute to this objective. Both political parties and political candidates, in order to win, will do all they can and all that the system will permit them to do. Political parties and candidates have found that by spending money on intermediaries to buy votes, by distributing liquor and other goodies, by directly bribing officials, and by patronizing, through the spending of money, most rowdies and "goondas" of the locality, their chances to win become better. This is what has become the norm therefore. They do this, however, because the system, directly or indirectly, permits them to collect a far greater sum of money if they win the election. Therefore, the money spent on elections is like a mandatory investment. In the eventual analysis, costs can only be controlled if we control the way in which politicians can generate money through corrupt means once they are in power. If this is not entirely possible within the current scenario, then whatever rules and regulations we bring about can only have a limited influence toward achievement of this objective.

14.4 The question is how do we go about reducing the role that money can play? The answer to this one is not easy. The fact is that political parties need tons of funds for political activity, which includes campaigning for elections. Political parties should have legitimate sources of these funds. If they don't have these funds legitimately and then if (and this is the critical part) **the system permits them to do so**, they will find illegitimate funds. This is what has been happening in India and with illegitimate funding the spending has also been comparatively limitless. One party started it but others soon caught on. However, it is also true that if the system did not permit the kind of spending that is happening, the various candidates would have found their equilibrium at a much lower level.

14.5 Various attempts have been made in the past to regulate this expense; as well as various suggestions keep coming through in this regard. The primary suggestions are two-fold: first set relates to fixing "more reasonable limits" for campaign expenditure. The argument is that election campaigning costs money. It is best for us to recognize this and estimate what would be reasonable costs taking everything into account – the need for public meetings, handouts, election workers, agents, posters, vehicles, staff movement, loudspeakers and microphones and communications etc. If, the argument goes, we fix "reasonable" limits for all of this, then the candidates would not have to spend more than these amounts that are permitted. There would be no need for illegal spending. This suggestion has been made by all - the Goswami Committee, the Indrajit Gupta Committee, the Law Commission as well as a number of other organisations. In fact, the limits have been raised to Rs.15,00,000 for most Lok Sabha (compared to Rs.4,50,000 before) and Rs.6,00,000 (compared to 1,50,000 before) for most assembly constituencies. These limits also may need to be continuously under review by the Election Commission and perhaps be linked to the cost of living index. But, the basic question will always arise that if a Lok Sabha election costs upwards of a crore then how does fixing the limit at 15 lakhs help? And in any case where is even this 15 lakhs going to come from? That means there must be an active plan to reduce the cost of election to this magical figure of 15 lakhs. But clearly an approach such as this has to be also backed up by a strong deterrent against overstepping the limits sanctioned. On this there is not much action.

14.6 The other problem is that the present rules have a significant loophole in the shape of explanation 1 to section 77(1) of the Representation of the People Act 1951, under which the amounts spent by persons other than the candidate and his agent themselves, are not counted in his election expenses. This means that all extra expenditure, even when known and proven, can be shown to have been incurred by the party or by any friends and it remains outside of the enforceable limits. Even the Supreme Court has commented that this needed to be changed. However, this remains as it was. This anomaly should be immediately removed. For, in any case the returns of election expenses filed now are almost invariably false and there is hardly any way the prescribed limits can be really enforced even though the Supreme Court has laid on the candidate the onus to prove that the extra expenditure was not from his funds.

The second set of suggestions is that political parties as well as individual candidates should be subject to a proper audit of the amounts they receive and spend. At the end of the election each candidate should submit an audited statement of receipts and expenses, head-wise. Any violation or misreporting should be dealt with strongly. These two suggestions have also received agreement from most activists and non-governmental organisations. Most persons recommend that these be implemented.

14.7 The Indrajit Gupta Committee on State Funding of Elections portrays a third set of suggestions. According to them, there should be at least a partial though non-cash state funding of elections. Theoretically, at least, it means that the candidates and parties have to spend less for campaigning with the state taking care of some aspects. Whatever levels of permissible expenditure we may fix, unless we have a) a reasonably foolproof method of enforcing these and b) to take action when these are violated, these exercises may turn out to be meaningless. At the current moment we do not seem to have any foolproof mechanism. Also for obvious reasons, the political will to enforce this appears to be missing. Regarding partial state funding, till such time that there is an effective systemic acceptance of full audit of party funds including a full audit of campaign funds, deletion of explanation 1 to section 77(1) of the Representation of People Act 1951, a foolproof mechanism to deter expenditure violations, and until the government is convinced that these improvements have been institutionalised and are no longer being breached, the question of state funding should not even arise. The Law Commission in their report have voiced similar sentiments. To quote them, "We are, therefore, of the opinion that the proposals relating to state funding contained in the Indrajit Gupta Committee Report should be implemented only after or simultaneously with the implementation of the provisions contained in this report relating to political parties

viz., deletion of Explanation 1 to Section 77, maintenance of accounts and their submission etc., and the provisions governing the functioning of political parties contained in chapters I and II of Part IV and chapter I of Part III. The funding even if partial, should never be resorted to unless the other provisions mentioned aforesaid are implemented lest the very idea may prove counter-productive and may defeat the very object underlying the idea of state funding of elections." If any state funding is permitted without the above it simply means an additional burden on the state exchequer and the taxpayers. And, for no particular public or systemic benefit whatsoever. Political parties and candidates will happily accept this additional bounty and still continue to spend whatever else they perceive is required by the competitive ground realities in order to win elections. If they get elected, they find ways to repay it many times over.

14.8 Another view on state funding is that a national election fund should be created out of the consolidated fund of India in order to specifically subsidize election expenses and more generally to support legitimate political activity. The suggestion is to pay at the rate of Rs. 5 or 10 for each vote polled by a political party in any constituency provided they have polled at least 2 % of the votes cast. It should be compulsory to get audited for the use of this fund and to spend at least half of this amount on election campaign. Parties which do not hold internal elections to its highest decision making body should be ineligible for this fund. The legitimacy of any such suggestion may be extremely doubtful. In any case the necessary control mechanisms simply do not exist.

14.9 Sensibly enough, an indirect way of state funding has in fact already been put into practice in the form of giving recognized political parties far greater time, free of any charge, on equitable basis on State owned television to use for their election campaigning at the time of general elections. But this does not seem to have helped in reducing any campaign expenditure.

14.10 The situation can be helped only by bringing transparency in this whole exercise. Transparency fights corruption and deviant behaviour. We strongly feel that we need to create more and more transparency in the receipt and spending of election expenses. It is a bit odd that while we do talk about the expenditure statement from the candidate, we do not ask for the source of this money.

14.11 The Goswami Committee, for reasons that appear more political that economic, recommended that there should be a ban on any corporate or company donations to political parties or political candidates. The only purpose a recommendation or rule of this kind serves is that it drives contributions underground. Political parties need money and this money is going to be generated one way or another. If through our misguided rules and regulations we block legal and more transparent sources of funding, we can be totally sure that illegal and non-transparent channels will immediately open up and substitute for the legal ones. There may be no justification to ban corporate contributions including contributions from trade unions and professional associations. In fact, these should be permitted within the limits that already exist. The effort should be to make them transparent. Thus, all donations and contributions should be allowed legally, subject to over all limits, as was the case prior to 1985. In fact corporate donations should be encouraged by making them tax exempt within certain limits so that maximum funds become visible. For example, tax exemptions should be limited to say 25,000 for individuals and 10,00,000 for companies provided that the contributions are made to party funds and not to individuals. In the case of corporate contributions, the Board of Directors may approve up to say 1,00,000 and anything over this amount may be approved by the shareholders. Political funding should be separate head in the accounts and annual report of the company. This will ensure transparency. The tax loss to the state should be treated as partial state funding of the electoral process. The more we push contributions above ground into public eye, the better control we will have in the end. There may be a clear rule that all political party accounts, much like the accounts of a public company, should be published yearly with complete disclosure under pre-determined account heads. Failure to do so should invite action including de-recognition. Also it may be made obligatory for campaign expense accounts – both receipts and expenses - of all candidates

being made public in their constituencies. In addition, a full audit should not only be mandatory but it should be enforced by Election Commission by appointing a council of at least two auditors say for 10 constituencies each. The funding issue is quite universal and almost everywhere including U.K. and U.S.A. the debate on this has focused on a high level of transparency as the only long term effective instrument. It is felt that only transparency can create a strong public opinion or a possibility of public censure and as a result have a moderating influence on excessive or devious political sources or application of funds.

14.12 Transparency means that both, the means of finance as well as where these have been spent are listed out in an audited statement. If we can make the politicians list the sources of their revenue, this can be a damper because each contribution that they show can be checked back by the income tax authorities. In the first instance there will be much resistance to this idea both from the politicians and also from the business. What if they have contributed to the wrong party? The opponent who wins might make their life miserable. But over a period of time, this may settle down and the long-term effect may be beneficial. Also instead of looking at creating more rules and regulations for monitoring electoral expenses, there should be a serious attempt at reducing election expenses and this can be done by perhaps changing the ground rules for electoral campaigns – partly by encouraging the use of electronic and digital technology to campaign at state cost and simultaneously by totally and effectively banning other overt and wasteful *tamashaas* of campaigning including the use of auto-traffic to ferry people to election rallies of any kind. The maximum money is spent by parties to ensure attendance for their so-called popular rallies. It should be possible to stop this by common agreement between the political parties/candidates or by law. This apart, the Law Commission and many others have suggested that some reasonable restrictions should be placed on the following:

1. Wall writings
2. Display of cut-outs, hoardings and banners
3. Hoisting of flags (except at party officers, public meetings and other specified places)
4. Use of more than a specified number of vehicles for election campaign and for processions
5. Announcements or publicity by more than a specified number of moving vehicles
6. Holding of public meetings beyond the specified hours
7. Display of posters at places, other than those specified by the district/electoral authorities.

14.13 It is said that strong penalities are already provided for violations of expenditure ceilings under the RPA, 1951 and that most of the above points are generally covered by the model code of conduct and instructions of E.C. and can be implemented as the EC deems fit. As long these are the same for all candidates, the ground realities will adjust to them. But, the costs of elections can only come down if the people so elected are unable to make money out of their positions. This would require reform in other and more critical areas.

14.14 All the suggestions relating to rules and regulations for controlling political funding may come to naught unless we have an effective mechanism for imposing these rules and an effective ability to hand over deterrent punishment even leading to complete disqualification in case of transgression. Regrettably, our experience of fifty years has taught us that rules and regulations are known more for violation than for compliance. Finally, suggestions for reducing the cost of elections, for state funding etc. cannot be considered without first considering reforms in the system and structure of political parties, reduction in the number of parties, role of independents etc.

(Please see the consultation paper on Political Parties)

15. Disqualification on ground of corrupt practices – election petitions

15.1 The Representation of the People's Act 1951, Section 8A, provides for disqualification on ground of corrupt practices. The current practice is that once the High Court hands out the judgement on an election petition holding the candidate guilty of corrupt practices, the case goes to the Secretary of the concerned State Legislature or the Secretary General Lok Sabha or Rajya Sabha, as the case may be. It is then forwarded to the President who in turn forwards it to the EC. Only then does the EC get jurisdiction to tender its opinion to the President based on which the disqualification order is issued. The EC has suggested that the President should determine the period of disqualification on the direct opinion of the EC and avoid the delay currently experienced. This can be done by resorting to the position before the 1975 amendment to RPA, 1951.

15.2 The High Court is expected to give the judgement on all election petitions within 6 months, which in itself is quite a long time. In actual practice, there is quite some delay from the High Court in delivering of these judgements. Out of a total of 81 election petitions pertaining to the 1998 State Assemblies elections, 61 (75%) are still pending. In the opinion of many activists and eminent persons, all election related petitions should be heard by a separate judicial set up as suggested in the previous section, and these petitions should be decided within a time bound period by dedicated benches of those special electoral courts. If so, much of the present in-built delays will be taken care of. At the moment election petitions can remain pending for years together. There are many cases where the petition is not decided within the term of the house after which it has lost most of its significance apart from having subverted the rules and law in this regard. For example, there were 49 petitions relating to 1996 Lok Sabha. Of these 13 (27%) are still pending four years later. Of the 52 petitions relating to Lok Sabha 1998, 13 (25%) are pending as on date. For the Lok Sabha 1999, out of 64 petitions, 62 (97%) are still pending and 100% of all State Assembly petitions of 1999 are pending, indicating that in about one year hardly anything has moved. Other data relating both to Lok Sabha and State Assemblies is provided in the table below:

DATA ON ELECTION PETITIONS PENDING

Sr. no.	Election held	No. of election petitions filed	No. of election petitions pending	Percent pending
1	**Lok-Sabha 1999**	64	62	96.88%
2	**Lok-Sabha 1998**	49	13	26.53%
3	**Lok-Sabha 1996**	52	13	25.00%
4	**Lok-Sabha 1991**	86	15	17.44%
	State Assemblies 2000			
5	Bihar 2000	12	12	100.00%
	State Assemblies 1999			
6	Andhra Pradesh	25	25	100.00%
7	Karnataka	26	26	100.00%
8	Maharashtra	32	32	100.00%
9	Arunachal Pradesh	2	2	100.00%
	State Assemblies 1998			
10	Madhya Pradesh	42	32	76.19%
11	Rajasthan	11	11	100.00%
12	Delhi	4	4	100.00%
13	Meghalaya	2	2	100.00%
14	Himachal Pradesh	10	5	50.00%
15	Gujarat	12	7	58.33%
	State Assemblies 1996			
16	Assam	11	4	36.36%
17	Haryana	20	5	25.00%
18	Kerala	17	11	64.71%
19	Tamilnadu	8	6	75.00%
20	Pondicherry	3	3	100.00%
21	West Bengal	22	17	77.27%

Source: Election Commission records

16. The Question Of Representation And Winning On Minority Vote

16.1 The multiplicity of political parties, combined with our Westminster based first-past-the-post system results in a majority of legislators and parliamentarians getting elected on a minority vote. In other words, they usually win by obtaining less than 50% of the votes cast *i.e.* with more votes cast against them than in their favour. There are States where 85% to 90% of the legislators have won on a minority vote (*i.e.*, by having obtained less than 50% of the votes cast). In many cases candidates have won by getting less than 20% of the total votes cast in their constituency. To quote a few examples: in Uttar Pradesh, over the last three assembly elections an average of only 11% legislators won on a majority vote. In other words, almost 90% legislators won on a minority vote. The same proportion for Bihar is 18% and 82%; for Madhya Pradesh it is 40% and 60%; for Assam 29% and 71% and for Karnataka 31% and 69%. Only Tamilnadu displays a different characteristic where a large proportion of legislators have won on a majority vote –1991 - 90%, 1985 - 83%.

At the national level, the proportion of MPs who have won on a minority vote is over 67% at an average for the last three Lok Sabha elections. Three years data for Lok Sabha and for

some States is appended. It has taken into account at least three recent elections for a number of sample States which give a fairly representative picture on an all-India basis. This means that at an average, at the very least, two-thirds of our legislators all over India win on the basis of a minority vote.

16.2 In the first place, in a hugely divergent society such as ours, this has created a vested interest for political parties to progressively appeal to narrower loyalties. Clearly, if a candidate can win on less than one-third share of the votes polled, he does not need to generate a wider appeal. In the long-term, this has even more serious consequences for India, as the existing cleavages will only deepen thus dividing the society further. We have certainly seen it on the communal and caste fronts. By making caste and community a factor in political power play, we have made the divide even wider and deeper in the Indian society and made it nearly impossible for Babasaheb Dr. Ambedkar's vision and wish of a casteless and classless society ever coming true.

Secondly, given that we have territorial constituencies from which voters elect a representative, it is strange that most people of the constituency do not vote for a particular candidate yet it is he who becomes their representative. A question can arise: whose representatives are such candidates when a majority of voters did not want them?

16.3 The seriousness of this issue has generated suggestions from many quarters focused primarily on two possibilities. The first follows the list system somewhat along the lines of the German Bundestag whereby recognized political parties, in addition to winning seats on the FPTP system, get a further number of seats based on the number of votes polled by them. In the second approach many eminent persons have suggested that we should only have representatives who win on the basis of 50%+1 vote. If, in the first round, nobody gets over 50%, then there should be a run-off contest between the top two candidates so that one of them will win on the basis of over 50% of the votes polled. To save on the cost and trouble of a run-off, another suggestion made is that of each voter being asked to give an alternative vote so that in case of no one getting 50+ votes in the first count, the alternative votes get counted. With EVMs and technology available now counting of alternative votes need cause no delay or other problem.

16.4 One major change proposed by the Law Commission was the "list system" in addition to the "first-past-the-post-system" being followed presently. The objective was to generate better representation by providing seats to recognized political parties in proportion to the votes obtained by them. It was suggested that the number of MPs in Lok Sabha should be increased by 25% and this additional number of MPs should be made up of candidates pre-nominated by political parties and the number should be in accordance with their share of the votes polled. They suggested that the strength of the Lok Sabha should be increased to 688, with about 138 candidates nominated on the basis of a list to be provided by various political parties. The Law Commission suggested that political parties that secured less than 5% of the valid votes cast in the Parliament or Legislative Assembly elections would not be entitled to any seat, based on their list system, in that legislature. It was also suggested that while bigger States would constitute a territorial unit for this purpose, the smaller States should either be clubbed with a bigger State or they should all be clubbed together for forming a territorial unit for elections to the Lok Sabha. Another variant of this suggestion was that voters be asked to vote on two ballot papers. One for the candidates and the other for one of the political parties. The votes polled by political parties would be considered for selecting the candidates on pre-nominated lists.

16.5 In whatever manner perceived, such suggestions of the Law Commission may be open to serious objection both on grounds of principle and practicability. Adoption of the partial list system would create two very unhealthy long-term trends in a multi-faceted society like India. In the first place, it would create even more difficulties in providing a stable government. Proportional representation is famous for creating non-majority legislatures where coalitions are a rule rather than an exception. This has serious implications for

governance in India, as already borne out by our experience of the past few years. Because each coalition partner wields negative influence, the government may have to ignore even flagrant abuse of political positions by coalition partners. The idea of the "List System" runs against the grain of attempting to provide stability in the government because with many parties present with small but sometimes determining numbers it potentially enhances horse-trading to create artificial majorities for forming and maintaining governments. Weak governance results. Also, the suggestion would create two classes of members of Parliament in Lok Sabha – those elected directly by the people and those coming through party lists.

16.6 There is an interesting recent quote from Sir Peter Lloyd, MP from a House of Commons debate on proportional representation (2 June 1998), "When I visited the Netherlands earlier this year...some of our Dutch hosts said that they had heard that the UK was changing to PR. They could not understand why we might want to abandon a system that, in their view, had produced great governmental stability. They obviously admired the clarity and the personal involvement of the single member constituency system, which they do not have." He went on to say that "the additional member system, which produces two classes of members of Parliament, one with a constituency link and the other with none, is presumably favoured by the party hierarchy." There may be a message here for India.

16.7 Secondly and even more important, elections should be used to unite our very divided society, which is progressively getting more divided because individual players are constantly mobilizing support based on narrow loyalties. The idea of any form of proportional representation will aid in the divisive tendencies, as it will now pay the politician to appeal to a small group if he feels that he has a good chance of getting their vote en-bloc. The moment political parties are given the opportunity to have representatives in the Lok Sabha or the State assemblies based only on the number of votes that they obtain, it takes away the incentive to make their electoral appeal broader. Also, the parties which can have the resources to put up a large number of candidates even in areas where they do not hope to win, will have a distinct advantage under any scheme of additional seats through list system. It will then pay the political party to address itself to narrow interests because that may be the only safe way for it to ensure itself a few seats in the house. It should never be enough in such a diverse society as India to maximize support among a narrow grouping and then rely on being needed as a part of a coalition government. On the contrary a party must appeal broadly across the electorate. The Law Commission recognized this and stated that this could aid and enhance caste-based politics, yet it made a slightly toned down recommendation that instead of having 50% seats on the basis of list system, let us have 25%. The smaller percentage, however, does not take away from the negative influence that this policy is likely to create.

16.8 Proportional representation of this kind assumes a well educated and aware electorate and a type of matured political behaviour from both the electorate and the elected representatives and can only work for good governance if there are very strong conventions of behaviour that cannot be transgressed at all. India is really very far from it at the moment. This therefore, can only be left for posterity to decide when the time comes, if ever.

16.9 Several eminent persons, including the distinguished former President Shri R Venkataraman have therefore opposed this suggestion. They have however proposed that the option of electing only candidates with over 50% of the votes cast in their favour is a far better way to achieve the same objective of better representation. Here, each legislator is elected on a majority vote and can therefore be said to be a representative of a majority from his constituency. The Law Commission, who evaluated this suggestion in their report albeit with the inclusion of a "negative vote" did comment in their report that this was an excellent suggestion but they felt that there might be insurmountable practical difficulties with implementing it because of the run-off election that will happen at least in 2/3rd of the cases at present. The Election Commission however, does not feel so. The Chief Election Commissioner, has stated that he had himself made this suggestion of 50%+1 vote on a number of occasions and he confirmed that the daunting task of run-off elections can be managed by the Election Commission. Actually, the run-off vote is like a re-poll in certain

1207 LJ&CA/2002—33A.

constituencies. There is no revision of electoral rolls, no fresh nominations, no fresh campaigning or the like. It is the same polling booth with the same administration and therefore it should not be complicated.

16.10 A serious effort at implementing this suggestion should be possible. There are two substantial advantages of following the policy of 50%+1 vote. On the one hand, it resolves the problem of representation. On the other, it also makes it in the self-interest of various political parties to widen their appeal to the electorate. It can help push political rhetoric in a direction that the mobilizing language might take on comparative "universal" tones as opposed to "sectoral" tones of the present day. Currently the possibility of winning on a minority of votes polled has encouraged parties to function on caste, communal or other sectoral bases. When such parties get into positions of power, they also follow a sectoral agenda. With the need to be more broad based in their appeal, issues that have to do with governance rather than with cleavages and narrow identities might start to surface in the vocabulary of the politicians. On this count alone it may be considered worth pursuing.

16.11 Of course, the EC would have to find a practical way of handling the run-off election without permitting any distortions. With EVMs we can easily plan on a two-day election all over the country. The second day may be for run-offs. This means that at the end of the day, through the use of computer technology, the constituency will know whether someone has won by getting over 50% or that it is a run-off. If it is the latter the announcement would mention the names of the two candidates. The final results can be announced with all others. No doubt, there will be initial problems in this, but with 50 years of experience with us, we are in a much better position today than we were ever before, to find a way to implement this as well as to anticipate what intended and unintended consequences might follow this policy. The positive aspect of this will follow if all goes as planned. But what if it does not? Let us, therefore, attempt to look at the possible unintended results of this policy.

16.12 The main question might be that once a run-off is decided leaving only two candidates in the field, would it not lead to even more attempts at rigging and/or violence because now it would be a matter of do or die for each of these two candidates? Given our experience with elections and the political culture in which these have operated, yes, this may be possible. If not muscle power, it is also conceivable that yet bigger amount of money might change hands to get intermediaries to bring block votes to the polling station. This is also may be a possible scenario. It is also possible that for the run-off election the voter turn out will be lower due partly to election fatigue and mainly to the fact that one of the candidates may use muscle power to keep unfriendly voters away.

16.13 If the suggestion of holding election on two consecutive days is accepted (the second day being for run-offs), there will simply not be time enough to generate fresh violence or to indulge in other malpractices like horse trading and using money power to buy votes. As for voter turn out, battle lines being more sharply drawn between only two contestants, it is equally likely that the turn out may be better. But, the administration at least when the policy is first introduced, would of course have to be prepared to make special arrangements at sensitive constituencies.

16.14 If the two-day election plan is difficult or not acceptable, there should in any case not be a long gap between the main election and the run-off election. No further campaigning should be permitted. The less the time available between the two polls, the less are the chances for the candidates to create hurdles in the way of the system. Secondly, and more importantly, any electoral offence in the run-off should carry a higher penalty for the candidate than the original election. The possibility of disqualification and perhaps a mandatory hefty imprisonment and a hefty fine, should loom large on the horizon for both the finalists.

16.15 We would do well to remember that if implemented properly, this suggestion has the potential of forcing political parties and candidates to think of strategies to obtain over 50% votes in the first election itself. This will discourage the non-serious candidates and fringe players from jumping in the fray and it will encourage making of pre-election agreements

between parties and if viewed together with the suggestions on defection, this should lead to moderation and stability. The proposal of run-off elections may push up the cost of elections marginally only. The mobilization is one time and when EVMs are used, there are no ballot papers to print either. Also, while on the first occasion, there may be many run offs, with each successive election the number may be reduced to only a few.

17. Compulsory Voting

17.1 Some scholars and concerned citizens have suggested that voting should be made a citizenship obligation. Voting is compulsory in countries like Australia, Argentina, Belgium, Bolivia, Brazil, Chile, Costa Rica, Cyprus, Ecuador, El Salvador, Finland, Greece, Gutemala, Guinea, Honduras, North Korea, Luxembourg, Madagascar, Mexico, Morocco, Panama, Paraguay, Peru, Phillipines, Singapore, Turkey, Uruguay, Venezuela and others. Interestingly, in Egypt, voting is compulsory for men only. There may be some very strong arguments in favour of making voting compulsory in India for all men and women. But, in our situation, there may be several management and legal enforceability problems and difficult questions of penalty for not voting, Perhaps, we could think along the lines of providing some incentives to help increase the electoral turnout, particularly of sections that are now not voting. For example, we could consider a tax deductible expense of say Rs. 2500. Or this could be linked to the schemes of tax rebate on total amount of tax payable by the person subject to some pre-determined limits. Or for non tax-payers other small incentives or token benefits in the matter of rations, speed of granting certain licenses, passports, etc. could be considered. The revenue lost as a result could be treated as partial state funding of the electoral process. Such policies might help push electoral turnout up. An additional counterfoil in the voting paper could be given to the voter as his certificate of voting. It is felt these suggestions for increasing popular participation in the democratic exercise of elections are certainly worth debating.

17.2 Arguably, the above would help to bring more voters out to the polling booths. The process of voting would meanwhile be simplified by the introduction of EVMs and in the long run it would be possible to have, particularly for sensitive constituencies, mobile polling stations with EVMs that can reach the voter rather than the voter reaching them.

18. Negative Voting

18.1 Some eminent persons like the Vice-President Shri Krishna Kant have been suggesting for many years now that the voters should have a choice to say 'no' to all the candidates on the voting paper if they find all of them to be undesirable. This can be done by adding a column in the voting paper saying 'none of the above'. The Law Commission has also advocated provision of such a negative vote. The proposal has to be accompanied by a provision that if a certain specified percentage of votes cast is that of negative votes then the election would be void.

With different parties putting up candidates only on grounds of their winning ability, the result sometimes is that all the prominent candidates in a constituency are known criminals or undesirable characters. In this context, the suggestion of a negative or 'none of the above' vote does make lot of sense intellectually and as a matter of principle. It may however not at all be a practicable proposition for several reasons: (1) The proposal is negative in character. (2) Maximum effort and money of every candidate has to be devoted to getting the voters to the polling booth to vote for him. Thus, as it is, those who come come only to vote for someone. It may be unrealistic to expect a reasonable percentage of voters to come simply to say that they do not wish to vote for any of the candidates. (3) It may require a massive and costly movement to motivate people to stand in queues to cast negative votes. Also, if such a movement can be mounted, those doing it can as well do the more positive thing of putting up a candidate they consider desirable. (4) Where some candidates win with 20, 15 or even less percentage of votes cast, it would not be easy to decide what percentage in the negative vote category should suffice to invalidate the election. (5) It would hardly be easy for the largely illiterate Indian electorate to understand the concept of negative vote.

19. Defections and The Tenth Schedule

19.1 The question of defections has now haunted the Indian polity for over three decades. Between the fourth and the fifth general elections in 1967 and 1972, from among the 4000 odd members of the Lok Sabha and the Legislative Assemblies in the States and the Union Territories, there were nearly 2000 cases of defection and counter-defection. By the end of March, 1971 approximately 50% of the legislators had changed their party affiliations and several of them did it more than once – some of them as many as five times. One MLA was found to have defected five times to be a minister for only five days. Defections were always rewarded thereby establishing the fact that these "floor crossings" were engineered and bought. This was sought to be eliminated by the Tenth Schedule but all that has happened that while individual defections have become rare, *en bloc* defections are permitted, promoted and are amply rewarded. Therefore, despite Tenth Schedule, or because of it, countless defections have taken place without incurring any disqualification. In fact, on an average more defections per year took place after the Anti-defection Law (10th Schedule) came into force than ever earlier.

19.2 What has been even more disconcerting is that some of the Speakers have tended to act in a partisan manner and without a proper appreciation – deliberate or otherwise – of the provisions of the Tenth Schedule. Almost everyone dealing with this subject agrees that defections flout people's mandate and cannot and should not be permitted, neither singly nor in a group. The fact is that most candidates get elected on the basis of the party that has given them a ticket. Defections allow these candidates to theoretically go to the polar opposite of this party, which is not the basis on which people elected them. Simply because there is no accountability vis-à-vis the people, such a practice continues unabated. Defections encourage corruption of the highest level. Defectors usually are gifted with political positions and other such perquisites so openly that it really makes a mockery of our democracy.

19.3 The rule should be clear and unambiguous. If a candidate has an insurmountable problem with his party he should resign and go back to the people for a fresh mandate. He cannot be permitted to use the old mandate to "live-in" with new partners on whose ticket he might even have forfeited his deposit. This is a negative power, used only for pelf and our legislators and parliamentarians can and should do without it. There should be no debate and no discretion for the Speaker or anyone else to interpret it. The disqualification for a defector should be automatic and immediate and his vote should be annulled. If votes are not annulled, the defectors may succeed in toppling or forming governments before they are disqualified.

In the same vein, just to ensure that the party machinery does not misuse this power either, what constitutes defection should be re-defined. At the moment any disagreement with the party organisation and a vote against party directive on *any issue* can subject a legislator to disqualification under the Tenth Schedule. This is not what should happen. The whip should only be applicable for any matter where the life of the government is in danger and not to all voting as at present under the Tenth Schedule. In other words except on voting concerning a finance bill, or confidence motion or no-confidence motion, whip should not apply from the point of view of anti-defection law. The question of defection will then only arise when a legislator actually changes allegiance or defies party directives on critical issues of affecting its life.

19.4 Some activists and scholars still accept the idea of a split. The argument is that in view of the lack of internal democracy in political parties splits should not be barred. This school of thought wants to introduce what in their view might be better regulations to monitor splits. But even here there is unanimity that defecting members should not be permitted any spoils of office. It is suggested that the members who split from their parent party shall not be eligible for any ministerial or other position at least for a period of one or two years or until they get reelected. However, conceptually splits are wrong. Party members can always split if ideologically there is a big disagreement, or really for any other reason, but they must go back

to the people for a fresh mandate if they are members of any legislature at that time. Permitting the concept of splits will ensure that some indiscreet politicians will find a way to work around the regulations. The Law Commission had also felt that when a person becomes a member of a political party, accepts its ticket and contests and succeeds on that ticket, he renders himself subject to the discipline of this party. Therefore, the concept of "splits" as provided in the Tenth Schedule should be done away with. Alternatively, there may be every case for our debating the repeal of the anti-defection law which has fulfilled no objective and served no purpose except to legalise and institutionalize group defections.

20. Delimitation of Constituencies

20.1 Since 1971, the number of seats in the Lok-Sabha allocated to different States was frozen upto the year 2000. No fresh delimitation commission has been formed. The Law Commission deliberated on this issue but was persuaded that a fresh delimitation exercise for Lok Sabha would place those States, particularly the Southern States, which had carried out a successful family planning programme and had curbed the rate of growth of population, at a considerable disadvantage compared to the others. Indeed it would appear to reward the States with poor population control by granting them a bigger representation in the parliament.

20.2 Of course, freezing the delimitation exercise goes against the grain of one-man one vote because the value of the vote becomes unequal. For example the average Lok Sabha constituency in Rajasthan in 1991 consisted of 1,060,540 voters compared to 769,046 of Goa and only 31,665 at the bottom of the table for Lakshwadweep. Within States the oft quoted example is that Outer Delhi Lok Sabha constituency has a number of over 29,00,000 voters whereas Chandni Chowk parliamentary constituency has only about 3,68,000 – about 13% of the former. Clearly the value of an individual vote in Outer Delhi is only about $1/8^{th}$ of Chandni Chowk. There are many similar cases all over the country.

There is no general agreement on this issue. The opinion is divided so far as inter-State delimitation is concerned. Some have agreed that fresh delimitation between States should be frozen; others argue that this goes against the grain of our Constitution. In any case this exercise has already been frozen for another 10 or 25 years according to newspaper reports.

20.3 However, there is no difference of opinion on intra-State delimitation exercise. But even this has remained pending. The EC had at one time suggested that it was well qualified to do this and was also generally accepted to be a neutral and impartial body, but successive governments have not taken up this matter. At least within a State this anomaly should be removed and a decision taken to authorize the EC to come up with its proposals. The delimitation exercise is not only important for Lok Sabha constituencies but equally so for assembly constituencies. This could perhaps be done by the Election Commission in coordination with the State Election Commissioners in a visibly neutral fashion.

21. Problems of Instability, Hung Parliament and Assemblies and their relation to the electoral laws and processes.

21.1 The last few decades have seen a great deal of political instability in India. During the last ten years there have been seven governments at the Union level. Being minority governments, these have been unable to provide stable administration and stable policies. The reasons are not far to find. We adopted the Westminster model of FPTP system of elections but forgot that it works mainly in communion with a two party system or a limited number of parties. Even today there are only two major political parties in the UK. In our case, politicization at ground level coupled with a highly fragmented society, has given rise to a large number of political parties, each one existing not on a different ideology or economic programme, but on the basis of having nursed a narrow parochial, mostly caste or religion based, identity for itself and its band of followers. Even this support is usually earned not by doing some positive work for the concerned group but negatively by bad-mouthing and demeaning others and all the time pitting one group against the other. The political system

and the politicization of caste and communal identities have proved to be very divisive of society and disruptive of the national ethos. It has become increasingly difficult to get a workable majority to form a government and make a success of coalition arrangements.

21.2 This has had very negative repercussions on the quality of governance because to cobble up a workable majority to form government, compromises had to be made and ideology or notions of quality of governance may sometimes have taken a back seat. The consequences are pretty severe. Law and order suffers because control mechanisms break down or become very loose. It becomes difficult to take strong measures to curb corruption and provide clean and quality governance. In the end, it is the citizen who is the victim of all the misgovernance.

21.3 There is a bi-polar spread on this issue and there have been many strong views on both sides. One insists that for a parliamentary democracy to work there must be a limit on political parties as well as on the number of independents that are allowed to contest elections. The other view challenges this on the pretext that a democracy like India, which has a huge cultural, religious and linguistic diversity, needs to articulate its differences through a share for most participants in the power structure. Therefore there should be no curtailment whatsoever. There are many other moderating views that work between the two extremes.

21.4 The Law Commission dealt with this issue in some detail and suggested rather radically that ideally the effort should be to have only one election every five years for Lok Sabha and all the legislative assemblies. Although the Commission clarified that it was not their intention to suggest a fixed five-year term for the government, the implication of their suggestion was clearly in that direction. The Law Commission also stated that in if a political party received less than 5% of the valid votes cast in the parliamentary or legislative assembly election, they should not be entitled to any seat and Independents should be barred from contesting elections. This would, the Commission thought, consolidate the presently fragmented vote and provide for possible stability.

21.5 Many activist organisations and eminent persons have disagreed with this suggestion but many have not only agreed but also gone a step further to suggest even other methods to reduce the number of parties or political alliances participating in the electoral process. One of the other suggestions is for actively pursuing the ideal of building a healthy two party system essential for the success of the parliamentary system. Former President, Shri R. Venkataraman and others have suggested that political parties that secure less than 10% of votes cast should be de-recognised by the EC. After the first such election the party that secures lowest number of votes in each subsequent general election should be de-recognised until the number of parties left is only two. The de-recognised parties would lose the right to get a common symbol for their candidates.

21.6 The argument about independent candidates to be discouraged if not altogether barred from elections is based on the fact that out of 1900 independent candidates who contested the general election in 1998, only 6 (0.65%) succeeded. 885 (47%) lost their deposits. Likewise out of the 10635 candidates, who contested the 1996 Lok-Sabha elections, only 9 (0.08%) won and 10,603 (99.7%) lost their deposits. It is also known that most of these so-called independent candidates are in fact dummy candidates or defectors from their parties on being denied party tickets. These candidates only vitiate the sanctity of the electoral process. This was carried to ridiculous limits when a Lok Sabha constituency in Andhra Pradesh (Nagonda 1996) had 480 contestants. The first three received 82% of votes and the balance 477 got 18% of votes. Similarly there have been assembly constituencies reaching over 1000 candidates. What a waste of resources and effort!

21.7 The more moderate suggestions on the question of independents contesting elections are that such candidates should be proposed by a certain minimum number of Panchayat Sarpanches or municipal councilors from their constituency. This would ensure that only persons who have some political standing in their constituency contest the election. In the alternative, some have proposed that only such independent candidates should be

permitted to contest who have already a track record of having held some other elective political office, **e.g.,** panchayat or zilla parishad or municipality or a cooperative etc. The suggestions need further debate and consideration.

21.8 One other set of suggestions centers around permitting only recognized "national parties" or qualifying pre-poll alliances to contest national elections to Lok Sabha. In their view this would, by prompting pre-poll alliances, automatically consolidate the vote and help in evolving some sort of federal parties or alliances providing more stable governments. Candidates who thus come to occupy seats in the national parliament will have a more national perspective on things as opposed to those who come on a purely local or regional platform.

21.9 Some suggestions are centered around reducing the number of recognized national parties or pre-poll alliances by changing the present criteria for their recognition. For example, at the moment a political party in order to be recognised as a national party needs to secure at least 6% votes in 4 States or have one MP elected for every 25 MPs from four States. It is proposed by some scholars and elder statesman like the former President Shri R. Venkataraman that this percentage should be increased to 10% of votes polled. It is also proposed by some that the number of States should be increased to half of the total States and Union territories. This would certainly trim down the list of national parties/alliances. A de-recognition would mean the loss of many benefits including a common symbol nationwide. Coupled with the suggestion that non-national parties should not be permitted to contest national elections, this would force many pre-poll alliances or growth of federal parties.

21.10 It has also been suggested that in a situation of so called 'hung' house, the best course would be to have the house elect its leader as it elects the Speaker. The leader so elected may be appointed the Prime or Chief Minister and his government should be removable only on a constructive vote of no-confidence. This really means that at the time of introducing the vote of no-confidence, a simultaneous vote of confidence has to be passed in favour of an alternative leadership, which will be sworn in if the vote goes through. In other words, there may be a change of leadership, or even a change of government but the country would not go back to polls, nor would there be time for horse-trading after the fall of a government to cobble up artificial majorities. The period of office for Lok Sabha and Assemblies should be reduced to 4 years. If India can have only one election every four years this would be a huge national saving apart from creating stability that at least gives a chance for better and development oriented governance. Some have suggested that if a vote of no confidence is proposed and is defeated in the House, a fresh vote of no-confidence should not be permitted for a period of time say a year or two. Most of these suggestions do not call for any amendment in the provisions of the Constitution and all that may be needed may be a simple legislative amendment or a modified rule of procedure.

Also, all the suggestions are permutations and combinations of the same set of proposals to achieve the objective of more stability in the system of, governance as contradistinguished from the suggestions of some to provide fixed terms to the government or to the legislators. The latter cannot be considered legitimate. If a leadership is performing poorly and/or making grievous errors, deliberate or compulsive, in running of the nation, or even when it fails to provide the basics of governance, it cannot be allowed to continue for any fixed term.

21.11 Many of the above issues in the long run will be addressed if the proposal of winning on a majority 50%+1 vote is accepted. Many non-serious candidates and even fringe parties will go out of the electoral fray, as it will be impossible for them to contemplate a win. It will certainly push many of them into better formed and longer lasting political alliances in order to win.

22. Issues of Political Morality:

22.1 The decay in political morality is an issue that occupies centre-stage in India's political discourse but there are really no remedies and we appear to be on a downhill course

with getting rich-quick anyhow and competitive consumerism having become the highest virtues. If the question is asked how can we reverse this trend, the answer would have to be that there are no magical formulas or laws and regulations for moral regeneration that can help in creating a better sense of higher values and a general political conscience. It can only be done by building and nursing strong conventions that politically and even more importantly, socially ostracize deviant behaviour.

22.2 One of the ways in which this may be attempted is by educating India's masses about their fundamental rights and duties, by driving home the message that political position holders are not "rulers" in the sense of the "mai-baap" of the colonial era or "maharajas of the feudal vintage". They are elected to positions of authority to serve the society's needs. Strong public opinion has to be created against political corruption making sure that no one gets to enjoy the fruits of corrupt actions. Above all, we may need a renaissance of the old values of sacrifice and service in public life and politics based on some moral principles. This would need politicians who are not for power for its own sake or for promoting their own narrow self interests but who enter public life motivated by a mission and a desire to serve the people or ones fellow citizens. For this the government would have to keep on a constant communication with the populace at large. For whatever it is worth, immediate appointment of one or more ombudsmen or Lokpal may be suggested once again. To keep a tab on issues of public morality and ensure that transgressions are widely debated and the culprits brought to book, a beginning should be made to include some secular constitutional values and citizenship obligations in the curriculum of schools and colleges so that the next generations will grow up with this information and perhaps wisdom to form a formidable social force against the kind of decaying political morality of today.

23. Miscellaneous Suggestions:

23.1 Some other suggestions need mention. These may need to be considered. The feedback and views received may help in framing arguments and reaching some conclusions in regard to the following:

1. Debar all legislators from being appointed as chairpersons of various state undertakings, also debar them from any non-ministerial post other than chairmanship of legislative committees.
2. There must be a bar on ministries that are larger than 10% of the house. No other position with executive or financial powers to be considered for legislators. Also, the power to create Minister level or Cabinet rank posts should be strictly regulated.
3. There must be a limit of two terms for any political position. So one may be a member of the panchayat for two terms, of State assembly only for two terms even if non-contiguous and MP for two terms. This may reduce the number of life-time professional politicians who have no other sources of livelihood except political office.
4. The EC should be appointed by a neutral body consisting of the Prime Minister, the Vice President, the Speaker, the Leader of the Opposition and the Chief Justice of India. This would make his position totally impartial in the eyes of all political parties and factions. The EC should not be appointed to any other office after retirement.
5. An independent auditing authority should be appointed for auditing annual statements of accounts of all political parties and the audited accounts should be published for public scrutiny.
6. Rotation of seats should be done for SC seats and non-scheduled area ST seats.
7. There seems to be a general agreement on the need to have more women members. The question is whether political parties should be asked to put up women candidates for at least one-third of the seats they contest both for State and Parliament elections or one-third seats should be reserved for them by rotation. Another suggestion being made is that there may be a 30% increase in the number of seats in each house and these additional seats be filled by women party candidates on the basis of a list system.
8. The minimum number of valid votes polled should be increased to 25% in order not to forfeit the deposit. Also, the amount of deposit should be again increased substantially. These two steps would further reduce non-serious candidates.

9. All candidates should be required to clear all government dues e.g. huge I.T. arrears before their candidature is accepted. This pertains also to holding on the accommodation, telephones, and government facilities used while in power.
10. EC should have full disciplinary authority over the officials who are involved in election duty. It is said that at present there are too many complaints of compromised or partisan officials but EC is unable to take any stringent action. The question however is whether the Election Commission could have the same disciplinary powers over all the officers and staff engaged on election duty as that of the appointing authority.
11. Create multi-member or double-member constituencies to eliminate or at least reduce narrow appeals based on religion or caste.
12. Hold State level and parliamentary level elections at the same time. This would reduce expenditure.
13. Every candidate to an elective office at the time of filing nomination and every holder of a political position annually must declare his assets and liabilities as also the assets and liabilities of his close family members.
14. For Legislative Councils, eliminate the Teachers' and Graduates' constitue-ncies, which provide extra votes to some electors and have politicized educational institutions.
15. Subsequent to the 73rd and 74th amendments, ensure that criminalization does not engulf our PRIs and there must be a serious debate on the issue with a view to substantive reform.
16. For contesting elections to the Rajya Sabha, the requirement of a candidate being 'ordinarily resident' in the State should be interpreted to mean that he or she should be actually residing in that State.

SUMMARY*

PROBLEMS

1. With majority of representatives elected by a minority of votes cast, the representational legitimacy of the FPTP system of elections stands seriously eroded. There is mismatch between FPTP and the multi-party system. Hung houses make stable Government formation difficult.

2. With the constituents and electors for all directly elected representatives from the Panchayat to Parliament levels being the same, competing role expectations and perception conflicts result e.g. even a member of the Union Parliament is expected to attend to purely local problems in the village or town.

3. With large constituencies, multiplicity of parties and candidates, absence of ideology, politicization of caste and communal identities and building of vote banks, elections have become terribly expensive. Huge amounts of money are needed to contest any election. Legitimate sources are difficult to find. Corruption and black money are generated. Politics gets criminalized. Mafia gangs and others with money and muscle power assume importance.

4. Many malpractices and acts of violence, corruption, etc. have polluted the electoral processes. Misuse of the Government machinery and connivance of polling staff with miscreants are also not uncommon. With very faulty electoral rolls and rampant impersonation, booth capturing and rigging, large sections of people are in effect disenfranchised.

(Para 5)

THE GANDHIAN MODEL

To strike at the root of most of the problems, one option suggested for consideration is that of the adoption of the Gandhian model of decentralization of power down to the grassroots people's level and a bottom-up instead of the present top-down approach with multi-member or double-member constituency-based direct elections being held to the primary tier of governance and all the upper tiers being filled up by representatives elected by electoral colleges of representatives manning the lower tiers.

The Prime Minister/Chief Minister may be elected by the House and be removable only by a constructive vote of no-confidence.

This would mean a low-expense electoral process with representatives being more representative of the people, more responsible to them and responsive to their needs and aspirations. This could ultimately lead to people, development and citizen-friendly, stable and good governance at every level.

(Paras 6.2 – 6.5)

* This summary is only for guidance and facility of reference. For purposes of study and deliberation, it is advisable to use the text in the relevant paras of the body of the consultation paper.

OTHER REFORM OPTIONS AND SUGGESTIONS

Other reform options to tackle different problems broadly within the existing electoral system are summed up below:

Electoral Rolls and Identity Cards

1. Electoral roll should be updated at the lowest constituency level with a clear link to the higher constituency levels till the parliamentary constituency.

2. There should be a mechanism for constantly updating these rolls and during each 1st week of April the updated rolls as of 31st December of the previous year should be posted on the web.

3. Multipurpose voter ID cards or citizenship card should be designed with a bar coded unique voter ID number. Over an acceptable period of time these should become mandatory for all elections.

4. This job should be entrusted to a pre-qualified professional organisation and should include designing the implementation of the scheme in coordination with and under the EC. PRIs and local post offices to be involved in helping in its implementation.

5. The designing of Electoral Rolls and ID should be coordinated with a view to the future.

6. The responsibility for the electoral rolls and ID should rest with one integrated machinery under the EC/SECs.

(Para 7)

Electronic Voting Machines

7. Introduce Electronic Voting Machines in all constituencies as rapidly as possible. For all sensitive constituencies use them straightaway.

(Para 8)

Booth Capturing and Rigging

8. Reference section 58A of the Representation of the People Act 1951, give Election Commission the authority to take decision regarding booth capturing not only on the report of the returning officer but even otherwise if it is satisfied.

9. Again, under section 58A of the Act, the Election Commission should not only be empowered to countermand the election and order a fresh election as now provided under the law, but also should be empowered to declare the earlier poll to be void and order only a re-poll in the entire constituency, instead of a re-election there, depending on the nature and seriousness of each case.

10. Make booth capturing punishable with more stringent punishment and empower the Election Commission, to investigate booth capturing and other violations of the electoral law, through the Central or State police investigating agency; by the establishment of special electoral courts.

11. Consider use of tamper-proof video and other electronic surveillance at sensitive polling stations/constituencies.

(Para 9)

Caste and Communal Hatred

12. Any campaign on the basis of caste or religion and any attempt to spread caste and communal hatred during elections should be punished with immediate disqualification and mandatory imprisonment.

(Para 11)

President's Rule during Elections

13. CEC's suggestion to impose President's rule over all the States for the duration of elections may not be considered logical or feasible.

(Para 10)

Criminalisation

14. Once charges relating to certain crimes have been framed by a court against a person, he should not be permitted to contest elections unless cleared.

15. A potential candidate against whom charges have been framed by the police may take the matter to a special electoral court. This court would be obliged to enquire and take a decision in a strictly time bound manner. Basically, this court may decide whether there is indeed a *prima facie* case justifying the framing of charges. If yes, the person should not be allowed to contest.

16. Eliminate incongruities in the existing provisions of sub-sections (1), (2) and (3) of Section 8 of the Representation of the People Act, 1951, whereby a rapist convicted and sentenced to ten years imprisonment, may be disqualified only for six years under sub-section (1) and thus remain free to contest elections, even while in prison serving the last four years of his sentence. The law should provide that whoever is convicted of any offence by a Court of law and sentenced to imprisonment for six months or more should be debarred from contesting elections, for a period totalling the sentence imposed plus an additional six years.

17. Under Section 8(4), sitting members are not disqualified even when convicted until their appeal is decided. This should be deleted.

18. If an elected representative gets convicted on charges related to specific crimes, he should be required to withdraw from the legislature for six months and if within that period he fails to get an acquittal, he should be disqualified.

19. Political parties, when they are seen to be abetting criminalisation should face derecognition and other action.

(Para 13)

Disqualification on ground of corrupt practices – election petitions:

20. Amend current practice that once the High court hands out the judgement on an election petition holding the candidate guilty of corrupt practices, the case goes to the Secretary of the concerned State Legislature or the Secretary General Lok Sabha or Rajya Sabha, as the case may be. It is then forwarded to the President who in turn forwards it to the EC. Only then does the EC get jurisdiction to tender its opinion to the President based on which the disqualification order is issued. Instead of this round about procedure a direct reference between the High Court, the Election Commission and the President should be created to cut unnecessary delay.

21. Create special electoral courts for deciding on election petitions. These should be decided in a time bound way within 6 to 12 weeks unlike the present where it can take years by which time they have lost their meaning.

(Para 15)

Election expenditure - the high cost of elections and abuse of unaccounted money power

22. The basic problem is that the present rules have a significant loophole in the shape of explanation 1 to section 77(1) of the Representation of the People Act 1951, under which the amounts spent by persons other than the candidate and his agent themselves, are not counted in his election expenses. This means that there can be never any violation of the expenditure limits. All extra expenditure, even when known and proven, can be shown to have been spent by the party or by any friends and it remains outside of the enforceable limits. This must be rectified and all expenditure made by or on behalf of the candidate must be included in his expenditure limit as provided under the rules.

23. Political parties as well as individual candidates should be subject to a proper statutory audit of the amounts they spend. At the end of the election each candidate should submit an audited statement of expenses, head-wise. The audit should not only be mandatory but it should be enforced by the Election Commission appointing a council of at least two auditors say for 10 constituencies each. Any violation or misreporting should be dealt with strongly.

24. Partial state funding of elections through time provided on national media for campaign activities of recognised parties may continue.

25. For other proposed state funding, it has to be linked to the political parties being regulated by law and to creating a foolproof mechanism to implement financial limits strictly and to deter expenditure violations.

26. Bring in transparency into all political funding.

27. Permit corporate donations within prescribed limits and keep them transparent.

28. Make all legal and transparent donations tax exempt and treat this tax loss to the state as its contribution to state funding of elections. For example, tax exemptions could be limited to say 25,000 for individuals and 10,00,000 for companies provided that the contributions are made to party funds and not to individuals. In the case of corporate contributions, the Board of Directors may approve up to say 1,00,000 and anything over this amount may be approved by the shareholders. Political funding should be separate head in the accounts and annual reports of the company. This will ensure transparency.

29. All political party accounts, much like the accounts of a public company, should be published yearly with complete disclosure under pre-determined account heads. The Election Commission should have these accounts audited.
30. Also make it obligatory for campaign expense accounts – both receipts and expenses - of all candidates to be made public in their constituencies.

31. There should be a serious attempt at reducing election expenses and this can be done by perhaps changing the ground rules for electoral campaigns – partly by encouraging the use of electronic and digital technology to campaign at state cost and simultaneously by totally and effectively banning other overt and wasteful *tamashaas* of campaigning

32. Place reasonable restrictions on the following:

Wall writings, Display of cut-outs hoardings and banners, Hoisting of flags (except at party offices, public meetings and other specified places), Use of more than a specified number of vehicles for election campaign and for processions, Announcements or publicity by more than a specified number of moving vehicles, Holding of public meetings beyond the specified hours, Display of posters at places, other than those specified by the district/electoral authorities., Strong penalty for violation of expenditure ceiling, During election times rallies only under covered roofs should be allowed. No outdoor public rallies should be permitted.

33. Create an effective mechanism to implement these rules and create an effective deterrence against violations.

(Paras 14)

The Question Of Representation And Winning On Minority Vote

34. Let candidates both at state level and parliamentary level win only on the basis of a majority vote meaning 50%+1 of the votes cast. This will create a majority representation and also push political parties and serious contenders to widen their appeal to their electorate.

35. For this let there be a run-off election if required between the top two candidates who get the highest and the second highest number of votes.
36. When using EVMs have election spread over two days and keep the second day for possible run-offs. This will save considerable resources.

37. If this is not possible have the shortest possible gap between the main election and the run-off. No further campaigning should be permitted.

38. Consider providing incentives to voters for casting their vote by providing of some simple facilities in order to push up the electoral turn out. Together with the 50%+1 vote scheme this will have a salutary effect on the campaigning rhetoric of the candidates and political parties because they will have to reach a higher number of voters now.

39. Electoral offences in the run-off elections should have a higher punishment prescribed.

(Para 16)

Compulsory Voting

While compulsory voting may not be feasible or advisable at present, a scheme of suitable incentives for increasing voter participation may be considered.

(Para 17)

Negative Voting

Sound on principle, the suggestion for a provision of negative voting may be found impracticable and unnecessary.

(Para 18)

Defections and The Tenth Schedule

40. Whether by an individual or a group, defections should not be permitted. If a legislator wishes to leave his party or vote against it he should vacate his seat. Let him/her contest on a fresh platform. The vote cast by a defector should also be invalidated. In the alternative, the 10th Schedule should be repealed.

41. As a corollary to this, the role of whip should be reduced. Whip should be allowed to be used only for those votes in the House which might threaten the life of the government.

42. Defectors should not eligible for any public office until re-election.

(Para 19)

Delimitation of Constituencies

43. Have intra-state delimitation exercise undertaken by the Election Commission to eliminate anomalies like the Chandni chowk Lok Sabha constituency being only 1/7th of the voter size of the Outer Delhi Lok Sabha constituency. The same should be done for assembly constituencies.

(Para 20)

Problems of Instability:

44. Independent candidates should be discouraged. Permit only those who have a track record of having won any local election.

45. Let only recognised national parties or pre-poll alliances contest elections to Lok Sabha.

46. It should be possible without any constitutional amendment to provide for the election of the Leader of the House (Lok Sabha /State Assembly) along with the election of the Speaker and in like manner under the Rules of Procedure. The person so elected may be appointed the Prime Minister/Chief Minister and the Government constituted by him may be removable only on a constructive vote of no-confidence.

(Para 21)

Issues of Public Morality

47. Educate India's masses about their fundamental rights and duties, by driving home the message that political position holders are not "rulers" in the sense of a "mai-baap" or a "maharaja" but are elected into positions of authority to administer and serve the society's needs. Create a strong public opinion against political corruption and by making sure that no one gets to enjoy the fruits of their corrupt actions.

(Para 22)

Miscellaneous

48. Debar all legislators from being appointed as chairpersons of various state undertakings, also debar them from any non-ministerial post other than chairmanship of legislative committees.

49. There must be a bar on ministries that are larger than 10% of the house. No other position of profit, executive authority or discretion should be available to legislators.

50. There must be a limit of two terms for any political position. So you may be a member of the panchayat for two terms, of state assembly only for two terms even if non-contiguous and MP for two terms.

51. Some policy should be devised to encourage public-spirited "professionals" to contest elections and give to the legislature the benefit of their expertise and experience for a term or two.

52. The EC should be unanimously appointed by a body consisting of the Prime Minister, the Leader of the Opposition, the Chief Justice of India and the Presiding Officers of

Lok Sabha and Rajya Sabha. This should also be done for the State Election Commissioners.

53. The EC should not be appointed to any other office after retirement.

54. An independent auditing authority should be appointed for auditing annual statements of accounts of all political parties.

55. Rotation of seats should be done for SC seats and non-scheduled area ST seats.

56. There is every case for their being more women representatives. Political parties should be asked to put up women candidates for at least one-third of the seats they contest both for State and parliament elections or the same number of seats should be reserved for them by rotation.

57. The minimum number of valid votes polled should be increased to 25% from the current 16.67% as a condition for the deposit not being forfeited. Also the amount of deposit should be increased. These steps would further reduce non-serious candidates.

58. All candidates should be required to clear government dues before their candidature is accepted. This pertains specially to payment of taxes and bills and to holding on the accommodation, telephones, and government facilities used while in power.

59. Create multi-member or double-member constituencies to eliminate or at least reduce narrow appeals based on religion or caste.

60. Hold State level and parliamentary level elections at the same time. This would reduce election expenditure.

61. Every candidate at the time of election and every holder of a political position annually must declare his assets and liabilities along with those of his close relatives.

(Para 23)

1207 LJ&CA2002—34A

ANNEXURE I (A)

Number and Percentage of votes polled by winning candidates

13th General Election – Lok Sabha 1999

	Over 70%	Over 60%	55-60%	50-55%	45-50%	40-45%	35-40%	30-35%	Below 30%	Total	Above 50%	Below 50%
Andhra Pradesh			6	19	12	4	1			42	59.52%	40.48%
Arunachal Pradesh			2							2	100.00%	0.00%
Assam				1	5	2	2	4		14	7.14%	92.86%
Bihar		2	5	13	21	5	5	3		54	37.04%	62.96%
Goa				1	1					2	50.00%	50.00%
Gujarat		5	3	13	5					26	80.77%	19.23%
Haryana		4	3	2	1					10	90.00%	10.00%
Himachal Pradesh		2	1	1						4	100.00%	0.00%
J & K			1		2	2	1			6	16.67%	83.33%
Karnataka				10	12	4	2			28	35.71%	64.29%
Kerala				5	14		1			20	25.00%	75.00%
Madhya Pradesh		3	6	14	5	10	2			40	57.50%	42.50%
Maharashtra			3	6	12	18	8		1	48	18.75%	81.25%
Manipur								1	1	2	0.00%	100.00%
Meghalaya		1					1			2	50.00%	50.00%
Mizoram			1							1	100.00%	0.00%
Nagaland	1									1	100.00%	0.00%
Orissa	1	4	10	5		1				21	95.24%	4.76%
Punjab				4	5	4				13	30.77%	69.23%
Rajasthan		1	4	13	6		1			25	72.00%	28.00%
Sikim				1						1	100.00%	0.00%
Tamilnadu		1	1	10	18	8	1			39	30.77%	69.23%
Tripura			1	1						2	100.00%	0.00%
Uttar Pradesh		1	1	2	4	12	26	23	16	85	4.71%	95.29%
West Bengal		1	3	11	23	4				42	35.71%	64.29%
Andaman & Nicobar				1						1	100.00%	0.00%
Chandigarh					1					1	0.00%	100.00%

ANNEXURE I (A) – (contd.)

Number and Percentage of votes polled by winning candidates

13th General Election – Lok Sabha 1999

	Over 70%	Over 60%	55-60%	50-55%	45-50%	40-45%	35-40%	30-35%	Below 30%	Total	Above 50%	Below 50%
Dadra & Nagar Haveli					1					1	0.00%	100.00%
Daman & Diu					1					1	0.00%	100.00%
Delhi			1	4	1		1			7	71.43%	28.57%
Lakshadweep				1						1	100.00%	0.00%
Pondicherry							1			1	0.00%	100.00%
Total	**2**	**25**	**52**	**138**	**150**	**74**	**53**	**31**	**18**	**543**	**39.96%**	**60.04%**
Percentage	**0.37%**	**4.60%**	**9.58%**	**25.41%**	**27.62%**	**13.63%**	**9.76%**	**5.71%**	**3.31%**	**100.00%**	**39.96%**	**60.04%**
More than 50%			**39.96%**									
Less than 50%							**60.04%**					

1207 LJ&CA/2002—34B.

ANNEXURE I (B)

Number and Percentage of votes polled by winning candidates

12th General Election – Lok Sabha 1998

	Over 70%	Over 60%	55-60%	50-55%	45-50%	40-45%	35-40%	30-35%	Below 30%	Total	Above 50%	Below 50%
Andhra Pradesh				5	13	13	10	1		42	11.90%	88.10%
Arunachal Pradesh				2						2	100.00%	0.00%
Assam		1	2	1	3	3	2		1	13	30.77%	69.23%
Bihar		1	1	5	16	19	10	2		54	12.96%	87.04%
Goa								1	1	2	0.00%	100.00%
Gujarat	1	1	3	9	6	4	1	1		26	53.85%	46.15%
Haryana					1	5	3	1		10	0.00%	100.00%
Himachal Pradesh		1		2	1					4	75.00%	25.00%
J & K			3		1	2				6	50.00%	50.00%
Karnataka				7	7	10	4			28	25.00%	75.00%
Kerala				5	13	2				20	25.00%	75.00%
Madhya Pradesh			4	9	13	9	4	1		40	32.50%	67.50%
Maharashtra		3	10	18	13	3	1			48	64.58%	35.42%
Manipur								2		2	0.00%	100.00%
Meghalaya		1					1			2	50.00%	50.00%
Mizoram								1		1	0.00%	100.00%
Nagaland	1									1	100.00%	0.00%
Orissa		1	2	10	5	3				21	61.90%	38.10%
Punjab		1	3	7	1	1				13	84.62%	15.38%
Rajasthan			2	10	8	2	2	1		25	48.00%	52.00%
Sikim		1								1	100.00%	0.00%
Tamilnadu			4	14	15	4	2			39	46.15%	53.85%
Tripura				1	1					2	50.00%	50.00%
Uttar Pradesh			4	3	7	19	32	19	1	85	8.24%	91.76%
West Bengal			6	7	19	9	1			42	30.95%	69.05%
Andaman & Nicobar							1			1	0.00%	100.00%
Chandigarh						1				1	0.00%	100.00%
Dadra & Nagar Haveli				1						1	100.00%	0.00%
Daman & Diu						1				1	0.00%	100.00%

Lok Sabha Figures

ANNEXURE I (B) –(contd.)

Number and Percentage of votes polled by winning candidates

12th General Election – Lok Sabha 1998

	Over 70%	Over 60%	55-60%	50-55%	45-50%	40-45%	35-40%	30-35%	Below 30%	Total	Above 50%	Below 50%
Delhi			2	2	2		1			7	57.14%	42.86%
Lakshadweep				1						1	100.00%	0.00%
Pondicherry						1				1	0.00%	100.00%
Total	2	11	46	119	145	111	75	30	3	542	32.84%	67.16%
Percentage	0.37%	2.03%	8.49%	21.96%	26.75%	20.48%	13.84%	5.54%	0.55%	100.00%	32.84%	67.16%
More than 50%			32.84%									
Less than 50%							67.16%					

Lok Sabha Figures

ANNEXE I (C)

Number and Percentage of votes polled by winning candidates

11th General Election – Lok Sabha 1996

	Over 70%	Over 60%	55-60%	50-55%	45-50%	40-45%	35-40%	30-35%	Below 30%	Total	Above 50%	Below 50%
Andhra Pradesh				4	11	14	10	3		42	9.52%	90.48%
Arunachal Pradesh				1				1		2	50.00%	50.00%
Assam				2	1	3	3	4	1	14	14.29%	85.71%
Bihar		2	5	11	8	12	8	7	1	54	33.33%	66.67%
Goa						2				2	0.00%	100.00%
Gujarat		6	6	5	5	1	1	2		26	65.38%	34.62%
Haryana			1			2	2	5		10	10.00%	90.00%
Himachal Pradesh		1	1		2					4	50.00%	50.00%
J & K				1			2	2	1	6	16.67%	83.33%
Karnataka				1	4	8	9	5	1	28	3.57%	96.43%
Kerala				4	14	2				20	20.00%	80.00%
Madhya Pradesh		1	1	8	9	10	4	4	3	40	25.00%	75.00%
Maharashtra			3	5	15	11	7	6	1	48	16.67%	83.33%
Manipur						1			1	2	0.00%	100.00%
Meghalaya	1		1							2	100.00%	0.00%
Mizoram						1				1	0.00%	100.00%
Nagaland		1								1	100.00%	0.00%
Orissa		1	2	4	8	1	3	1	1	21	33.33%	66.67%
Punjab					4	4	4	1		13	0.00%	100.00%
Rajasthan				7	9	7	2			25	28.00%	72.00%
Sikim	1									1	100.00%	0.00%
Tamilnadu		9	16	5	5	2	1	1		39	76.92%	23.08%
Tripura				2						2	100.00%	0.00%
Uttar Pradesh			3	3	5	13	32	21	8	85	7.06%	92.94%
West Bengal		2	6	8	24	2				42	38.10%	61.90%
Andaman & Nicobar			1							1	100.00%	0.00%
Chandigarh							1			1	0.00%	100.00%
Dadar & Nagar Haveli			1							1	100.00%	0.00%

ANNEXURE I (C) – (contd.)

Number and Percentage of votes polled by winning candidates

11th General Election – Lok Sabha 1996

	Over 70%	Over 60%	55-60%	50-55%	45-50%	40-45%	35-40%	30-35%	Below 30%	Total	Above 50%	Below 50%
Daman & Diu				1						1	100.00%	0.00%
Delhi			1	3	2	1				7	57.14%	42.86%
Lakshadweep				1						1	100.00%	0.00%
Pondicherry							1			1	0.00%	100.00%
TOTAL	**2**	**23**	**48**	**76**	**126**	**97**	**90**	**63**	**18**	**543**	**27.44%**	**72.56%**
72.56%	**72.56%**	**72.56%**	**72.56%**	**72.56%**	**72.56%**	**72.56%**	**72.56%**	**72.56%**	**72.56%**	**72.56%**	**72.56%**	**72.56%**
More than 50%			**27.44%**									
Less than 50%							**72.56%**					

ANNEXURE I (D)

Number and Percentage of votes polled by winning candidates – State Assemblies

	Over 70%	Over 60%	55-60%	50-55%	45-50%	40-45%	35-40%	30-35%	Below 30%	Total
Bihar 2000	1	15	17	32	57	53	55	52	42	324
	0.31%	**4.63%**	**5.25%**	**9.88%**	**17.59%**	**16.36%**	**16.98%**	**16.05%**	**12.96%**	**100.00%**
More than 50%			**20.06%**							
Less than 50%							**79.94**			
Bihar 1995		10	14	25	38	54	61	63	59	324
	0.00%	**3.09%**	**4.32%**	**7.72%**	**11.73%**	**16.67%**	**18.83%**	**19.44%**	**18.21%**	**100.00%**
More than 50%			**15.12%**							
Less than 50%							**84.88%**			
Bihar 1990	5	17	21	22	41	41	57	52	68	324
	1.54%	**5.25%**	**6.48%**	**6.79%**	**12.65%**	**12.65%**	**17.59%**	**16.05%**	**20.99%**	**100.00%**
More than 50%			**20.06%**							
Less than 50%							**79.94%**			
Andhra Pradesh 1999	2	19	44	110	60	28	22	7	2	294
	0.68%	**6.46%**	**14.97%**	**37.41%**	**20.41%**	**9.52%**	**7.48%**	**2.38%**	**0.68%**	**100.00%**
More than 50%			**59.52%**							
Less than 50%							**40.48%**			
Andhra Pradesh 1994	8	60	59	84	44	18	13	5	3	294
	2.72%	**20.41%**	**20.07%**	**28.57%**	**14.97%**	**6.12%**	**4.42%**	**1.70%**	**1.02%**	**100.00%**
More than 50%			**71.77%**							
Less than 50%							**28.23%**			

ANNEXURE I (D) – (contd.)

Number and Percentage of votes polled by winning candidates-State Assemblies

	Over 70%	Over 60%	55-60%	50-55%	45-50%	40-45%	35-40%	30-35%	Below 30%	Total
Andhra Pradesh	3	25	43	142	53	15	10	2	1	**294**
1989-90										
	1.02%	**8.50%**	**14.63%**	**48.30%**	**18.03%**	**5.10%**	**3.40%**	**0.68%**	**0.34%**	**100.00%**
More than 50%			**72.45%**							
Less than 50%							**27.55%**			
Maharashtra	0	12	16	31	77	64	53	27	8	**288**
1999										
	0.00%	**4.17%**	**5.56%**	**10.76%**	**26.74%**	**22.22%**	**18.40%**	**9.38%**	**2.78%**	**100.00%**
More than 50%			**20.49%**							
Less than 50%							**79.51%**			
Maharashtra	2	17	20	38	51	50	41	32	37	**288**
1995										
	0.69%	**5.90%**	**6.94%**	**13.19%**	**17.71%**	**17.36%**	**14.24%**	**11.11%**	**12.85%**	**100.00%**
More than 50%			**26.74%**							
Less than 50%							**73.26%**			
Maharashtra	2	16	26	50	50	51	52	25	16	**288**
1990										
	0.69%	**5.56%**	**9.03%**	**17.36%**	**17.36%**	**17.71%**	**18.06%**	**8.68%**	**5.56%**	**100.00%**
More than 50%			**32.64%**							
Less than 50%							**67.36%**			

State Assemblies

ANNEXURE I (D) – (contd.)

Number and Percentage of votes polled by winning candidates-State Assemblies

	Over 70%	Over 60%	55-60%	50-55%	45-50%	40-45%	35-40%	30-35%	Below 30%	Total
Uttar Pradesh	2	10	10	25	47	86	152	74	18	**424**
1996										
	0.47%	**2.36%**	**2.36%**	**5.90%**	**11.08%**	**20.28%**	**35.85%**	**17.45%**	**4.25%**	**100.00%**
More than 50%			**11.08%**							
Less than 50%							**88.92%**			
Uttar Pradesh	0	4	8	31	81	85	104	82	29	**424**
1993										
	0.00%	**0.94%**	**1.89%**	**7.31%**	**19.10%**	**20.05%**	**24.53%**	**19.34%**	**6.84%**	**100.00%**
More than 50%			**10.14%**							
Less than 50%							**89.86%**			
Uttar Pradesh	1	8	12	24	37	61	81	103	97	**424**
1991										
	0.24%	**1.89%**	**2.83%**	**5.66%**	**8.73%**	**14.39%**	**19.10%**	**24.29%**	**22.88%**	**100.00%**
More than 50%			**10.61%**							
Less than 50%							**89.39%**			
Madhya Pradesh	1	10	28	83	69	54	40	22	13	**320**
1998										
	0.31%	**3.13%**	**8.75%**	**25.94%**	**21.56%**	**16.88%**	**12.50%**	**6.88%**	**4.06%**	**100.00%**
More than 50%			**38.13%**							
Less than 50%							**61.88%**			

State Assemblies

ANNEXURE I (D) – (contd.)

Number and Percentage of votes polled by winning candidates-State Assemblies

	Over 70%	Over 60%	55-60%	50-55%	45-50%	40-45%	35-40%	30-35%	Below 30%	Total
Madhya Pradesh	2	11	25	84	66	45	50	27	10	**320**
1993										
	0.63%	**3.44%**	**7.81%**	**26.25%**	**20.63%**	**14.06%**	**15.63%**	**8.44%**	**3.13%**	**100.00%**
More than 50%			**38.13%**							
Less than 50%							**61.88%**			
Madhya Pradesh	2	29	49	63	67	42	36	18	14	**320**
1989-90										
	0.63%	**9.06%**	**15.31%**	**19.68%**	**20.94%**	**13.13%**	**11.25%**	**5.63%**	**4.38%**	**100.00%**
More than 50%			**44.69%**							
Less than 50%							**55.31%**			
Gujarat	6	18	17	38	46	35	16	5	1	**182**
1998										
	3.30%	**9.89%**	**9.34%**	**20.88%**	**25.27%**	**19.23%**	**8.79%**	**2.75%**	**0.55%**	**100.00%**
More than 50%			**43.41%**							
Less than 50%							**56.59%**			
Gujarat	1	13	19	35	44	33	20	11	6	**182**
1995										
	0.55%	**7.14%**	**10.44%**	**19.23%**	**24.18%**	**18.13%**	**10.99%**	**6.04%**	**3.30%**	**100.00%**
More than 50%			**37.36%**							
Less than 50%							**62.64%**			

State Assemblies

ANNEXURE I (D) – (contd.)

Number and Percentage of votes polled by winning candidates-State Assemblies

	Over 70%	Over 60%	55-60%	50-55%	45-50%	40-45%	35-40%	30-35%	Below 30%	Total
Gujarat	11	20	14	34	38	27	24	12	2	**182**
1990										
	6.04%	**10.99%**	**7.69%**	**18.68%**	**20.88%**	**14.84%**	**13.19%**	**6.59%**	**1.10%**	**100.00%**
More than 50%			**43.41%**							
Less than 50%							**56.59%**			
Assam	1	9	10	13	24	24	20	13	11	**125**
1996										
	0.80%	**7.20%**	**8.00%**	**10.40%**	**19.20%**	**19.20%**	**16.00%**	**10.40%**	**8.80%**	**100.00%**
More than 50%			**26.40%**							
Less than 50%							**73.60%**			
Assam	3	5	5	11	20	18	13	20	30	**125**
1991										
	2.40%	**4.00%**	**4.00%**	**8.80%**	**16.00%**	**14.40%**	**10.40%**	**16.00%**	**24.00%**	**100.00%**
More than 50%			**19.20%**							
Less than 50%							**80.80%**			

State Assemblies

ANNEXURE I (D) – (contd.)

Number and Percentage of votes polled by winning candidates - State Assemblies

	Over 70%	Over 60%	55-60%	50-55%	45-50%	40-45%	35-40%	30-35%	Below 30%	Total
Assam	12	11	14	15	19	22	17	11	5	**126**
1985										
	9.52%	8.73%	11.11%	11.90%	15.08%	17.46%	13.49%	8.73%	3.97%	**100.0%**
More than 50%			**41.27%**							
Less than 50%							**58.73%**			
Karnataka	2	6	18	60	50	28	30	21	9	**224**
1999										
	0.89%	2.68%	8.04%	26.79%	22.32%	12.50%	13.39%	9.38%	4.02%	**100.00%**
More than 50%			**38.39%**							
Less than 50%							**61.61%**			
Karnataka	1	8	16	22	38	42	47	28	22	**224**
1994										
	0.45%	3.57%	7.14%	9.82%	16.96%	18.75%	20.98%	12.50%	9.82%	**100.00%**
More than 50%			**20.98%**							
Less than 50%							**79.02%**			
Karnataka										
1989-90	0	10	24	45	53	49	26	14	3	**224**
	0.00%	4.46%	10.71%	20.09%	23.66%	21.88%	11.61%	6.25%	1.34%	**100.00%**
More than 50%			**35.27%**							
Less than 50%							**64.73%**			
Orissa	0	7	8	19	41	29	18	19	6	**147**
1995										
	0.00%	4.76%	5.44%	12.93%	27.89%	19.73%	12.24%	12.93%	4.08%	100.00%
More than 50%			**23.13%**							
Less than 50%							**76.87%**			

ANNEXURE I (D) – (contd.)

Number and Percentage of votes polled byowinning candidates - State Assemblies

	Over 70%	Over 60%	55-60%	50-55%	45-50%	40-45%	35-40%	30-35%	Below 30%	Total
Orissa	20	39	30	17	24	11	4	1	1	**147**
1990										
	13.61%	26.53%	20.41%	11.56%	16.33%	7.48%	2.72%	0.68%	0.68%	100.00%
More than 50%			**72.11%**							
Less than 50%							**27.89%**			
Tamil Nadu	20	95	67	30	16	3	1	2	0	234
1991										
	8.55%	40.60%	28.63%	12.82%	6.84%	1.28%	0.43%	0.85%	0.00%	100.00%
More than 50%			**90.60%**							
Less than 50%							**9.40%**			
Tamil Nadu	2	55	65	73	29	2	8	0	0	**234**
1985										
	0.85%	23.50%	27.78%	31.20%	12.39%	0.85%	3.42%	0.00%	0.00%	100.00%
More than 50%			**83.33%**							
Less than 50%							**16.67%**			
Delhi	0	5	4	13	15	15	12	5	1	**70**
1993										
	0.00%	7.14%	5.71%	18.57%	21.43%	21.43%	17.14%	7.14%	1.43%	100.00%
More than 50%			**31.43%**							
Less than 50%							**68.57%**			
West Bengal	1	33	42	80	116	16	4	2	0	**294**
1996										
	0.34%	11.22%	14.29%	27.21%	39.46%	5.44%	1.36%	0.68%	0.00%	100.00%
More than 50%			**53.06%**							
Less than 50%							**46.94%**			

ANNEXURE I (D) – (contd.)

Number and Percentage of votes polled by winning candidates - State Assemblies

	Over 70%	Over 60%	55-60%	50-55%	45-50%	40-45%	35-40%	30-35%	Below 30%	Total
West Bengal 1991	1	22	47	72	93	48	9	2	0	294
	0.34%	7.48%	15.99%	24.49%	31.63%	16.33%	3.06%	0.68%	0.00%	100.00%
More than 50%			**48.30%**							
Less than 50%							**51.70%**			
West Bengal 1987	3	32	86	129	30	10	4	0	0	**294**
	1.02%	10.88%	29.25%	43.88%	10.20%	3.40%	1.36%	0.00%	0.00%	100.00%
More than 50%			**85.03%**							
Less than 50%							**14.97%**			
Total for all	115	651	878	1550	1534	1159	1100	757	514	8258
Average %age	1.39%	7.88%	10.63%	18.77%	18.58%	14.03%	13.32%	9.17%	6.22%	100.00%
More than 50%			**38.68%**							
Less than 50%							**61.32%**			

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QUESTIONNAIRE
ON
REVIEW OF ELECTION LAW, PROCESSES AND REFORM OPTIONS

1. The paper argues that the terribly high cost of elections lead to corruption, criminalization and black money economy. Do you agree?
   Yes ☐ No ☐

2. Should the responsibilities for attending to constituency problems be clearly demarcated between representatives elected to local bodies, State Legislatures and Union Parliament?
   Yes ☐ No ☐

3. Should the people (the electorate) have a role in the selection of candidates?
   Yes ☐ No ☐

4. Do you agree that the present first-past-the-post system of election does not go well with large number of parties and many Independents contesting elections?
   Yes ☐ No ☐

5. One of the reform options suggested in the paper is that of the Gandhian model. Do you support decentralization of power to the grassroots level with a bottom-up in place of the present top-down approach, cutting down the cost of elections drastically by having direct elections at the local levels and in multi-tier governance each lower level electing the higher and the higher remaining responsible to the lower as argued in paras 6.2 – 6.5 of the paper?
   Yes ☐ No ☐

6. The paper argues that accurate electoral rolls are critical to a free and fair election. Do you agree?
   Yes ☐ No ☐

7. Do you agree hat the current electoral rolls in India are significantly flawed?
   Yes ☐ No ☐

8. Do you agree that the electoral roll inaccuracies are partly a result of wilful tampering by the staff concerned?
   Yes ☐ No ☐

9. Do you think that accurate electoral rolls can help clean up the electoral process and curb impersonation and rigging?
   Yes ☐ No ☐

10. Do you think that accurate electoral rolls will lend greater legitimacy to the electoral process?
    Yes ☐ No ☐

11. Currently electoral rolls are prepared at the level of assembly constituency. Do you believe that the preparation of these rolls right at panchayat level or municipal ward level would achieve significantly better accuracy?
    Yes ☐ No ☐

12. The paper argues that the job of preparing electoral rolls should be given to a pre-qualified professional organisation instead of government staff deputed to Election Commission. This would be more efficient and increase accuracy. Do you agree?
    Yes ☐ No ☐

13. Should the Voter ID card be a multipurpose card, which can be used for other identity functions?
Yes ☐ No ☐

14. Should the voter ID card be prepared with latest technology so that it will have a unique bar-coded ID number for each voter?
Yes ☐ No ☐

15. As argued in the paper, should the voter ID card have information about a visible identification mark apart from the photograph?
Yes ☐ No ☐

16. If a multipurpose card is made which would have benefits in many areas, is it alright to charge a small amount for it?
Yes ☐ No ☐

17. Do you agree that voting should be made compulsory?
Yes ☐ No ☐

18. Electoral rolls and voter ID if linked to each other can create a strong deterrent against impersonation. Do you agree?
Yes ☐ No ☐

19. Should India introduce Electronic Voting Machines for all elections?
Yes ☐ No ☐

20. In your opinion would a proper electoral roll and a proper voter ID help in curbing rigging, and other intimidation of voters?
Yes ☐ No ☐

21. Should the Election Commission have the authority to take a decision about booth capturing without the report of the returning officer, if it is satisfied that there was booth capturing?
Yes ☐ No ☐

22. Should the punishment for booth capturing be made more stringent with mandatory imprisonment?
Yes ☐ No ☐

23. Are the existing laws in regard to punishing violators of electoral laws being properly implemented?
Yes ☐ No ☐

24. The present laws about punishing violators of electoral laws need to be more strictly implemented?
Yes ☐ No ☐

25. The present laws about punishing violators of electoral laws are not strict enough and need to be even more stringent providing severe punishment
Yes ☐ No ☐

26. Should there be video surveillance in sensitive constituencies and correspondingly a strict punishment for violators?
Yes ☐ No ☐

27. The present law states that a person should be convicted for certain offences, only then can we disqualify him from contesting elections. Do you agree?
Yes ☐ No ☐

28. Should anyone with a criminal record be permitted to contest elections even though a court may not have convicted him?
Yes ☐ No ☐

29. If not, should a person against whom the court has framed charges not be allowed to contest elections?
Yes ☐ No ☐

30. In case of charges framed only by the police should there be special electoral courts to decide whether the charges framed are serious and genuine enough to stop the person from contesting?
Yes ☐ No ☐

31. Do you agree that all election related petitions should be heard by a separate judicial set up?
Yes ☐ No ☐

32. Do you agree that all election related petitions should be decided in a strict time bound period of 6 to 12 weeks?
Yes ☐ No ☐

33. Do you agree with the views of the Election Commission that whoever is convicted by a court of law and sentenced to imprisonment for six months or more should be debarred from contesting elections for the period of his sentence plus six years?
Yes ☐ No ☐

34. Do you agree that the political parties that are seen to abet criminalisation should face action including derecognition.
Yes ☐ No ☐

35. Election Commission has suggested that the procedure for disqualification based on corrupt practices should be streamlined so that a quick decision can be taken by the Election Commission without the matter going from the High Court to the House concerned and then to the President and through the President to the Election Commission. Do you agree?
Yes ☐ No ☐

36. Should corporate donations and contributions to political parties remain banned as at present?
Yes ☐ No ☐

37. Does the banning of corporate contributions really serve any purpose in actually curbing these contributions?
Yes ☐ No ☐

38. Does curbing contributions in this way only drives contributions underground?
Yes ☐ No ☐

39. Would making all contributions transparent help in regulating political funding?
Yes ☐ No ☐

40. Do you think that political parties have a single point agenda to "win" elections and other moral issues, interests of the nation or welfare of the people take a back seat?
Yes ☐ No ☐

41. Do you think that widespread corruption in electoral process compromises the legitimacy of the whole system?
Yes ☐ No ☐

42. Should limits on campaign costs be more reasonable and regularly revised with reference to the cost of living index?
Yes ☐ No ☐

43. Currently, money spent on a candidate's election campaign by his friends or supporters or his political party is not counted as expenditure in his account leading to a disregard for expenditure limits imposed on him. Should all expenses on a candidate including the expenditure made by his friends and supporters and his political party be counted as his election expense?
Yes ☐ No ☐

44. Should there be partial state funding of elections?
Yes ☐ No ☐

45. Should it be in kind or cash or both or none?
Cash ☐ Kind ☐ Both ☐ None ☐

46. If yes, please indicate separately how far should state funding go.

47. It has been suggested that political parties should be subject to a regular statutory audit of their accounts. Do you agree?
Yes ☐ No ☐

48. It has also been suggested that electoral candidates should be subject to a full audit of their campaign spending. Do you agree?
Yes ☐ No ☐

49. It has been suggested that an election fund may be created and political parties paid Rs. 5 or Rs. 10 by the government for each vote they poll (provided they poll more than 2% votes) to meet election and other political activity expenses. Do you agree?
Yes ☐ No ☐

50. Should corporate donations be tax-exempt to encourage transparent and open contributions?
Yes ☐ No ☐

51. Should wasteful political rallies and *tamashas* be banned and electronic campaigns promoted instead even if it means state help?
Yes ☐ No ☐

52. Should there be a stricter control on election campaign expenses being made by the candidates?
Yes ☐ No ☐

53. In light of the fact that regulations and laws have not helped much in this direction, what other means can be adopted to reduce this expenditure? Please attach your suggestions on a separate sheet.

54. Some have suggested that in addition to the directly elected candidates, there should be a further 25% MPs elected on a list system in proportion to the votes polled by various political parties? It is suggested that this would lead to better representation. Do you agree?

Yes ☐ No ☐

55. Do you think such a proportional representation would lead to more stable or more unstable governments?

Stable ☐ Unstable ☐

56. Do you think that having the possibility to nominate candidates through the list system, political parties will pick up best candidates (better) or it will mean, more intrigue and politicking and corruption (worse) in such lists?

Better ☐ Worse ☐

57. It has been suggested that in view of most candidates winning on a minority vote candidates appeal to narrow loyalties and this divides the society further. Do you agree?

Yes ☐ No ☐

58. To counter this it is suggested that a candidate should win only when he gets more than 50% votes in the constituency even if a run-off poll is required. Do you agree?

Yes ☐ No ☐

59. Do you think that there should be some incentive in matters of rations, tax exemptions, etc. for voters to come forward and vote in large numbers?

Yes ☐ No ☐

60. It is suggested that defections whether by individuals or in groups should not be permitted. Any one defecting or leaving his original political party on whose ticket he won the election should be disqualified and should lose his seat in the parliament/state assembly. Do you agree?

Yes ☐ No ☐

61. Some suggest that there should be no exemption from disqualification on the ground of party split. Do you agree?

Yes ☐ No ☐

62. Due to population changes many constituencies within States have become imbalanced in the sense that one has very high numbers of voters while other may have very few, and both elect one representative each. This should be rectified so that the value of vote in each constituency within the state is more uniform. Do you agree?

Yes ☐ No ☐

63. Should this be done regularly by the Election Commission as a matter of course from election to election or should there be a delimitation exercise by the government separately?

By EC regularly ☐ By Delimitation Commission ☐

64. It has been suggested, in view of proliferation of political parties, that only those national or federal parties or pre-poll alliances which get a certain percentage of votes cast (say 10%) in half the States should be recognized as All India parties and allowed to contest for seats in Lok Sabha. Do you agree?

Yes ☐ No ☐

65. It is also suggested that most of the independents are fake, frivolous or put up candidates and therefore should be barred from contesting. Do you egree?

Yes ☐ No ☐

66. Others suggest that instead of barring independents altogether, only allow those who may have won a lower tier election before, for example, a panchayat, municipal, or even a recognised cooperative election. Do you agree?
Yes ☐ No ☐

67. It is suggested that for parliamentary democracy to succeed, we should have a system of two major parties or two major pre-poll alliances. Do you agree?
Yes ☐ No ☐

68. To resolve the problem of Government formation in case of a hung house or of no party or alliance being in a position to form a stable government, it is suggested that the House should elect its Leader along with the election of the Speaker. Do you agree?
Yes ☐ No ☐

69. In order to impart further stability to the system, it is suggested that no-confidence motion should not be permitted unless it simultaneously proposes a new leader of the House. Do you agree?
Yes ☐ No ☐

70. It is also suggested that if a no-confidence motion is defeated then a fresh one should not be permitted for at least one year. Do you agree?
Yes ☐ No ☐

71. It is suggested by some that legislators should be debarred from non-ministerial posts like Chairmanship of Public Undertakings. In other words, those who are not ministers will be only legislators and will not have any other office except that of Chairmen of legislative committees in their respective Houses. Do you agree?
Yes ☐ No ☐

72. There must be a bar on ministries larger than 10% of the strength of the House.
Yes ☐ No ☐

73. Some people feel that whole-time professional politicians with no means of earning their livelihood except in political offices have corrupted the system. Do you agree?
Yes ☐ No ☐

74. If so, should there be a limit of two terms for any elected political position?
Yes ☐ No ☐

75. A neutral body consisting of the Prime Minister, the Leader of the Opposition, the Chief Justice of India and presiding officers of Lok Sabha and Rajya Sabha should appoint the EC. Do you agree?
Yes ☐ No ☐

76. EC should not be appointed to any other office after retirement.
Yes ☐ No ☐

77. An independent auditing authority should be appointed for auditing annual statements of accounts of all political parties.
Yes ☐ No ☐

78. Rotation of seats should be done for SC seats and non-scheduled area ST seats.
Yes ☐ No ☐

79. Political parties should be asked to put up women candidates for at least one-third of the seats they contest both for State and Parliament elections or there should be reservation of the same number by rotation.
Reservation ☐ Nomination by Parties ☐

80. The minimum number of valid votes polled should be increased to 25% from the current 16.67% as a condition for not forgeiting the deposit. The deposit should also be increased. These steps would further reduce non-serious candidates.
Yes ☐ No ☐

81. All candidates should be required to clear all government dues, taxes etc., before their candidature is accepted. This may cover handing over the accommodation, telephones, and government facilities used while in power. Do you agree?
Yes ☐ No ☐

82. Every candidate at the time of filing the nomination and every holder of a political position annually must declare the assets and liabilities of himself and his close family members.
Yes ☐ No ☐

83. India has never tried to educate its masses in their duties under democracy. The fundamental rights and fundamental duties must be included in all curriculums so that over a period of time the new generation will know what their rights are and what is expected of them. The manipulating politician may not be able to manipulate this new generation then. This would play a significant role in cleansing of the political arena. Should this be done?
Yes ☐ No ☐

84. Create multi-member or double member constituencies to eliminate or at least reduce narrow appeals based on religion or caste.
Yes ☐ No ☐

85. Hold state level and Parliamentary level elections at the same time. This would reduce election expenditure. Do you agree?
Yes ☐ No ☐

86. Should elections to Lok Sabha and Legislative Assemblies of States be held simultaneously?
Yes ☐ No ☐

87. For contesting elections to Rajya Sabha (Council of States) should it not be an essential pre-condition that the candidate is an actual resident of the State.
Yes ☐ No ☐



NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

IMMUNITY OF LEGISLATORS : WHAT DO THE WORDS "IN RESPECT OF ANYTHING SAID OR ANY VOTE GIVEN BY HIM" IN ARTICLE 105(2) SIGNIFY?

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating public debate and eliciting public response.

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Advisory Panel

on

Strengthening of the institutions of Parliamentary Democracy;
(Working of the Legislature, Executive and Judiciary;
their accountability; problems of Administrative,
Social and Economic Cost of Political
Instability; Exploring the possibilities
of stability within the discipline
of Parliamentary Democracy)

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The Commission places on record its profound appreciation of and gratitude to Justice Shri B.P. Jeevan Reddy for his contribution.

CONTENTS

		Pages
1.	Introduction	547
2.	Position in U.K.	550
3.	Position in Australia	551
4.	Position in Canada	551
5.	Position in USA	551
6.	The Basis of the decision in P.V. Narasimha Rao Vs. The State	551
7.	Recommendations	556
	Questionnaire	557

1. INTRODUCTION

The power, privileges and immunities of each House of Parliament and of the Members and the Committees of each House are set out in Article 105 of the Constitution. The Article comprises four clauses. Clause (1) says that "subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament". Clause (2) declares that "no member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings". Clause (3), which has undergone an amendment under the Constitution 44th Amendment Act, 1978, read before the amendment as follows: "in other respects the powers, privileges and immunities of each House of Parliament, and of the Members and the Committees of each House, shall be such as may from time to time be defined by Parliament by law, and until so defined shall be those of the House of Commons of Parliament of the United Kingdom and of its Members and Committees at the commencement of this Constitution". After the aforesaid amendment, clause (3) now reads as follows: "(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978." Clause (4) reads thus: "(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament."

2. Article 194 similarly sets out the powers, privileges and immunities of the House of the Legislature of a State, of its members and the committees of the House of such Legislature. The provisions of Article 194 are identical to the provisions in Article 105 in all respects. Hence, whatever is said hereinafter with respect to Article 105, applies equally to Article 194.

3. Clause (1) of Article 105 has been construed by the Supreme Court in several decisions, namely, MSM Sharma v. Shrikrishna Sinha (AIR 1959 SC 395), special reference number 1 of 64 Keshav Singh's case (AIR 1965 SC 745) and recently in PV Narasimha Rao v. State (AIR 1998 SC 2120).

4. It has been held by the Court that the freedom of speech guaranteed by clause (1) to the Members of Parliament is in addition to the freedom of speech and expression guaranteed to the citizens of this country by Article 19(1)(a) and that the said freedom guaranteed to the Members of Parliament is not subject to the reasonable restrictions contemplated by clause (2) of Article 19. Of course the said freedom is available only within the Houses of Parliament and is "subject to the provisions of this Constitution" (which expression has been construed to mean subject to the provisions of the Constitution which regulate the procedure of Parliament, namely, Articles 118 and 121). The said right is also subject to the rules and standing orders regulating the procedure of Parliament. It has also been held that even if a Member of Parliament makes a statement in the House which is defamatory of a citizen, no action can be taken by a citizen for defamation against such member. Of course, if the member makes such an allegation or repeats the said allegation outside the House, he shall be liable to be sued for defamation or being proceeded against for libel in a criminal court.

5. Clause (2) is in two parts. The first part confers an immunity upon a Member of Parliament in respect of anything said or any vote given by him in Parliament or any committee thereof; the immunity protects him from being proceeded against in a court of law. The second part confers an immunity upon the person who publishes such proceedings by or under the authority of either House of Parliament; the publication may be of any report, paper,

be decided by the ordinary courts in appropriate proceedings. For example, the jurisdiction to try a criminal offence, such as murder, committed even within a House vests in ordinary criminal courts and not in a House of Parliament or in a State Legislature."

10. As stated hereinbefore, the interpretation of clause (2) arose again in PV Narasimha Rao v. State. The facts of this case are interesting. A chargesheet was filed against Shri PV Narasimha Rao and some others (Members of Parliament and others) under section 120B IPC and sections 7, 12, 13(2) read with section 13(1)(d)(iii) of the Prevention of Corruption Act, 1988. The substance of the charge was that PV Narasimha Rao and some others entered into a criminal conspiracy to bribe certain other accused, namely, Suraj Mandal and others (Members of Parliament), to induce them to vote against the motion of no confidence moved against Shri PV Narasimha Rao's government in Lok Sabha. Both the bribe givers and bribe takers were chargesheeted. A preliminary objection was raised on behalf of the accused before the special judge (in whose court the chargesheets were filed) contending that the jurisdiction of the court to try the accused for the aforementioned offences was barred by clause (2) of Article 105 of the Constitution inasmuch as the charges and the prospective trial is in respect of matters which relate to the privileges and immunities of the Members of Parliament. It was contended that inasmuch the foundation of the chargesheets is the allegation of acceptance of bribe by some Members of Parliament for voting against the no confidence motion, the controversy is in respect of the motive and actions of the Members of Parliament pertaining to the vote given by them in relation to the said motion. The special judge rejected the said contention. He held that the issue before him was not the voting pattern of the Members of the House but their alleged illegal acts, namely, demanding and accepting bribe for exercising their franchise in a particular manner. He held further that members of Parliament are holding a public office and accepting illegal gratification for exercising their franchise in a particular manner is an offence punishable under the P.C. Act. Certain other contentions raised by the accused were also rejected which we need not refer to at this stage. The matter was then taken to the Delhi High Court. The High Court agreed with the special judge and dismissed the revision petitions. It held, construing clauses (2) and (3) of Article 105, that to offer bribe to a Member of Parliament to influence him in his conduct as a member has been treated as a breach of privilege in England but by merely treating the commission of a criminal offence as a breach of privilege does not amount to ouster of the jurisdiction of the ordinary courts to try penal offences. The High Court held that the claim for such a privilege would amount to claiming a privilege to commit a crime which cannot be conceded. The High Court also rejected the contention that the Members of Parliament were not public servants within the meaning of the P.C. Act. Other contentions urged by the accused were also rejected. The matter was then carried to the Supreme Court. A five-judge Constitution Bench heard the matter. So far as the question whether a Member of Parliament is a 'public servant' within the meaning of the Prevention of Corruption Act is concerned, the Bench was unanimous that they are. But on the question of interpretation of clause (2) of Article 105, there was a sharp division of opinion. Two judges, S.C. Agrawal and A.S. Anand, JJ. held that "a Member of Parliament does not enjoy immunity under Article 105(2) or Article 105(3) of the Constitution from being prosecuted before a criminal court for an offence involving offer or acceptance of bribe for the purpose of speaking or by giving his vote in Parliament or in any committees thereof". On the other hand, S.P. Barucha and Rajendra Babu, JJ. held that while bribe-givers (who are Members of Parliament) cannot invoke the immunity conferred by clause (2) of Article 105, the bribe-takers (Members of Parliament) can invoke that immunity if they have actually spoken or voted in the House pursuant to the bribe taken by them; if however a Member of Parliament takes a bribe for speaking or voting in the House in a particular manner but does not so speak or vote, the immunity cannot be invoked by him. This conclusion was arrived at on the construction of the words "in respect of" occurring in the said clause. The learned judges held that the said words were of wide amplitude and therefore the integral connection between the bribe taking and the vote in the House cannot be dissected or separated. G.N. Ray, J. agreed with Barucha and Rajendra Babu, JJ. on this question.

11. The learned judges differed on one more question which was raised before them viz. who is the authority competent to grant sanction required by section 19 of the Prevention

of Corruption Act? S.C. Agrawal and A.S. Anand, JJ. held that even though the Members of Parliament are public servants within the meaning of section 2© of the Prevention of Corruption Act, 1988, no authority is specified as on today as the authority competent to remove a Member of Parliament and to grant sanction for his prosecution under section 19(1) of the said Act. But, the learned judges held, that does not mean that the Members of Parliament cannot be proceeded against under the said Act. They held that until the law is amended suitably, the prosecuting agency shall, before filing a chargesheet in respect of offences under sections 7, 10, 11, 13 and 15 of the P.C. Act against a Member of Parliament in a criminal court, obtain the permission of the Chairman of the Rajya Sabha/Speaker of the Lok Sabha, as the case may be. On the other hand, S.P. Bharucha and Rajendra Babu, JJ. held that since there is no authority competent to grant sanction under section 19 of the P.C. Act, they cannot be prosecuted for offences under sections 7, 10, 11 and 13 of the said Act. The learned judges expressed the hope that Parliament will address itself to the task of removing the said lacuna with due expedition. G.N. Ray, J. does not appear to have expressed himself on this question.

12. Before the said question is examined further, it would be appropriate to examine the position obtaining in other democracies in this behalf.

2. POSITION IN U.K.

13. The House of Commons had passed a resolution on May 2, 1695 resolving that "the offer of money or other advantage to any Member of Parliament for the promoting of any matter whatsoever pending or to be transacted in Parliament is high crime and misdemeanor and tends to the subversion of the English Constitution." In the 1970s, a Royal Commission on Standards of Conduct in Public Life chaired by Lord Salmon was constituted to examine this question. The Commission submitted its report in July, 1976 pointing out that "neither the statutory nor the common law applies to the bribery or attempted bribery of a Member of Parliament in respect of his parliamentary activities." While stating that corrupt transactions involving a Member of Parliament in respect of matters that had nothing to do with his parliamentary activities would be caught by the ordinary criminal law, they recommended, in the light of the nature of the duties of a Member of Parliament that "Parliament should consider bringing corruption, bribery and attempted bribery of a Member of Parliament acting in his parliamentary capacity within the ambit of the criminal law". Indeed, during the course of debate, Lord Salmon stated: "to my mind, equality before the law is one of the pillars of freedom to say that immunity from criminal proceedings against anyone who attempts to bribe a Member of Parliament and any Member of Parliament who accepts the bribe, stems from the Bill of rights is possibly a serious mistake ... now this (Bill of rights) is a charter for freedom of speech in the House; it is not a charter for corruption".

14. The Committee on Standards in Public Life chaired by Lord Nolan in its first report submitted in May, 1995, opined that while undoubtedly the Members of Parliament who accepted bribes in connection with their parliamentary duties would be committing common law offences, there is a doubt whether the courts or the Parliament have jurisdiction in such cases. The committee recommended that the matter be examined further by the Law Commission. Pursuant to the said recommendation, it appears, the UK Law Commission issued a consultation paper (No.145) entitled "Clarification of the Law relating to the Bribery of Members of Parliament" in December, 1996. The Select Committee on Standards and Privileges has been invited by the Law Commission to consider the following four broad options:

1) To rely solely on parliamentary privileges to deal with acquisitions of the bribery by Members of Parliament.
2) Subject Members of Parliament to the present corruption statutes in full.
3) Distinguish between conduct which should be dealt with by the criminal law and that which should be left to Parliament itself and
4) Making proceedings subject to the approval of the relevant Houses of Parliament.

15. Mention must be made of the decision of a single judge Buckley J. in R v. Currie where the learned judge expressed the opinion that the claim of immunity in respect of cases of corruption by Members of Parliament is "an unacceptable proposition at the present time".

3. POSITION IN AUSTRALIA

16. As far back as 1875, the Supreme Court of New South Wales held that an attempt to bribe a Member of a Legislative Assembly in order to influence his vote was a criminal offence triable by common law. The said decision was approved by the High Court of Australia in R v. Boston, (1923) 33 CIR 386. In fact, section 73A of the Crimes Act, 1914 makes it an offence for Members of Australian Parliament to accept a bribe. Similarly a person who seeks to bribe a Member of Parliament is equally guilty of an offence.

4. POSITION IN CANADA

17. The law in Canada is similar to the law in Australia. Section 108 of the Criminal Code in Canada makes it an offence either to offer or to accept a bribe by a provincial or a federal Member of Parliament.

In other Commonwealth countries too, the position appears to be the same.

5. POSITION IN USA

18. Two decisions of the US Supreme Court have considered this question, namely, US v. Brewster, (1972) 33 Lawyers Edition 2d 507 and US v. Helstoski, (1979) 61 Lawyers Edition 2d 12. In Brewster, a majority of six judges led by Burger C.J. held that the speech or debate clause contained in Article 1(6) of the US Constitution protects the Members of Congress from inquiry into legislative acts or into the motivation for their actual performance of legislative acts but that it does not protect them from other activities they undertake that are political rather then legislative in nature and that taking a bribe for the purpose of having one's official conduct influenced is not part of any legislative process or function and further that the speech or debate clause did not prevent indictment and prosecution of Brewster for accepting bribes. Three judges, Brennan, White and Douglas, JJ., however, dissented and held that Brewster cannot be prosecuted in a criminal court. The judges in minority held that the trial of the crimes with which Brewster is charged calls for an examination of the motives behind his legislative acts and hence prohibited by Article 1(6) of the US Constitution. They held that the immunity goes beyond the vote itself and "precludes all extra congressional scrutiny as to how and why he cast, or whatever cast, is voted a certain way". They held that if Members of Congress are to be subject to prosecutions in criminal courts, the speech and debate clause in Article 1(6) loses its force and that the argument that while a Congressman cannot be prosecuted for his vote whatever it might be but he can be prosecuted for an alleged agreement (of bribery), even if he votes contrary to the bargain, is unacceptable.

The decision in Brewster was followed in the later case referred to above.

6. THE BASIS OF THE DECISION IN P.V. NARSIMHA RAO VS. STATE

19. S.C. Aggarwal and A.S. Anand JJ. who rendered the minority opinion in the said decision relied upon and followed the majority opinion in Brewster. The learned Judges quoted with approval the following passages from the opinion of Burger, C.J. who delivered the majority opinion: "the authors of our Constitution were well aware of the history of both the need for the privilege and the abuses that could flow from the sweeping safeguards. In order to preserve other values, they wrote the privilege so that it tolerates and protects behavior on the part of Members not tolerated and protected when done by other citizens, but the shield does not extend beyond what is necessary to preserve the integrity of the legislative process..... Congress is ill-equipped to investigate, try, and punish its Members for a wide range of behavior that is loosely and incidentally related to the legislative process".

20. The learned Judges also quoted with approval the following comment of Burger, C.J. upon the reasoning of Brennan J. (who delivered one of the minority opinions in the said case):

> "Mr. Justice Brennan suggests that inquiry into the alleged bribe is inquiry into the motivation for a legislative act, and it is urged that this very inquiry was condemned as impermissible in Johnson. That argument misconstrues the concept of motivation for legislative acts. The Speech or Debate Clause does not prohibit inquiry into illegal conduct simply because it has some nexus to legislative functions."

Besides the decision in Brewster, the learned Judges referred to and followed the general trend of opinions in Australia and Canada.

21. S.P. Barucha and Rajendra Babu JJ., on the other hand, preferred to rely upon and follow the minority opinion in Brewster. The learned Judges pointed out at the outset that even Burger, C.J. said that the purpose of the speech or Debate Clause in Article 1(6) of the U.S. Constitution was to protect the individual legislator, not simply for his own sake, but to preserve the independence and thereby the integrity of the legislative process. The learned Judges quoted with approval the following observations of Brennan, J. in the said decision: "Senator Brewster is not charged with conduct merely 'relating to the legislative process' but with a crime whose proof calls into question the very motives behind his legislative acts. The indictment, then, lies not at the periphery but at the very center of the protection that this Court has said is provided a Congressman under the clause." The learned Judges pointed out that Brennan, J. rightly held that the Senator's immunity went beyond the vote itself and that it "precludes all extra-congressional scrutiny as to how and why he cast, or would have cast, his vote a certain way." The learned Judges pointed out further that Brennan J. has quoted from the opinion of Frankfurter, J. in an earlier case to the effect:

> "One must not expect uncommon courage even in legislators. The privilege would be of little value if they could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives. The holding of this Court in Fletcher v. Peck, (1809-15) 3 Law Ed 162, 176, that it was not consonant with our scheme of Government for a Court to inquire into the motives of legislators, has remained unquestioned.... In times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed. Courts are not the place for such controversies. Self-discipline and the voters must be the ultimate reliance for discouraging or correcting such abuses."

22. The learned Judges also quoted with approval the following observations of Brennan J.:

> "this reprehensible and outrageous conduct, if committed by the Senator, should not have gone unpunished. But whether a Court or only the Senate might undertake the task is a constitutional issue of portentous significance, which must of course be resolved uninfluenced by the magnitude of the perfidy alleged. It is no answer that Congress assigned the task to the judiciary in enacting 18 USC201. Our duty is to Nation and Constitution, not Congress. We are guilty of a grave disservice to both Nation and Constitution when we permit Congress to shirk its responsibility in favour of the Courts. The Framers' judgment was that the American people could have a Congress of independence and integrity only if alleged misbehaviour in the performance of legislative functions was accountable solely to a Member's own House and never to the executive or judiciary. The passing years have amply justified the wisdom of that judgment. It is the Court's duty to enforce the letter of the Speech or Debate Clause in that spirit. We did so in deciding Johnson. In turning its back on that decision today, the Court arrogates to the judiciary an authority committed by the Constitution, in Senator Brewster's case, exclusively to the Senate of the United States."

23. Applying the ratio of Brennan J., the learned Judges held: (a) that the alleged bribes were accepted by the Members of Parliament "as a motive or reward for defeating the no-Confidence Motion.... the nexus between the alleged conspiracy and bribe and the no-Confidence Motion is explicit." Hence the said activity of bribe taking must fall within the ambit of the expression "in respect of" in clause (2) of article 105, which expression must receive a broad meaning, and (b) the true object behind clause (2) of article 105 is "to enable the Members to speak their mind in Parliament and vote in the same way freed of the fear of being made answerable on that account in a court of law.... It is not enough that Members should be protected against civil action and criminal proceedings, the cause of action of which is their speech or their vote. To enable members to participate fearlessly in Parliamentary debates, members need the wider protection of immunity against all civil and criminal proceedings that bear a nexus to their speech or vote. It is for that reason that a member is not 'liable to any proceedings in any Court in respect of anything said or any vote given by him". On the above reasoning the learned Judges (with whom G.N. Ray J. agreed), held that where a Member of Parliament votes pursuant to a bribe taken by him to influence his voting, he cannot be prosecuted in a court of law but where he has taken a bribe to vote in a particular manner, but does not actively cast the vote, he can be prosecuted in a criminal court because in such a case it cannot be said that there is a nexus between the vote and the bribe taken by him. The learned Judges have also referred to the decisions of courts in other countries but ultimately preferred to apply and follow the reasoning of the minority opinion in Brewster.

24. Commission seeks to point out hereinabove that the two main opinions in P.V. Narsimha Rao differ on yet another point viz., who is the authority to grant the sanction for prosecuting the Members of Parliament in a criminal court. In the absence of any specified authority, Aggrawal and Anand, JJ. held that the Speaker/Chairman of Lok Sabha/Rajya Sabha should be the authority to grant sanction pending legislation on the said aspect while Barucha and Rajendra Babu, JJ. opined that in the absence of any authority having been specified by law to grant sanction for prosecuting the Members of Parliament under the P.C. Act, it must be held that there is no authority that can grant such sanction. (G.N. Ray, J. did not express any opinion on this aspect, as has been pointed out by us hereinbefore).

25. It is evident from the above discussion that two issues require to be clarified by effecting necessary amendments in articles 105 and 194 and/or the Prevention of Corruption Act, 1988. The issues are (a) which among the two opinions in P.V. Narsimha Rao represents the correct interpretation of clause (2) of article 105 and if the answer is that the minority opinion (Aggarwal and Anand, JJ.) is the correct one, what are the changes required in the relevant constitutional provisions to give effect to their opinion to bring our law in accord with the law in major democracies, and (b) if an authority competent to grant sanction for prosecuting the Members of Parliament under the P.C. Act has to be constituted/specified - as indeed recommended by both the main opinions in P.V. Narsimha Rao. - whether it should be brought about by amending the P.C. Act or whether article 105 itself is necessary to be amended for the purpose?

First Issue: The Preamble to our Constitution as well as articles 14 to 18 speak of equality before law in addition to equal protection of laws. It has been repeatedly held by the Supreme Court that the equality clause in our Constitution is the most fundamental and basic of all the rights and freedoms assured by our Constitution. (For example, see the opinion of Chandrachud J. in Indira Gandhi v. Raj Narain, 1975 SC 2299 at 2469 (para 680) where Article 14 has been described as "a basic postulate of our Constitution".) Creating an immunity in favour of Members of Parliament for their corrupt acts on the ground that such corrupt acts are "in respect of" their voting and speaking in Parliament appears to run counter not only to the principle of equality underlying our Constitution but against all notions of justice, fair play and above all good conduct which is expected from the Members of Parliament more than from the ordinary citizens of this country. The representatives of people, who make laws for the nation, must set standards of rectitude for the people and not the other way round. If they indulge in corrupt activity and bribe-taking for speaking or voting in a particular way in Parliament, with what face can they enact laws providing for good conduct and incorporating injunctions of corruption-free discharge of duties by officials and

others? The unrestricted freedom of speech guaranteed by clause (1) of article 105 and the protection provided by clause (2) is to enable the members to function fearlessly, free from the fear of being prosecuted in a criminal court for their speeches and votes within the House. The Founding Fathers could never have meant the said freedom and protection in clauses (1) and (2) to protect the corrupt behaviour or to facilitate bribe-taking. A charter of freedom can not be converted into a charter for corruption. Clause (2) cannot and ought not to be construed as conferring an immunity for crimes committed. The privileges of Members of Parliament cannot be invoked where a crime has been committed. In this regard, it would be useful to refer to the decision of the U.S. Supreme Court in U.S. v. Nixon (1974) 418 US 683 = 41 L.Ed. 2d. 1039 where it has been held that the executive privilege of the President cannot be invoked, and not available, for screening a crime. The following observations in the said judgment are apposite:

> "[29] The impediment that an absolute, unqualified privilege would place in the way of the primary constitutional duty of the Judicial Branch to do justice in criminal prosecutions would plainly conflict with the function of the courts under Art III. In designing the structure of our Government and dividing and allocating the sovereign power among three co-equal branches, the Framers of the Constitution sought to provide a comprehensive system, but the separate powers were not intended to operate with absolute independence. 'While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity." Youngstown Sheet & Tube Co. v Sawyer, 343 US, at 635, 96 L Ed 1153, 26 ALR2d 1378 (Jackson, J., concurring). To read the Art II powers of the President as providing an absolute privilege as against a subpoena essential to enforcement of criminal statutes on no more than a generalized claim of the public interest in confidentiality of nonmilitary and non-diplomatic discussions would upset the constitutional balance of "a workable government" and gravely impair the role of the courts under Art III.... The allowance of the privilege to withhold evidence that is demonstrably relevant in a criminal trial would cut deeply into the guarantee of due process of law and gravely impair the basic function of the courts. A President's acknowledged need for confidentiality in the communications of his office is general in nature, whereas the constitutional need for production of relevant evidence in a criminal proceeding is specific and central to the fair adjudication of a particular criminal case in the administration of justice. Without access to specific facts a criminal prosecution may be totally frustrated. The President's broad interest in confidentiality of communications will not be vitiated by disclosure of a limited number of conversations preliminarily shown to have some bearing on the pending criminal cases. [39] We conclude that when the ground for asserting privilege as to subpoenaed materials sought for use in a criminal trial is based only on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice. The generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial."

26. It is a matter of common knowledge that President Nixon tendered his resignation soon after the said judgment of the Supreme Court.

27. We are also of the opinion that recognition of such an immunity is neither good for the image of the Parliament and of its Members nor is it in the interest of our society and our nation. Indeed it appears surprising that such a contention was urged by certain Members of Parliament before the courts including the Supreme Court. That the majority of the Members of the Constitution Bench of the Supreme Court felt obliged to accept the said plea in the light of the language employed in clause (2) does not mean that they have justified it or condoned such behaviour. On the contrary, they clearly expressed their disgust with such behaviour, though ultimately they felt constrained to uphold their contention in view of what they

considered was the inescapable effect of the language in clause (2). Constitutionality and desirability are two different and distinct matters. With a view to maintaining the dignity, honour and respect, not excluding the self-respect, of the House and its Members, it is necessary to clarify the issue to the effect that the freedom of speech guaranteed by clause (1) or the protection provided by clause (2) shall not extend to corrupt acts of the Members of Parliament. In other words, it is necessary to specify that if any Member indulges in any corrupt act or accepts bribes or other unlawful benefit as an inducement or motive for his act namely, voting or speaking in a particular manner or not voting or not speaking in the House, shall be governed by the provisions of the Indian Penal Code and Prevention of Corruption Act and that such Member shall be liable to be proceeded against in a criminal court for such offences. It must also be mentioned that the Commission is not impressed by the argument (espoused by the minority opinions in Brewster) that such conduct can only be gone into by the House - and not by a court. Firstly, the House is not so constituted as to act as an effective forum to "investigate, try and punish its members" (Burger C.J.'s opinion in Brewster quoted above) which aspect has also been stressed in the opinion of Mathew J. in Indira Gandhi v. Raj Narain (1975 SC 2299 at 2382-83 (para 329)). The learned judge pointed out that the Parliament, as it is constituted, is not a proper forum for deciding disputed questions of fact and law and that judicial process is the only appropriate process for resolving such disputes. Any attempt to decide judicial matters, the learned judge pointed out, may be likened to a "bill of attainder". There is yet another factor militating against the said argument: by the time, the bribery has come to light; the life of the House may have come to end; even otherwise, if the term of the House comes to an end before the conclusion of the proceedings taken against the member, the proceedings lapse. It is equally a matter for consideration whether even in the case of a continuing House like Rajya Sabha, whether the House can continue the proceedings after the expiry of the term of the member proceeded against; if not, the proceedings can be defeated by the member by simply resigning his membership. All these circumstances induce us to take the view that bribe-offering or bribe-taking by Members of Parliament should be within the purview of the criminal court, as mentioned above.

28. At the same time, we are fully conscious of the fact that the Members of Parliament should not also be shackled or their freedom of action curtailed unnecessarily. We must also not create a situation where they may be subjected to constant criminal prosecution which would also restrict and curtail their freedom of action. Our object for the present is only one viz., to provide that accepting a bribe or any other illegal gratification or any other valuable consideration as a consideration or reward for voting in the House in a particular manner or for not voting in the House, shall not be covered by the immunity conferred upon them either clause (2) or clause (3) of Article 105.

Second Issue: If the Members are to be made liable for being proceeded against in a criminal court as suggested in the preceding paragraph, then the question arises as to who shall be the authority for granting sanction contemplated by section 19 of the Prevention of Corruption Act. Instead of placing this burden upon the Speaker or the Chairman of the Rajya Sabha (who also happens to be the Vice-President of the Republic) and thus involve them in delicate and very often politically surcharged issues, it would be appropriate to create a committee comprising of five Members of Parliament of a very high repute, drawn from both the Houses of Parliament - who shall be nominated by the President of India in consultation with the Speaker of the Lok Sabha and Chairman of the Rajya Sabha - for the purpose. This committee shall be constituted immediately after a new Lok Sabha is constituted. The term of the members of such committee shall be co-extensive with the duration of the House to which they belong or to the term of their membership, whichever is earlier. This Committee shall be the competent authority to grant the sanction required by section 19 of the Prevention of Corruption Act or any other similar provision in the Indian Penal Code or other penal enactments.

7. RECOMMENDATIONS:

29. In the light of the above discussion, the following measures are recommended:

(a) A new clause – clause (3A) – may be inserted in Article 105 to the following effect:

"(3A)(i) Nothing in clauses (1), (2) or (3) shall bar the prosecution of a Member of Parliament, in any court of law, for an offence involving receiving or accepting, whether directly or indirectly, and whether for his own benefit or for the benefit of any other person in whom he is interested, any kind of monetary or other valuable consideration for voting in a particular manner or for not voting, as the case may be, in a House of Parliament.

(ii) No court shall take cognizance of the offence mentioned in sub-clause (i) of this clause, except with the previous sanction of the committee constituted under sub-clause (iii) of this clause.

(iii) The committee referred to in sub-clause (ii) shall be a permanent committee constituted by the President. It shall comprise five Members of Parliament drawn from the Lok Sabha and Rajya Sabha (in the proportion of 3:2) nominated by the President in consultation with the Speaker of the Lok Sabha and the Chairman of the Rajya Sabha. The term of the members of the committee and other incidental matters may be such as may be notified by the President in the order constituting the committee.

(Revised on 18.12.2000)

1207 LJ&CA/2002—37B.

QUESTIONNAIRE
ON
IMMUNITY OF LEGISLATORS – WHAT DO THE WORDS 'IN RESPECT OF ANYTHING SAID OR ANY VOTE GIVEN BY HIM' IN ARTICLE 105(2) SIGNIFY ?

1. Do you agree with the view expressed in the Consultation Paper that the position resulting from the opinion of the majority in the decision of the Supreme Court of India in P.V. Narasimha Rao V. State (AIR 1998 Supreme Court 2120) requires to be redressed by amending Article 105 and Article 194 of the Constitution of India?

2. If your answer to Question No. 1 is in the affirmative, which of the two alternatives mentioned at para 29 of the Consultation Paper [regarding the wording of sub-clause (i) of clause (3A)] is more appropriate?

3. Do you support the suggestion contained in sub-clauses (ii) and (iii) (regarding the consultation of an authority to grant sanction to prosecute) at para 29 of the Consultation Paper?

4. Have you any other suggestions to offer on the issue/ issues dealt with in this Consultation Paper? If so, please state them.



NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

EFFICACY OF PUBLIC AUDIT SYSTEM IN INDIA: C & AG – REFORMING THE INSTITUTION

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating a public debate and eliciting public response.

January 8, 2001
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on

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The Commission places on record its profound appreciation of and gratitude to Dr. Mathur for his contribution.

CONTENTS

		Pages
1.	Current Status	567
2.	Weakness of the existing system	569
3.	C & AG's Audit Jurisdiction	571
4.	Quality of Audit – Problems due to C & AG's highly centralised set up	573
5.	Need for collegiate decision : Audit Commission	575
6.	Appointment of Comptroller and Auditor-General	576
7.	C & AG and Parliament interface	577
8.	Accountability of C & AG – External Audit	579
	Questionnaire	580

I am of the opinion that this dignitary or officer (C&AG) is probably the most important officer of the Constitution of India. He is the one man who is going to see that the expenses voted by parliament are not exceeded, or varied from what has been laid down by Parliament in what is called appropriation Act. If this functionary is to carry out the duties- and his duties, I submit are far more important than the duties than the duties of the Judiciary.

Dr B R Ambedkar

1. CURRENT STATUS

Public audit is a vital instrument of ensuring supremacy of Parliament over executive and enforcing public accountability. Public audit institutions developed over time to help legislatures to implement the power of the purse. This power had two essential elements: the granting of the moneys and supervision of the expenditure. State audit in its present form was introduced first time in Great Britain as an integral part of parliamentary control over national finance with the enactment of Exchequer and Audit Department Act in 1866.The Act required all departments for the first time, to produce annual accounts known as appropriation accounts. The act also established the position of Comptroller and Auditor General (C&AG) and an Exchequer and Audit department to provide the supportive staff from within the civil service. The results of C&AG's investigations were considered by a dedicated parliamentary committee called the Committee on Public Accounts thus establishing a circle of parliamentary financial control.

2. The system of Government accounting and auditing and the organisational structure of the Indian Audit and Accounts department (IAAD) as it exists today in our country is the legacy of British Raj and is more or less patterned on British model. The IAAD has a history dating back to 1858 when the East India Company administration was taken over by the British Government and an Auditor General of India, who looked after both audit and accounts functions, was appointed. The introduction of constitutional reforms in 1919 brought about statutory recognition to the Auditor General.. The Government of India Act 1935, gave further recognition to the importance and status of the Auditor General.

1.1 Constitutional and Statutory Mandate

3. The Indian Constitution gave special status to Comptroller & Auditor General (C&AG) as laid down in Articles 148 to 152. The C&AG's Act, 1971 regulate the duties, powers and conditions of service of the Comptroller and Auditor General.

4. Section 13, 16 and 17 of Act gives authority to C&AG to audit all expenditure from and receipt into the Consolidated fund of India and the State. Section 14, 15, and 20 of the Act authorises C&AG to audit the receipts and expenditure of bodies or authorities substantially financed by loans or grants from Union or State or Union Territory. Article 151 of the Constitution prescribes that Audit Reports on the accounts of Union and the States be submitted to Parliament /State Legislature.

1.2 Organisational Structure

5. The C&AG is the head of the Indian Audit and Accounts Department. The office of the C&AG directs, controls and monitors the activities of the various offices of the department and is responsible for development of organisational objectives and policies, auditing standards and systems, laying down policies for management of man power and final approval of the Audit report. For carrying on these responsiblities field formations exist for each specific areas of auditing and accounting.

6. The offices of IAAD are spread throughout the country. There are 34 Union Government Audit Offices headed by Director General/ Principal Director of Audit and 60 State Accounts and Audit offices headed by Principal Accountant General and Accountant General. There are 60000 personnel in the IAAD with about 500 Group A officers belonging to the Indian Audit and Accounts Service (IA&AS).The total budget of the IAAD is around Rs 846 crs bulk of which constitutes expenditure on pay and allowances of the staff.

Comptroller and Auditor General of India
Article 148(1): There shall be a Comptroller and Auditor General of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in like manner and on the like grounds as a Judge of the Supreme Court.

Article 151: Audit Reports-
(1) The reports of the Comptroller and Auditor General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament.
(2) The reports of the Comptroller and Auditor General of India relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State.

1.3 Evolution of Audit since Independence

7. The traditional audit conducted by the supreme audit institutions (SAI) is known as ***Regularity audit*** which implies checking upon the legality of an action taken by a public official or a person using public funds and whether the decision or its implementation is according to the law, rules or regulations governing that activity Gradually its dimension was extended to *Financial audit* and now to *Value for Money audit*. ***Financial Audit*** basically means audit of financial statement and whether they provide reasonable assurance that they present fairly the financial position, results of operations, and cash flows of an audited entity in accordance with generally accepted accounting principles. In Financial audit, State auditors do almost the same kind of job which the Chartered Accountants do while auditing a public limited company .

Value for Money or 3E's Audit: also known as Performance audit is an independent assessment of the performance of an organisation, programme, project or an activity in terms of its goals and objectives- how far expected results have been achieved from the use of available resources of money, men and material. Put it differently an examination is made regarding economy, efficiency and effectiveness of public spending, which has come to be known as 3E's audit.

- Economy: minimising the cost of resources used or required - *spending less;*
- Efficiency : the relationship between the output of goods and services and the resources to produce them- *spending well;*
- Effectiveness: the relationship between the intended and actual results of public spending - *spending wisely.*

8. The concept and technique of audit has undergone a major change during the last fifty years. Before India became independent, the government audit was mostly confined to check against provision of funds, rules and orders and competence of authority concerned to sanction expenditure. With the launching of the Five Year plans for economic and social development there has been change in the pattern of government expenditure necessitating shift in the emphasis, concept and practice of audit as scrutiny of individual transactions became inadequate as it tended to mistake wood for the tree. The Parliament and the public are more interested to know whether various development and welfare programmes are being executed efficiently and whether they were producing the expected results. This lead Audit department to enter in the area of *Performance Evaluation and Value for Money Audit.* Audit department is now producing a large number of performance reviews every year covering almost every facet of government's working.

9. *Audit of Revenue*: C&AG after some initial resistance on the part of revenue department was able to extend its dimension to audit of revenues which includes audit of tax assessment such as Income tax, Central Excise and Customs, Sales tax etc. The audit of receipts has helped bringing considerable revenue for the government by pointing out cases of under assessment of tax, and also assisted in better functioning of tax administration machinery by pointing out lacunae or loopholes in the Act/ Rules and deficiencies in the functioning of tax administration.

10. *Audit of Commercial Enterprises:* The audit of government companies was brought within the purview of C&AG's audit at the insistence of then CAG by introducing a suitable provision in the Companies Act 1956, although there were initial attempts to exclude his jurisdiction. Thus, while Chartered Accountants are required to certify Annual Accounts of government companies, C&AG has been granted right to conduct supplementary audit.

2. WEAKNESS OF THE EXISTING SYSTEM :

2.1 No Powers to Enforce Audit Findings - Violation of Rules

11. One of the primary functions of audit is to see that provisions of law, rules and regulation are properly applied while incurring expenditure or collecting revenue. In order to regulate usage of money elaborate rules and regulations have been drawn by government. While audit notices systematic violation of law, rules and regulations by departmental officers it is unable to take an effective action to prevent them.

12. The Bihar fodder scam will illustrate the point. Serious financial irregularities and misappropriation of government funds were being committed by senior government functionaries and the Treasury officials all acting together in collusion. The Accountant General (AG) Bihar could not detect the irregularity in time as Treasury officers suppressed the vouchers through which money was drawn and did not transmit them to AG thus preventing its audit. C&AG has been making mention of excess drawl over voted provision in its Audit Report presented to Bihar Legislature but Public Accounts Committee, it is said did not even met to discuss the report leave apart take preventive action. After the scam became public knowledge, C&AG has produced a well documented Audit Report but it is more a case of getting wise after the event—after crores of public money has been looted and shutting the stable door after the steed has been stolen.

- Just as it is not possible not to taste honey or poison placed on the surface of the tongue, even so it is not possible for the one dealing with the money of the king not to taste the money in however small a quantity.
- Just as fish moving inside water can not be known when drinking water, even so officers appointed for - carrying out works cannot be known when appropriating money.

- The king should make those who have amassed money wrongfully yield it up and should change them in their works, so that they do not consume the king's property or disgorge what is consumed.

Kautilya Arthshastra

13. The accounts keeping of State governments companies is in chaotic state. Out of about 900 State government companies the Annual Accounts of as about 700 companies is in arrears sometimes for periods as long as ten to twelve years. The Companies Act stipulates that the Annual Accounts of these companies should be got audited by Statutory auditors (Chartered Accountants) and C&AG within six months of the close of financial year viz. 30th September. Should a situation where management of these companies violate with impunity the legal provision laid down in the Companies Act be allowed? Similar is the situation with large number of autonomous bodies, which receive substantial grant from government every year. Many of them do not submit their Annual Accounts in time for audit. In numerous cases, accounts when prepared do not follow the accounting standards, contain serious mistakes and when pointed out, the concerned organisations refuse to rectify the errors . And yet they continue to get government grants every year. Should not C&AG be empowered to take legal action against management of such defaulting organisations, so that tax payer is assured that no misuse and misappropriation of public funds has taken place?

2.2 Legal position

14. Section 13 of the Comptroller and Auditor General's Act, lays down that it is the duty of audit: to ascertain that the money, which has been disursed was legally available for the service or purpose on which it has been applied and there is a proper authority to spend the money. What happens when a public official spends money, which is not legally available viz., it is in violation of laid down rules and regulations. The Act is silent about it – all that the last sentence of Section 13 says, " in each case to report on the expenditure, transaction or accounts so audited by him." *If the C&AG makes a report about the irregular usage of money to the Departments whose officials have committed the default and they contest C&AG's decision or do not take any action, it virtually amounts to the departments sitting over judgement on C&AG's findings and obstructing the duty he is required to perform under the law. In no other country of the world State audit finds itself in such a helpless situation.*

2.3 Position In Advanced Countries

15. Most Supreme Audit Institutions (SAI) have been vested with powers to fix responsibility on the officials who have caused loss to the exchequer and have legal power for its recovery. In ***New Zealand*** under the Public Finance Act of 1977, the Controller and Auditor General(CAG) is empowered to hold an enquiry which may require any evidence to be given either orally or in writing and to which the provisions of Crimes Act relating to perjury applies. The CAG has power for surcharge if he finds that there is deficiency or loss of money or store caused through fraud, mistake, default, negligence, error or improper or unauthorized use. In ***Japan*** the Board of Audit has powers to adjudicate and can order an official to indemnify the loss and direct the supervising officer to take disciplinary action against the delinquent official when it finds that the official has caused grave loss to the State either deliberately or by gross negligence. In ***France*** Cour des

Comptes which functions like a court may order accounting officers to settle uncollected revenue or irregular expenses out of their own resources, if during an investigation it finds that the accounting officer has failed to provide satisfactory justification- on the ground that they have formal personal responsibility. Hindering Cour's investigation may give rise to a monetary fine. The judgements of Cour are legally binding and can be appealed only on points of law.

16. In ***South Korea*** , the Board of Audit and Inspection (BAI) law , confers authority to the Board to examine and adjudicate whether an accounting official or any other person is liable for reparation and the manner in which recovery is to be made and execute collection by applying mutatis mutandis provisions concerning disposition of taxes in arrears in the National Tax Collection Act. In ***China*** under the State Audit Act, an audited unit violating financial and economic laws and regulations, the audit organs may confiscate or instruct them to return the illegal gain; take over the embezzled state assets; take decisions to cut off such appropriations or loans; and impose fines. In **Thailand under** the State Audit Act of 1979, Auditor General can summon an official to deliver accounts and registers; attach money, properties, accounts registers, documents etc. of the audited agency and summon a person to testify as witness. If a person who has the duty to keep in his custody money or property or documents etc., damages, destroys, or causes loss he is liable for imprisonment upto five years or a fine or both. The Auditor General and the competent officials while performing their duties under the State Audit Act are treated as officials under the Penal Code.

2.4 Need for Conferring Legal Powers

17. *The situation in our country needs to be remedied by conferring legal power to Audit Officers to enable them to implement their findings by making suitable provisions in the C&AG's Act on the lines enjoyed by State audit institutions of other countries.* The Act should entrust Audit Officers with following powers: (a) powers to summon the concerned officers before it for evidence on oath and (b) where default is established, after giving due opportunity, they be required to make good the loss, (c) in case the official does not make good the loss and the default or neglect is established, a report be made to the superior authority of the department where officer is working for taking disciplinary action under the Civil Services Conduct Rule, (e) where action of public official involves criminal liability, the public prosecutor be informed either by Audit official or by the Department to which he belongs for initiating criminal action under the Penal code. *For discharging this quasi-judicial function the powers similar to those available under Commission of Enquiry Act be vested with the Accountant General / Principal Director of Audit who are heads of department by making suitable legal provision to that effect.* To make the system transparent and fair there should also be a provision of appeal with final appellate stage at the level of Addl / Dy Comptroller and Auditor General at the headquarters of C&AG's office.

3. C&AG'S AUDIT JURISDICTION

3.1 Accountability of Public Sector Undertakings(PSU's)

18. Where autonomous bodies are created under a specific act, the statute setting them provides for the audit arrangement. There are a number of corporations, particularly in financial sector such as nationalised banks , IDBI, IFCI, LIC which have been kept outside the ambit of C&AG's audit . This is possibly on the ground that government audit is not suitable and hamstrungs their commercial operations. Audit of public enterprises by C&AG has always remained a controversial issue. In the 50's when PSU's were being set-up first time, there were attempts to bar C&AG's jurisdiction but the then C&AG resisted and the matter was resolved by amending the Companies Act and providing for supplementary audit of government companies by C&AG. Subsequently in the 70's, as a result of recommendation of Administrative Reforms

1207 LJ&CA/2002—38A.

Commission, an Audit Board system was introduced to provide commercial type audit for PSU's. In the wake of current privatisation programme, government is making policy pronouncements that government portion of equity will be brought down to a level of 49 or 26 percent. This is ostensibly being done to free them from government control including audit as they would no longer fall within the definition of government company. Will this not tantamount to evasion of public accountability as by retaining sizable share-holding government could still exercise policy control over these companies but will not be answerable to Parliament?

19. There is an opposite view that government control and agencies such as CBI, CVC, and CAG hampers decision making and risk taking necessary for a commercial organisation and largely responsible for their poor performance. Public enterprise managers and experts argue that in an era of globalisation and liberalisation where competition is the new *mantra* government companies have to be provided the same level field as their compeers in private sector if they have to survive the market forces. They should therefore be given autonomy and supplementary audit by CAG be done away with.

20. In U.K nationalised industries were kept outside C&AG's audit from the beginning. However, British practice was more of an exception. France and Italy which have large public enterprises including banks fall within the jurisdiction of state audit. In USA under the Corporation Control Act, financial transactions of wholly owned corporations are audited by General Accounting Office.

21. Keeping above factors in view what should be the best audit mechanism for public enterprises?

3.2 Evasion of Audit

22. Of late there has been tremendous change in the pattern of public expenditure due to the policy of devolution of administrative functions and parceling out certain activities to non-government organisations. A substantial part of public funds are transferred through complex financing arrangements to these autonomous bodies and NGO's which have mushroomed in thousands. How to verify that they have properly utilised the money and fulfilled the objective is a major challenge, as CAG has no access to their book of accounts. Presently Chartered Accountants certify their accounts which forms the basis of utilisation certificates furnished by them. Is this arrangement satisfactory?

23. Government has set up District Rural Development Agency (DRDA),as a registered society headed by an elected representative, in every district of the country to which Central/ State government grants are given directly. DRDA's pass on money to Zila Parishad's for various poverty alleviation programmes. No satisfactory system of audit of DRDA/ ZP has been developed although money spent by them comes from the Consolidated Fund of India /State and a staggering some of about Rs 10000 crs is spent annually. Chartered accountants certify their Annual Accounts on the basis of perfunctory information available to them regarding usage of money and they do not automatically fall within the audit jurisdiction of C&AG.

> Accounts department must not be afraid of courting unpopularity. They must not go about always saying things, which will please their superiors. I do hope that these people who are the watch dogs , so to say , of the public funds or the tax-payer's money will exercise great vigilance and control and see to it that we get a proper return for every rupee we spend and there is a proper utilisation of public funds.
>
> ***Dr S Radhakrishnan***

1207 LJ&CA/2002—38B.

24. *It is for consideration whether a Constitutional provision be made, that all bodies which are publicly funded, fall within the audit mandate of Comptroller and Auditor General and any stipulation , which ousts his jurisdiction would be held ultra -vires.*

3.3 Local (Third Tier of) Government- Panchayats and Municipalities

25. Consistent with the philosophy of devolution of powers and strengthening of local self government institutions, the constitution, composition, power and duties of Panchayats and Municipalities were enshrined in the Constitution by making 73rd amendment in 1993. Bulk of finance for panchayats / municipalities comes from government but there is no satisfactory arrangement for their audit. Article 243 J and 243 Z states." The Legislature of a state may, by law, make provisions with respect to the maintenance of accounts by the Panchayats/ Municipalities and the auditing of such accounts." Hardly any State has made law in this regard. The old arrangement continues and the Examiner Local Fund Accounts, which functions under the Finance department, audits the accounts of these bodies. With the policy of progressive empowerment of the self- governing institutions receiving greater emphasis with attendant prospect of sizable percentage of state funds being handled by these institutions appropriate public audit mechanism need to be considered.

26. It may be noted that keeping in view the importance of Local bodies in **England** an Audit Commission has been constituted in 1982 for auditing Local Authorities and National Health Service. Similarly in **France,** Regional Courts of Accounts have been created in 1982 as part of wider policy of decentralisation which is empowered to audit all local authorities.

27. *There is need for placing accounting and audit arrangement of Panchayats and Municipalities on sound footing and it is for consideration whether a Central legislation be enacted, with Comptroller and Auditor General having authority to lay down accounting and auditing standards and general superintendence over such audit.*

4. QUALITY OF AUDIT- PROBLEMS DUE TO C&AG'S HIGHLY CENTRALISED SET-UP

4.1 Lack of Quality due to Unwieldy Structure

28. If Indian Audit and Accounts Department (IAAD) is to be given more teeth to be effective it must ensure very high standards of performance. Administrative departments often voice criticism of the manner of functioning of Audit department. They point out that audit often takes trivial objections, does petty fogging, and has a negative fault finding approach rather than coming out with solutions to the problems being faced by administration. Audit is also criticised for preparing reviews on the working of scientific and technical departments and on issues relating to economic policy making about which it has no expertise. There is considerable merit in these observations.

29. Much of the problems arise due to the existing structure of IAAD, which is highly centralised with all powers concentrated with C&AG in person or in his headquarter office with very little delegation to State Accountants Generals or Principal Directors of Audit who perform all the accounting and auditing functions.This tells upon the efficiency of the State Accountant's General and other field outfits and effects their morale. The problem can be seen from the fact the C&AG personally approves about 20 Audit Reports for Union Government and 75 Reports for State Governments. In addition C&AG has to certify Finance and Appropriation accounts of the Union government as well as each of the State governments and UT's having a separate legislature before they are placed in their respective Houses. Each of about 100 odd Audit Reports of the Central and State governments which the C&AG produces annually runs into 200 to 250 pages. It is humanly not possible to read through 20000 to 25000 pages of highly technical literature dealing with subjects as complicated as taxation laws, purchase of defence equipment

etc., least of all to give any direction regarding meaningful conduct of audit. It is time to do some serious thinking on the issue and develop a more decentralised functioning of the institution of C&AG.

4 .2 Public Audit in India – Violation of Principles of Federal Structure

30. Most of the problems of the Indian Audit & Accounts department arise from the fact that the organisational structure of C&AG is not in consonance with the federal arrangement as envisaged in the Constitution. While we have a separate Legislature, Governor and a High Court in every State there is no separate Auditor General. It is important to remember that the Constitution makers were conscious of this fact and draft Constitution as originally prepared had recommended separate Auditor General for every State. The original draft prepared by the drafting Committee, headed by Dr B R Ambedkar and submitted to the President of the Constituent Assembly on 21st May 1948, contained the following provision:

31. Auditors-in-Chief for the States- "Art 210(1) The Legislature of the State for the time being specified in the First Schedule may by law provide for the appointment of an Auditor-in-Chief for the State and when such a provision has been made an Auditor- in Chief for that State may be appointed by the Governor in his discretion and the Auditor –in-Chief so appointed shall only be removed from office in the manner and like grounds as a judge of the High Court of the State." The draft Constitution had a provision for control of Auditor General of India over State Auditor General. Art 210(6) read as follows :" Nothing in this article shall derogate from the power of the Auditor General of India to give such directions in respect of the accounts of the States for the time being specified in Part I of the first schedule as are mentioned in article 126 of this Constitution." The drafting committee had made the aforesaid provision on the basis of Government of India Act of 1935 which had envisaged separate Auditor General for the Provinces.

32. The provision of draft Constitution got amended at the stage when draft articles came for approval of Constituent Assembly on the basis of the recommendation of an Expert Committee which suggested doing away with provision of Provincial Auditor General. Was this a right step?

4.3 Position in other Federal Countries

33. Every country with federal structure has a provision of separate Auditor General for the provinces / states. Thus in **Germany** the Federal Court of Audit (FCA) and the constituent states known as Laender are autonomous independent unit of government audit. They not subordinate to one another, share audit responsibilities and may perform joint audits. In **USA** the General Accounting Office performs audit of federal government only. There is Auditor General in each State who enjoys separate legal status and is free to devise his systems to make his audit effective. Similar is the position in **Canada** and **Australia** where an act specifies provincial Auditor General's responsibility to examine the accounts of the province and its various agencies and requirement to report to the Assembly on the governments stewardship of public funds. In **UK, CAG** audits central government expenditure only. Following devolution in 1999, new Auditor Generals have been set up in Scotland and Wales to audit the expenditure of new Parliament and Assembly. There has been a separate Comptroller and Auditor General for Northern Ireland since the foundation of the state in 1921

4.4 No legal status to State AG in India

34. As stated above the provision for a separate Auditor General for the States was deleted at the stage of final passing of the draft Constitution. Nevertheless for audit of State finances the C&AG has to be accountable to State legislature and this was secured by inserting a provision in

Article 148 and 149 of the Constitution stating that the Auditor General of Union will perform duties ' in relation to accounts of the States', and ' his reports will be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the States'. This position is somewhat anomalous. If C&AG is to perform duties in relation to Accounts of the State he should be available to State legislature and attend meetings of the State Public Accounts Committee. But how can one single individual discharge this function for 25 States? As matters stand today the Accountant General of the State discharges all the duties prescribed in the Constitution on behalf of the C&AG. Given this position it is imperative that a legal provision is made to this effect.

35. It is therefore for consideration that in order to make State audit effective independent Auditor Generals for the States who have the same status as a High Court Judges are created by amending the Constitution. The appointment of State Auditor General be made with the approval of President of India on the basis of recommendations of an independent Committee headed by C&AG and qualification for holding the post be laid down. However the Auditor General of India should have power of superintendence over State Auditor Generals, in policy matters relating to accounts and audit, in the same manner that Supreme Court has over the High Courts.

4.5 Indian Audit and Accounts Service and Department

36. Even if separate Auditor General's for State's are created, the existing status of IA&AS need not be disturbed and its members continue to be posted in the Accountant General's / Auditor General's offices as hitherto, on the basis of a policy evolved through Audit Services Board (comprising of representatives of CAG and State Auditor General's) which could be constituted for the purpose. Their current status of staff serving in the IAAD need not be changed, and they may continue to be Central government servants. However, the newly created State Auditor General's, will have final say regarding their recruitment, promotion, transfer etc within some kind of uniform policy which could be worked out by consultation amongst CAG's office and the State Auditor General's.

> The Judiciary has the power even to declare a law invalid when the Legislature has exceeded its powers. Similarly the office of the Comptroller and Auditor General ...has the power to call to account any officer, however highly placed, so far as State moneys are concerned.
>
> **Dr Rajendra Prasad**

5. NEED FOR COLLEGIATE DECISION: AUDIT COMMISSION

37. In most advanced democratic countries Audit Reports which are placed in Parliament are finalised through an Audit Board or Audit Commission system in which all the senior officers of the state audit department are represented. In **Germany** the Federal Court of Audit Act sets out the constitutional status of Bundesrechnungshof. All its members enjoy judicial independence and a constitutional status similar to that of judges. The Large Senate which is the main decision making body consists of 16 members and includes President, Vice President and the Directors of Audit. In **France** the Cour des Comptes, is presided by Premier President and has seven chambers with 15 members. The Cour always acts as a collegiate body, whether in a judicial or non-judicial capacity. The draft annual reports on the accounts of the state and the management of the state services, agencies and companies are brought before the complete bench presided over by the President of the Cour. In **Japan** there is an Audit Commission consisting of three Commissioners. All major decisions pertaining to audit are taken by the Audit Commission including finalisation of the Audit report. In **Korea** the Board of Audit is composed of seven Commissioners including the chairman. Decisions on policy issues, such as audit and inspection, are taken with the approval of the Council of Commissioners.

38. In our country there is no system of finalisation of audit reports through a formal committee system in which the Dy CAG/ Accountant General / Principal Directors of Audit participate. The audit reports both of the Central and State governments are processed on files by the Dy CAG and Addl Dy CAG and approval of C&AG taken.The expenditure and revenue transactions of the government have increased hundred folds with tremendous growth in government's activities after independence. *It is simply not possible for one individual viz. C&AG to be responsible for all audit work of Central as well as State government. There is need for wider sharing of responsibility.* The existing system results in neglect of audit and poor quality of Audit Reports. There is also no system of discussion with Secretaries to government / heads of department before the Audit report is finalised. This leaves yawning gap in the Report, facts and conclusions are often challenged with the result that the main purpose of audit viz. improvement of the administrative set-up and the systems and procedure takes a back seat.

39. The existing system needs an overhaul. *Audit Reports should be finalised through collegiate decision making of an Audit Commission in which all the Dy CAG's and Addl Dy CAG's should be represented besides C&AG. The position of C&AG should be that of primes inter pares. For proposed Audit Commission to be effective its members should be given a status similar to that of a High Court Judge with age of retirement as 62*

6. APPOINTMENT OF COMPTROLLER AND AUDITOR GENERAL

40. The office of C&AG embodies an institution of great importance. However, an institution, however exalted, is only as good as the incumbent holding it. Do qualified individuals get appointed to the post? The Constitution grants C&AG independence and an exalted status (Article 148)- he is appointed by President by a warrant under his hand and seal, has the same status as a Supreme Court judge, cannot be removed from office, his conditions of service cannot be varied to his disadvantage, his salary is charged on the Consolidated fund of India etc. During last three decades the appointment of C&AG has always been mired with controversy. From the time the Constitution came into being in 1950, the four C&AG's appointed to the post, were senior members of the Indian Audit & Accounts' Service . However from 1978 onwards the last four incumbents, are from the Indian Administrative Service(IAS). The appointment of C&AG who do not possess the requisite background of auditing and accounting has been subject of severe criticism by Chairman of the Public Accounts Committee, press, public spirited men, Officers and Staff association of the Audit department.

41. The Indian Constitution does not lay down qualification for the post of C&AG nor the manner of his selection. However the matter was discussed during the Constituent Assembly debates held in May 1949. From the debates it seems that framers of the Constitution's intention was that a person who had sufficient knowledge of finance and accounting systems and had practical experience of the work of Finance department and had worked as Accountant General would only be appointed. However, in practice this assurance has not been honored by successive governments.

42. Position in Other Countries : In **India** we have been following British traditions of parliamentary democracy and the post of C&AG has been patterned on British model. In **U.K** an act to strengthen Parliamentary control and supervision of expenditure of public money by making new provision for appointment and status of C&AG and establishing a National Audit Commission was enacted in 1983. The relevant provision regarding appointment of C&AG requires that the Prime Minister and Chairman of the Committee on Public Accounts should jointly select the incumbent and get it ratified by the House of Commons. In **Australia** Comptroller and Auditor General is appointed by the Governor General on the recommendation of the Minister, after the Minister has referred his recommendation to the Joint Committee of Public Accounts and Audit and the Committee has approved the same.

43. In **USA** under the Budget and Accounting Act of 1921, the Comptroller General of the United States and the Assistant Comptroller General of the United States shall be appointed by the President with the advise and consent of the Senate. The Congress participates in the selection of the Comptroller General by providing a list of candidates from which the President may choose and by confirming the appointment. The GAO Act of 1980 further amplifies the selection process of Controller General, and stipulates establishing a Commission to recommend the name for the post.

UK - National Audit Act 1983

1.-(1) The power of her Majesty under section 6 of the Appointment Exchequer and Audit Departments Act 1866(appointment of Comptroller and Auditor General) shall be exercisable on an address presented by the House of Commons, and no motion shall be made for such an address except by the Prime Minister acting with the agreement of the chairman of the Committee of Public Accounts.

(2) The Comptroller and Auditor General shall by virtue of his office be an officer of the House of Commons.

44. In **Germany** the Bundestag and Bundesrat (Parliament) shall elect the president and Vice President of Bundesrechnuhof without debate. In **Japan** the Commissioners of the Board of Audit are appointed by the Cabinet, with the consent of both Houses of the Diet. In **Korea** the Chairman of the Board of audit is appointed by the President with the consent of the National Assembly. Similarly in **Thailand** the appointment of Auditor General must receive prior approval of national Assembly.

45. In India it is necessary that the appointment of C&AG is kept outside the exclusive purview of the Executive. Recommendations regarding his appointment should be made by an independent committee. One could suggest that the committee should consist of the Prime Minister, Finance Minister, the Leader of the Opposition of the Lok Sabha and Chairman of the Public Accounts Committee. There is also need to prescribe qualification for appointment to the post and a person who has substantive experience of public sector accounting and auditing systems should only be appointed.

46. The period for which CAG is presently appointed is 6 years with 65 as age of retirement. The President, Vice- President, members of Public Service Commission are all appointed for a 5 year term. There is a strong case to prescribe 5 year term with age of retirement at 65.

7. C&AG AND PARLIAMENT INTERFACE

7.1 Relations with Public Accounts Committee

47. The Comptroller & Auditor General audits the accounts and submits his Report to Parliament / State Legislature which are automatically remitted to the Public Accounts Committee(PAC) / Committee on Public Undertakings(COPU). Parliament has constituted PAC and COPU under Rule 308(1) and Rule 312 A of the Rule of Procedure and Conduct of Business of Lok Sabha.

7.2 Excess Expenditure - Violation of Constitutional Provision

48. In many States PAC's have not been able to discharge even the Constitutional obligation of regularising "excess expenditure" over budgetary grants. Under Article 205(b) of the Constitution, if any money has been spent on any service in excess of the amount granted for that service in the Annual Financial Statement, it would need regularisation by the Legislative

Assembly. Under the Rules of Business framed by the Legislatures, the PAC examines the explanatory notes furnished by the Ministry/ department and the circumstances leading to such excesses and presents a report to the Legislature recommending regularisation of excess expenditure. As on March 1999 Excess expenditure" of the order of about Rs 94314 crs has not been regularised in various States. The position of some of the States is as follows :- J&K: Rs 22767crs, UP :Rs 13618crs ,. Assam : Rs 12569crs , Bihar :RS 6059 crs. Thus in almost all the States huge amount of public money has been spent in violation of budgetary control envisaged in the Constitution and fraught with the risk of misappropriation of public money.

49. There is no time limit prescribed for placing Appropriation Accounts certified by Comptroller and Auditor General in Parliament/ State Legislature and the regularisation of excess expenditure over voted grants by the PAC. There is need for making statutory provision regarding the dates by which Appropriation Accounts is submited to Parliament/ Legislature. *The Controller General of Accounts/ Accountant General should submit the same to CAG by 30th September and CAG should certify and arrange to place it in Parliament/ Legislature by 30th December of the following year to which the accounts relate. It is also for consideration whether a provision needs to be made that excess expenditure over voted grant be regularised by PAC/ Parliament/Legislature before the close of next financial year.* In UK under the Act, the Treasury is required to submit accounts to Comptroller and Auditor General by 30th September and he is required to certify the same and present to Parliament by January of the following year to which the accounts relate. In New Zealand under the Public Finance Act of 1989, the Treasury is required to forward the annual financial statement to the audit office by 30th August following the end of the financial year and the Audit office is required to give its opinion within 30 days of receipt and the same should be tabled in the House within six days of receipt by the Treasury.

7.3 Strengthening PAC

50. The two Parliamentary Committees PAC and COPU are able to examine only a few paras and reviews out of large number of audit reports submitted to them which defeats the very purpose of parliamentary financial control and the accountability of Executive which the Parliament is required to enforce. For example during 1997-98 out of 16 Reports submitted to Parliament containing 1209 paras/ reviews the number of paras / reviews selected for examination was 76, out of which only 16 could be discussed by the PAC. In States there is a huge backlog of work before the PAC's.

51. In order to strengthen parliamentary control over executive it is necessary to devise a system which envisages that PAC examines all the reports submitted by CAG and submits its recommendations to Legislature within a time limit of say 18 months. This is possible only if the volume of CAG's Audit reports is reduced and their quality and content improved and only matters of critical importance are included in the Audit Reports.(Other financial irregularities noticed during audit need to be settled with the concerned Ministries/ departments through forums such as Audit Committees which need to be devised in consultation with Ministry of Finance). *For PAC to function effectively and its members to develop specialisation, the life of PAC be made five years co-extensive with the life of Parliament/ State legislature with one- third of members retiring every year. It for consideration whether PAC be given a Constitutional status with clearly defined mandate, duties and functions.*

7.4 C&AG and Parliament

52. In parliamentary democratic form State audit tends to be classified as part of the legislative branch as the institution has developed over time to implement the power of the purse. State audit with its access to information and review of governmental activities, fulfills an increasingly important role in providing legislature with detailed reliable information necessary for control. A realisation of this fact has lead to major restructuring of the audit department in **U.K** with the passing of the National Audit Act of 1983. Under the act C&AG has been made an officer of the House of Commons. Another Commonwealth country **Australia** has fallen in line with British system and under a 1997 act Auditor General will be an independent officer of Parliament. In **U.S.A** the General Accounting Office from the time of its constitution in 1921, has been recognised as an agency within the legislative branch of the government and enjoys a special working relationship with the American Congress.

It is for consideration whether C&AG should be made an officer of the Lok Sabha so that he could work in greater cooperation with Parliament and its Finance committees with a view to make parliamentary financial control more effective.

8. ACCOUNTABILITY OF C&AG - EXTERNAL AUDIT

53. The importance of audit mission, and what it entails by way of resources deployed by agencies subject to audit, underlines the importance of subjecting the State audit to regular and perceptive scrutiny. It is necessary that State audit demonstrates that its own operations stand the test of professional soundness, efficiency and effectiveness.

54. In India there is no external audit of C&AG's outfit. In practice C&AG nominates one of the Accountant General under him as an auditor for C&AG's office. This is not a very satisfactory arrangement. Commonwealth countries such as U.K and Australia have made legal provision not only for audit of National Audit Office by independent auditors but scrutiny of budget estimates by a parliamentary committee which oversees its functioning. *It is for consideration whether an external audit arrangement be made C&AG's set-up in line with the practice in UK.*

QUESTIONNAIRE
ON
EFFICACY OF PUBLIC AUDIT SYSTEM IN INDIA:
C & AG – REFORMING THE INSTITUTION

Public response is sought to be elicited for making major reforms in the institution of C&AG to make its functioning more effective:

1) ***Should the appointment of C&AG be taken out of the exclusive purview of Executive and a high level independent committee consisting of Prime Minister, Finance Minister, Leader of Opposition in Lok Sabha and Chairman of Public Accounts Committee be constituted to select him? Is there a case for reducing the term of office of Comptroller and Auditor General from present 6 years to 5 years.***

Should qualification for the post of Comptroller and Auditor General be laid down and persons having extensive experience of the functioning of public audit and accounts systems should only be eligible to hold the office? (Refer Section VI)

2) Countries having federal structure such as USA, Germany, Canada, Australia and now U.K have separate Auditor General's for provinces. ***Should public audit systems conform to the federal structure of our country and constitutional status and autonomy be given to the State Accountant General and his status made equivalent to a High Court Judge so that he can effectively discharge his responsibility to the State Legislature?*** In that case should he be appointed by the President of India on the recommendations of an independent committee headed by Comptroller and Auditor General? How should a relationship that exists between Supreme Court and High Court be built between Comptroller and Auditor General and the State Accountant General with the later functioning within the overall policy framework of C&AG of India (Refer: Section IV)

3) Countries such as Germany, France, Japan and South Korea work through a system of Audit Court / Audit Board with members enjoying high legal status with President of the Court / Board's position that of *primus inter pares*. ***Should the office of CA&G be restructured and broad based by creating an Audit Commission which should have existing Dy CAG's enjoying the status of High Court Judge as members and function on the principle of collegiate decision for all policy matters relating to audit and accounts?*** (Refer Section V)

4) Audit officers in most countries such as New Zealand, Japan, Germany, France, Korea, China and Thailand have been entrusted with judicial powers so that they ensure that State money and property is safeguarded. ***Should quasi- judicial powers as available under Commission of Enquiry Act be given to senior officers of the Audit department who should have authority to summon public officials to give evidence on oath, surcharge them if they find that he has caused loss of State money and property through fraud, negligence and improper use and if that is not possible advise the Department where they are working to take disciplinary action under the Conduct Rules?*** (Refer Section 2)

5) Presently Public Corporations in the banking and financial sector do not fall within the jurisdiction of Comptroller and Auditor General's audit. However, government companies are subject to state audit under the Companies Act. Are public enterprises at a disadvantage due to presence of C&AG's audit in the context of globalisation and competition and a level playing field is not available to them? ***What should be the audit arrangement for Public Enterprises which should fulfill requirements of public accountability without impairing their commercial autonomy?*** (Refer Section 3.1)

6) A large number of autonomous bodies, NGO's and public funded institutions which receive substantial government grants escape C&AG's audit jurisdiction due to complex financing arrangements. ***It is for consideration that a Constitutional provision be made that all bodies which are publicly funded fall within the ambit of Comptroller and Auditor General's audit*** and any stipulation which ousts his jurisdiction would be ultra-vires . (Refer Section 3.2)

7) With the policy of progressive empowerment of the local self-governing institutions receiving greater emphasis with attendant prospect of sizable percentage of State funds being handled by these institutions, appropriate public audit mechanism needs to be considered. ***What should be the accounting and audit arrangement of Panchayats and Municipalities and whether a Central legislation be enacted,*** with Comptroller and Auditor General(or the proposed Auditor General for the States) having authority to lay down accounting and auditing standards and general superintendence over such audit? (Refer Section 3.3)

8) Public Accounts Committee's have not been functioning effectively and most of the reports of C&AG remitted to it remain unexamined defeating the principle of parliamentary control over public funds prescribed under the Constitution. In the States a sum of over Rs 94000 crs of "excess expenditure" over voted Grants is awaiting regularisation under Article 205(b) of the Constitution. ***To make the functioning of PAC effective should a time-limit, of say 18 months be prescribed, for it to examine the reports of C&AG and submit its recommendations? To develop expertise should the life of PAC be made five years, co-extensive with the term of legislature, with one-third of its members retiring every year. Should Constitutional status be given to Public Accounts Committee with clearly defined duties and responsibilities.*** (Refer Section 7.2 & 7.3)

9) Public audit institutions tend to be classified as part of legislative branch as they help legislature to implement power of the purse. In U.K and Australia C&AG has been made an officer of the House of Commons. ***What should be the relationship between C&AG and Parliament. Should practice similar to UK be followed in our country?*** (Refer Section 7.3)

10) In UK Public Accounts Commission examines the budget and appoints the auditor of the National Audit Office. ***What should be the arrangement for audit of the office of the Comptroller and Auditor General***? Should an external agency be entrusted this task to make the system transparent? (Refer Section 8)



NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

PROBITY IN GOVERNANCE

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating a public debate and eliciting public response.

August 21, 2001
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Advisory Panel

on

Strengthening of the institutions of Parliamentary Democracy;
(Working of the Legislature, Executive and Judiciary;
their accountability; problems of Administrative,
Social and Economic Cost of Political Instability;
Exploring the possibilities of stability
within the discipline of
Parliamentary Democracy)

Member-in-charge

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CONTENTS

		Pages
1.	Introduction	591
2.	Menace of corruption in public life	591
3.	Certain measures required to be taken for ensuring probity in governance	594
	A. Need for enforcing section 5 of the Benami Transactions (Prohibition) Act, 1988	594
	B. Misfeasance in public office – a remedy	596
	C. Necessity for a law providing for confiscation of illegally acquired assets of public servants	600
	D. Enactment of a Public Interest Disclosure Act	602
	E. Enactment of a Freedom of Information Act	604
	F. Necessity for enacting a Lok Pal Bill in addition to the Central Vigilance Commission Act	607
	G. Strengthening of the Criminal Judicial System	613
	QUESTIONNAIRE	614
	ANNEXURE	621

1. Introduction

1.1 Probity in governance is an essential and vital requirement for an efficient and effective system of governance and for socio-economic development. An important requisite for ensuring probity in governance is absence of corruption. The other requirements are effective laws, rules and regulations governing every aspect of public life and, more important, an effective and fair implementation of those laws, etc. Indeed, a proper, fair and effective enforcement of law is a facet of discipline. Unfortunately for India, discipline is disappearing fast from public life and without discipline, as the Scandinavian economist- sociologist, Gunnyar Myrdal, has pointed out, no real progress is possible. Discipline implies *inter alia* public and private morality and a sense of honesty. While in the West a man who rises to positions of higher authority develops greater respect for laws, the opposite is true in our country. Here, the mark of a person holding high position is the ease with which he can ignore the laws and regulations. We are being swamped by a culture of indiscipline and untruth; morality, both public and private, is at a premium. This paper explores whether some legislative measures can be designed to ensure probity in governance. It is true that instilling a sense of discipline among the citizens is more the function of the society, its leaders, political parties and public figures and less a matter which can be legislated upon. Even so, things have come to such a pass that measures need to be contemplated.

2. Menace of corruption in public life

2.1 Corruption is an abuse of public resources or position in public life for private gain. The scope for corruption increases when control on the public administrators is fragile and the division of power between political, executive and bureaucracy is ambiguous. Political corruption which is sometimes inseparable from bureaucratic corruption tends to be more widespread in authoritarian regimes where the public opinion and the Press are unable to denounce corruption. The paradox of India, however, is that in spite of a vigilant press and public opinion, the level of corruption is exceptionally high. This may be attributed to the utter insensitivity, lack of shame and the absence of any sense of public morality among the bribe-takers. Indeed, they wear their badge of corruption and shamelessness with equal élan and brazenness. The increase of opportunities in State intervention in economic and social life has vastly increased the opportunity for political and bureaucratic corruption, more particularly since politics has also become professionalized. We have professional politicians who are politicians on a full time basis, even when out of office. India is rated at 73 out of 99 countries in the corruption perception index prepared by a non-governmental organisation, Transparency International. Corruption today poses a danger not only to the quality of governance but is threatening the very foundations of our society and the State. Corruption in defence purchases, in other purchases and contracts tend to underme the very security of the State. Some of the power contracts are casting such financial burden upon some of the States that the very financial viability of those States has fallen into doubt. There seems to be a nexus between terrorism, drugs, smuggling, and politicians, a fact which was emphasized in the Vohra Committee Report.

2.2 Corruption has flourished because one does not see adequately successful examples of effectively prosecuted cases of corruption. Cases, poorly founded upon, half-hearted and incomplete investigation, followed by a tardy and delayed trial confluence a morally ill-deserved but a legally inevitable acquittal. The acceptance of corruption as an inexorable reality has led to silent reconciliation and resignation to such wrongs. There needs to be a vital stimulation in the social consciousness of our citizens – that is neither has a place in the personal nor social*. It is true that the present process of withdrawing the State from various sectors in which it should have never entered or in which it is not capable of performing efficiently may reduce the chances of corruption to some extent but even if we migrate to a free market economy, there has to be regulation of economy as distinct from restrictions upon the industrial activity. The requirements of governance would yet call for entering into contracts, purchases and so on.

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* What a far cry from Sir Warren Fisher's remarks that the Civil Service exacted from itself "a higher standard than that required by normal standards of personal honesty and integrity,' because it recognizes that the State is entitled to demand that its servants shall not only be honest in fact, but beyond the reach of suspicion of dishonesty. Civil Servants are not meant to allow their judgement or integrity to be compromised in fact or by reasonable implication (See The Executive in the Constitution, Terrence Dainfith & Alan page, Oxford, p.87)

2.3 The Scandinavian economist-sociologist, Gunnyar Myrdal, had described the Indian society as a 'soft society'. He also clarified what the expression 'soft society' means. According to him, a soft society is: (a) one which does not have the political will to enact the laws necessary for its progress and development and/or does not possess the political will to implement the laws, even when made, and (b) where there is no discipline. In fact, he has stressed the second aspect more than the first. According to him, if there is no discipline in the society, no real or meaningful development or progress is possible. It is the lack of discipline in the society - which expression includes the administration and structures of governance at all levels - that is contributing to corruption. Corruption and indiscipline feed upon each other. One way of instilling the discipline among the society may be to reduce the chances of corruption and to deal with it sternly and mercilessly wherever it is found. For this purpose, the inadequacies in the criminal judicial system have to be redressed. Corruption is also anti-poor. Take, for example, the Public Distribution System (PDS) and the welfare schemes for the poor including Scheduled Castes (SCs) and Scheduled Tribes (STs). It is well-known that a substantial portion of grain, sugar and kerosene oil meant for PDS goes into black-market and that hardly 16% of the funds meant for STs and SCs reach them – all the rest is misappropriated by some of the members of the political and official class and unscrupulous dealers and businessmen. The famous economist, Late Mehbub-Ul-Haq succinctly and poignantly set out the ill-effects of corruption in a South Asian country like ours. He said:

> "Corruption happens everywhere. It has been at the center of election campaigns in Italy and the United Kingdom, led to the fall of governments in Japan and Indonesia, and resulted in legislative action in Russia and the United States. But, if corruption exists in rich, economically successful countries, why should South Asia be worried about it? The answer is simple: South Asian corruption has four key characteristics that make it far more damaging than corruption in any other parts of the world.
>
> **First**, corruption in South Asia occurs up-stream, not down-stream. Corruption at the top distorts fundamental decisions about development priorities, policies, and projects. In industrial countries, these core decisions are taken through transparent competition and on merit, even though petty corruption may occur down-stream.
>
> **Second**, corruption money in South Asia has wings, not wheels. Most of the corrupt gains made in the region are immediately smuggled out to safe havens abroad. Whereas there is some capital flight in other countries as well, a greater proportion goes into investment. In other words, it is more likely that corruption money in the North Asia is used to finance business than to fill foreign accounts.
>
> **Third**, corruption in South Asia often leads to promotion, not prison. The big fish – unless they belong to the opposition – rarely fry. In contrast, industrialised countries often have a process of accountability where even top leaders are investigated and prosecuted. For instance, former Italian Prime Minister Bettino Craxi was forced to live in exile in Tunisia to escape extradition on corruption charges in Rome. The most frustrating aspect of corruption in South Asia is that the corrupt are often too powerful to go through such an honest process of accountability.
>
> **Fourth**, corruption in South Asia occurs with 515 million people in poverty, not with per capita incomes above twenty thousand dollars. While corruption in rich rapidly growing countries may be tolerable, though reprehensible, in poverty stricken South Asia, it is political dynamite when the majority of the population cannot, but to massive human deprivation and even more extreme income meet their basic needs while a few make fortunes through corruption. Thus corruption in South Asia does not lead to simply Cabinet portfolio shifts or newspaper headlines inequalities. Combating corruption in the region is not just about punishing corrupt politicians and bureaucrats but about saving human lives. There are two dimensions of corruption. One is the exploitative corruption where the public servant exploits the helpless poor citizen. The other is collusive corruption

where the citizen corrupts the public servant by a bribe because he gets financially better benefits. Collusive corruption depends on black money."•

2.4 It may be recalled that the Supreme Court had given certain directions in the case of Vineet Narain vs. Union of India (AIR 1998 SC 889) for conferring statutory status upon the Central Vigilance Commission and to insulate the Central Bureau of Investigation and the Enforcement Directorate from political control and pressures. In the said decision, the Supreme Court referred with approval the recommendations of Lord Nolan Committee[@] on Standards in Public Life in the United Kingdom. The following principles of public life, of general application, were commended by the court:

"Principles of public life[♦]:

5. The general principles of conduct which underpin public life need to be restated. We have done this. The seven principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership are set out (later on).

Codes of conduct:
6. All public bodies should draw up codes of conduct incorporating these principles.

Independent scrutiny:
7. Internal systems for maintaining standards should be supported by independent scrutiny.

Education:
8. More needs to be done to promote and reinforce standards of conduct in public bodies, in particular through guidance and training, including induction training."

The Seven Principles of Public Life are stated in the Report by Lord Nolan, thus -

"The Seven Principles of Public Life:
Selflessness:
Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity:
Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.

Objectivity:
In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability:
Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

• Perhaps like a Marienthal study, a study needs to be undertake n what is the effects of prolonged corruption? Have not the capacities and morale of the citizen so greatly impaired by years of corruption? The relentless upward progression of fiscal deficit accentuated by the profligacy of the States, 13 State Governments unable to pay their bloated bureaucracies, is the backdrop in which corruption needs to be understood. See a telling passage: Upendra Baxi: Liberty & Corruption, p.3 (Eastern Book Company)

@ *See* Vol. I of Lord Nolan's Report (1995).

♦ *See* AIR 1998 SC 889 (at pages 916-917)

Openness:
Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty:
Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership:
Holders of public office should promote and support these principles by leadership and example.".

2.5 The Supreme Court observed further:

> "These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinizing the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law." (see AIR 1998 SC 889, at page 917)

2.6 An instance and consequence of the adverse effects of corruption on Indian economy can be gauged from the following statement by Prem Shankar Jha, a keen observer of Indian economy:

> "So far, despite adopting some of the most liberal foreign investment laws in Asia, India has not succeeded in seducing even one major international corporation into using it as a global production platform. All the Foreign Direct Investment that has come has been bent upon exploiting the domestic market for consumer goods and durables. In a frank discussion in Singapore, fund managers and corporate executives revealed that the main reason why they were not prepared to mesh India into their global production plans was that even after they had obtained all the clearances from the Central and State Governments, they remained at the mercy of local bureaucrats and politicians. Any one of them could stop their operations, and threatened to do so if they were not given an adequate 'inducement'. Every change of government in a state led to a fresh set of demands and a fresh set of negotiations with the new incumbents. To sum it up, the Chinese took larger bribes, but delivered security of investment in return. Petty bureaucrats who transgressed this principle received a bullet in the back of the head in a football stadium. In India, by contrast, they prospered while the enterprise sickened or died.".

3. Certain measures required to be taken for ensuring probity in governance:

3.0 For ensuring probity in governance, several measures are necessary, some of which are mentioned hereinbelow:

A. Need for enforcing section 5 of the Benami Transactions (Prohibition) Act, 1988:

3.1.1 While many provisions of the Benami Transactions (Prohibition) Act, 1988 are salutary, it is necessary to take note of some of the anachronisms in the said Act. The expression "benami transaction" is defined in clause (a) of section 2 of the said Act. The said clause reads as under:-

'(a) "benami transaction" means any transaction in which property is transferred to one person for a consideration paid or provided by another person;'.

3.1.2 This definition appears to be susceptible to unchartered application taking in *bona fide* transactions which do not injure public interest – say, a father buying a flat for his child, paying the price in instalments. If the money for purchase is accounted for and it is a transaction of advancement, it should not be voided. This is the true meaning and purport of the definition. The Act, a statute containing nine sections, perhaps **requires to be modified and strengthened**. Section 3 prohibits a person from entering into any benami transaction. Be that as it may, the Act prohibits "benami transactions" and disables any person from claiming that though the property stands in another's name, he himself is the real owner. This Act, enacted as far back as 1988 by Parliament, contains a very salutary and much desired provision in section 5 which reads thus:

> **"5. Property held benami liable to acquisition:-** (1) All properties held benami shall be subject to acquisition by such authority, in such manner and after following such procedures, as may be prescribed.
>
> (2) For the removal of doubts, it is hereby declared that no amount shall be payable for the acquisition of any property under sub-section (1).".

3.1.3 It is evident from a reading of section 5 that it can become effective and operational only when rules are made under section 8 prescribing the authority, the manner and procedure following which benami properties can be acquired by the State (without paying any compensation). In fact, section 8 expressly contemplates rules being made by the Central Government for carrying out the purposes of the Act. It is surprising that the Central Government has not so far thought it fit to make rules for the above purpose. The Act is of general application; it applies to every benami transaction, whether the persons concerned are public servants or not. It is imperative that this is done forthwith, thus fulfilling the legislative mandate.

3.1.4 Perhaps, it may be safer to have a separate and exhaustive law relating to public servants. A law in relation to "public servants" as defined by section 2(c) of the Prevention of Corruption Act, 1988 and section 21 of the Indian Penal Code is a prime necessity. Such an Act must be comprehensive in nature and must also deal with acquisition of assets of public servants. The law must provide the manner in which properties can be held by the wife, minor children, near relations of a public servant and should stipulate that if circumstances show that they are benamidars of the public servants (which expression should be defined in the same manner as in section 2(c) of the Prevention of Corruption Act, 1988 and section 21 of the Indian Penal Code), the same should warrant a special provision which would declare the effects of holding of such assets. The statute may also provide that if proper statutory procedures of reporting and verification are not followed, the burden of proof may be placed on the holder of the property to show that the same was not acquired by him benami. It is also suggested that amendments to the Transfer of Property Act, 1882 and the Registration Act, 1908 should be made by which acquisition or transfer of property in favour of or by a public servant would only be through registered instruments warranting prior scrutiny or post-transaction scrutiny. (In Delhi, majority of property transactions are done only on the basis of power of attorney and wills; no registered documents are ever executed- which incidentally means a substantial loss of public revenue by way of stamp duty and registration charges). This may be made applicable even in relation to transactions by which even though a final conveyance may not be executed, yet interest in property may be sought to be passed *de facto*. The provisions may cover not only the public servants but all those within the family of the public servant. There must exist a clear definition of the family of the public servants. The Companies Act, 1961, which has enabled the near and dear ones of the corrupt to float fabulously rich companies through complex cyclical money in poring also needs to be amended. The status - financial and property matters - of a public servant needs to be brought under the proposed comprehensive law relating to public servants. We suggest that in the law, there should be a monitoring mechanism not composed of officials of the executive government (since the executive government can misuse such provisions to retaliate against unwilling civil servants) but an independent Ombudsman who will regulate the civil service. It is needless to add that in addition to stringent provisions relating to public servants, public opinion should encourage concurrent inward digestion of the principles (*See* The Executive and the Constitution, page 94).

3.1.5 It may be recalled that the Benami Transactions (Prohibition) Act, 1988 was made by Parliament about thirteen years ago. It conferred the rule-making power upon the Central Government for the

purpose *inter alia* to make rules prescribing the requisite matter contemplated by section 5. The Government has singularly failed in discharging the duty placed upon it by Parliament. It is true that Parliament has not prescribed any time limit for the purpose, but this is no answer. It is never done. In any event, the Central Govemment must have made the rules within a reasonable time. A period of thirteen years is too long. Central Government cannot frustrate the intent and object of the Parliament by its inaction. Indeed, it is under a statutory obligation to take measures to effectuate the said provision, if the same has not yet been done.

3.1.6 We must also clarify that the principle of the decision of the Supreme Court in A.K. Roy has no application here. Firstly, that was a case of 'conditional legislation' (power to bring a constitutional provision/enactment into force). Secondly, the matter related to the constitutional amendment (to Article 22) effected in 1979 and the case before the Supreme Court came up in 1981 i.e., within about two years. But when the very same question came up before the Supreme Court in 1994 in A.G. of India vs Amratlal Prajivandas, the nine-Judge Constitution Bench made certain pertinent observations. While observing that it was not necessary to decide the said question for the purpose of that case, the Court noted with approval the argument of the Counsel that such delay on the part of Central Government was not reasonable and that the Parliament while enacting the said amendment Act could never have contemplated that it would be converted into a dead letter by the Central Government by its inaction – deliberate or otherwise.

3.1.7 We are, therefore, of the opinion that at least now the **Central Government should enact a comprehensive law on public servants.** Such a measure would act as a salutary check-a deterrent - upon corrupt public servants and would certainly be a measure to ensure probity in governance.

3.1.8 In this connection, it is necessary to point out the inadequacies in the existing law, namely, the Prevention of Corruption Act, 1988 and the Indian Penal Code. Mere prosecution under the IPC or the Prevention of Corruption Act (PCA) is not sufficient, apart from the fact that such prosecutions are very rarely launched and even when they are, the conviction is much too rare. Unless the fruits of corruption are taken away, you would not be fighting the corruption truly and effectively. A law for forfeiture of property of corrupt public servants otherwise then through the route of conviction is absolutely essential. In other words, wherever a public servant is found to have screened the illegally acquired assets in the name of a benamidar, action should be taken under this Act and the Rules framed thereunder, and those assets acquired by State without any compensation, as indeed provided for expressly by the Act. For this purpose, the appropriate authority (like the one specified under section 5 of PCA) should be clothed with the necessary powers of investigation, verification, enquiry and the power to gather and receive information from any source, authority, institution or organization. So far as the public servants are concerned, different authorities may be specified in the States and at the Centre. So far as Union and State Ministers are concerned, appropriate authorities have to be created. For non-public servants, appropriate authorities may also have to be specified. The only obligation of such authorities should be to observe the principles of natural justice. It would not be a case of conviction by criminal courts – it would be a purely civil remedy – against corruption. The burden of proving that the property is not held 'benami' should be placed upon the holder of such property/asset.

B. Misfeasance in Public Office – A Remedy

3.2.1 The Supreme Court in an innovative exercise, examined executive actions of two former Union Ministers. It found that one of them allotted petrol pumps in favour of fifteen persons which were plainly vitiated by lack of transparency, nepotism and arbitrariness. The allotments made mostly in favour of the relations of the Ministers or members of his staff. In the case of the other Minister, the Court found that illegal allotments had been made in relation to occupation of Government accommodation. The Court, while taking the view that no public servant could arrogate himself the power to act in a manner which was plainly arbitrary, observed:

> "It is high time that the public servants should be held personally responsible for their mala fide acts in the discharge of their functions as public servants. With the change in socio-economic outlook, the public servants are being entrusted with more and more discretionary powers even in the field of distribution of government wealth in various forms. We take it to be perfectly clear, that if a public servant abuses his office either by an act of omission or commission, and the consequence of that is injury to an individual or loss of public property, an action may be maintained against such public

servant. No public servant can say "you may set aside an order on the ground of mala fide but you cannot hold me personally liable". No public servant can arrogate to himself the power to act in a manner which is arbitrary."[Ω].

3.2.2 On the question of allotments, the Court opined how the Minister who was executive head of the department held a position of trust. The court observed:

> "The government today – in a welfare State – provides large number of benefits to the citizens. It distributes wealth in the form of allotment of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas and licences, etc. Government distributes largesse in various forms. A Minister who is the executive head of the department concerned distributes these benefits and largesse. He is elected by the people and is elevated to a position where he holds a trust on behalf of the people. He has to deal with the people's property in a fair and just manner. He cannot commit breach of trust reposed in him by the people.... A transparent and objective criteria/procedure has to be evolved....".[1]

3.2.3 The Supreme Court directed one Minister to pay a sum of Rs. Fifty lakhs by way of exemplary damages to the government. Likewise, the other Minister was asked to pay a sum of Rs. Sixty lakhs by way of exemplary damages. The Court, in both the cases, concluded that the actions of the Ministers amounted to a misfeasance of public property.

3.2.4 The Supreme Court relied upon the well stated position in Ramana Deyaram Shettey and Lucknow Development Authority to hold that in the matter of grant of largesse, the Government and its officials were expected to act in a fair, just and transparent manner and that if they acted in a malicious and deliberate manner causing injury to the citizens of the State, they could be held liable for damages. Rookes v. Barnard was relied upon to hold that exemplary damages could be awarded for "oppressive, arbitrary and unconstitutional action by the servants of the government.". The Supreme Court then concluded:

> "We are of the view that the legal position that exemplary damages can be awarded in a case where the action of a public servant is oppressive, arbitrary or unconstitutional is unexceptionable" [para 12 at page 598 of the decision in 1996 (6) SCC 593]. The same principle was reiterated in the decision concerning the other Minister. It would not be out of place to mention that the Supreme Court followed several other English decisions besides Rookes v. Barnard in arriving at its decision. Indeed the Court pointed out that the principle of Rookes v. Barnard was expressly affirmed by the House of Lords in Broome v. Cassell (1972 AC 1027). The Court also referred to the decision of the Court of Appeals in A.B. v. South West Water Services Ltd. (1993 (1) All E.R. 609) as following and affirming the rule in Rookes v. Barnard. It may also be mentioned that as late as 1996, the U.K. High Court has held in Three Rivers District Council v. Bank of England (1996 (3) All E.R. 558), following earlier decisions that:
>
> > "The tort of misfeasance in public office was concerned with a deliberate and dishonest wrongful abuse of the powers given to a public officer and the purpose of the tort was to provide compensation for those who suffered loss as a result of improper abuse of power. It was not to be equated with torts based on an intention to injure, although it had some similarities to them. The tort could be established in two alternative ways: (a) where a public officer performed or omitted to perform an act with the object of injuring the plaintiff (i.e. where there was targeted malice); and (b) where he performed an act which he knew he had no power to perform and which he knew would injure the plaintiff. Accordingly, malice, in the sense of an intention to injure the plaintiff or a person in a class of which the plaintiff was a member, and knowledge by the officer both that he had no power to do the act complained of and that the act or omission would probably (but not that it would necessarily or inevitably) injure the plaintiff or such a person, were alternative, not cumulative, ingredients of the tort. To act with such knowledge was to act in a sufficient sense maliciously.".

[Ω] *See* Common Cause, A Registered Society Vs. Union of India, AIR 1996 SC 3539 at page 3551 (paragraph 25)

[1] *See* AIR 1996 SC 3538, at page 3550 (paragraph 21).

3.2.5 This statement of law is indeed a faithful reiteration of the law laid down by the Court of Appeals in Bourgoin S.A. v. Ministry of Agriculture (1985 (3) All E.R. 585).

3.2.6 These decisions, certainly, were welcome and enhanced the image of the Supreme Court in the public eye. The decisions established that courts were concerned with public servants and ministers could not escape consequences of their mala fide acts and orders. The decisions, in substance, demonstrated the adage that "howsoever high you may be, the law is above you". The decisions reinforced the rule of law and not that of men and further that public servants must develop a respect for public property and, above all, that public office is a trust and not a charter of corruption, nepotism and personal gain.

3.2.7 However, the principle enunciated in the above decisions were overruled in a subsequent decision of the Supreme Court in a review petition filed by one of the Ministers. A reading of the judgment (reported in AIR 1999 SC 2979) discloses that the review petition was allowed on the following grounds:

The petitioner before the court "Common Cause", a registered society, was not one of the applicants for allotment of petrol outlets and therefore has not suffered any legal injury by the unlawful allotments made by the Minister. If so, "how could then a finding of commission of misfeasance in public office by the petitioner (the Minister) be recorded in proceedings under Article 32 and that too at the instance of "Common Cause" on the basis of a Press report". Maybe, Common Cause was justified in agitating the said question by way of public interest litigation but that effort has already succeeded inasmuch as the 15 illegal allotments were quashed. But the Court was not entitled to go further and hold that the Minister has committed the tort of misfeasance in public office and to award exemplary damages on that basis.

Damages can be awarded for a tortious act to a particular plantiff who has suffered loss on account of the said tortious action; "mere allotment of petrol outlets would not constitute 'misfeasance' unless other essential elements were present". True, it is that allotment of 15 outlets by the Minister was wholly unjustified and was an instance of wanton misuse of power, yet "it falls short of 'misfeasance in public office' which is a specific tort and the ingredients of that tort are not wholly met in the case". Hence, there was no occasion to award exemplary damages.

Exemplary damages can no doubt be awarded against the public servants in certain situations but not in a case like this. The decision of the House of Lords in Rookes v. Bernard as affirmed in Broome v. Cassell cannot be accepted; "if we were to apply the rule in Rookes v. Bernard as upheld in Cassell and Company Limited v. Broome invariably and unhesitatingly and were to award exemplary damages in every case involving government officers or government servants, the result would be appalling".

The Court further observed: "The petitioner does not on becoming the Minister.... assume the role of a 'trustee' in the real sense nor does a 'trust' come into existence in respect of the government properties".

Examined from the point of view of criminal breach of trust as defined in section 405 of the Indian Penal Code, the 'power to allot' cannot be treated as 'property' within the meaning of section 405 IPC that is capable of being misutilised and misappropriated.

The direction to initiate criminal proceedings against the Minister concerned was violative of the right to life and liberty guaranteed to him by article 21 of the Constitution.

In exercise of its powers under Article 32 of the Constitution, it was not permissible for the Supreme Court "to direct the government to pay the exemplary damages to itself". (This was so held obviously on the footing that a Minister of the government is part of the Government and therefore the Government cannot be directed to pay damages to itself.)

3.2.8 While the moral vigour of the decisions rendered in the aforesaid cases needs to be respected. Whether the principle of damages for a tort of misfeasance must necessarily involve an ingredient of injury to an agreed individual needs to be re-examined. The principle on which liability can be placed on public servants must be clear and must also be a fair principle consistent with need to act fearlessly and

must not be capable of comprehending *bona fide* actions, though may be concerned, of civil servants. It is necessary that the principle must promote good governance. By way of example, we may refer to the Andhra Pradesh Cooperative Society's Act, 1964. Section 60 thereof provided that when an office bearer who was entrusted with the organization, affairs of management of the society, misappropriated or fraudulently retained any money or was guilty of any breach of trust, his conduct could be inquired into and an order requiring him to repay or restore the money or property by way of compensation would follow. It is necessary to enact as a part of a comprehensive law relating to public servants, the principles on the basis of which misfeasance can be rendered punishable. The principle must ensure that the wrong-doing is palpably evident, and given the barest standards of foreseeability, no two views are possible. It is then, and then alone, that the public servant is exposed to damages. Likewise, the principle may deal with both the situations, i.e., a situation where a definite injury had been caused to a third person and secondly where a declaration of wanton abuse of power can be arrived at by satisfying judicially manageable standards. Public servants in both the cases must be visited with the imposition of damages. Likewise, the principles of quantification of damages need to be defined since arbitrariness in arriving at figures may well become an area (of non-liquet) where 'no human law and justice may ever reach'. While drafting the legal provisions, there must be an examination of the basic power structure, the composition of the elite, of their fundamental structures in [see W. Michael Reisman, Folded Lies: Bribery, Crusades and Reforms, 69-73 (1973)]. It is necessary that the principles must be clear and achieve the desired result since there have been far too many moral crusades but few successful prosecutions. While adjusting the *bona fides* or mala fides of an executive act, the matter should be one which is determinable contemporaneously with reference to clear standards of foreseeability.

3.2.9 Section 60 of the Andhra Pradesh Cooperative Societies Act, which carries the heading "Surcharge" reads as follows:

> "60. **Surcharge.-** (1) Where in the course of an audit under section 50 or any inquiry under section 51 or an inspection under section 52 or section 53, or the winding up of a society, it appears that any person who is or was entrusted with the organization, affairs or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or has been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has made any payment contrary to the provisions of this Act, the rules or the bye-laws, the Registrar himself, or any person specially authorized by him in this behalf, of his own motion or on the application of the committee, liquidator or any creditor or contributory, may inquire into the conduct of such person or officer or servant and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorized as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or wilful negligence as the Registrar or the person authorized as aforesaid thinks just:
>
> Provided that no order shall be passed against any person referred to in this sub-section unless the person concerned has been given an opportunity of making his representation.
>
> (2) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by his act."

3.2.10 It may be remembered that a cooperative society has an elected managing committee to run and manage its affairs/business and also staff appointed to assist the persons in management in their duties. Both elected members and the employees so appointed are within the ambit of the above section. There is no reason why this principle cannot be extended to the governing machinery at the Union and State level, where too elected members form the government and run and manage the affairs of the State with the assistance of a permanent bureaucracy. Even the statutory authorities should be within the purview of this rule. The protective clauses usually found in enactments only save the authorities from any suit or prosecution in respect of acts done by them in 'good faith'. The protection does not and should not extend to acts done mala fide. Where the mala fide action causes loss to the State, i.e. people as such, the State must be entitled to recover the loss from the concerned official/ authority.

3.2.11 Several other enactments concerning the cooperative societies enacted by the various States too contain similar provisions.

3.2.12 A comprehensive law needs to be enacted to provide that where public servants cause loss to the State by their mala fide actions or omissions of a palpable character to be defined, they should be made liable to make good the loss caused by him to the State and, in addition, would be open to the imposition of exemplary damages. The principles must include cases of misuse of official position and acts outside authority. The expression 'public servant' must be extended to 'all public servants as defined in the Indian Penal Code and in the Prevention of Corruption Act, 1988, which expression has been interpreted to include Members of Parliament, Members of State Legislatures and Councils and Ministers. Such a law would have the merit of obviating several questions like whether Government can be asked to pay damages to itself, whether the power to grant or allot some benefit can be called 'property', whether such action of the public servant constitutes a 'tortuous action', whether damages/ exemplary damages can be awarded for such acts, and if so, on what basis and to what extent, whether public office is a trust and questions of 'locus standi' and so on. It would also contribute to avoidance of multiplicity of proceedings and would be more effective than a mere criminal prosecution, whether under IPC or PC Act. The law must, however, provide that proceedings thereunder can be taken on the basis of information received including an audit report or a report of any commission, committee or body competent to examine the relevant facts. The authority empowered to take proceedings must be an independent high level officer/agency whose tenure, conditions of service and independence should be firmly and fully guaranteed as has been done in the case of Central Vigilance Commissioner. Different authorities may be prescribed for different classes of public servants. For example Ministers and Legislators may constitute one category, Group A officers may constitute another category and so on. Classification can also be done department-wise. This is, however, a matter for the Parliament/Legislature to decide. It may be appropriate for the Parliament and also State Legislatures on similar lines to enact a new comprehensive law to deal with public servants with reference to their public functions, relationship with the State as well as the examination of their personal effects and private properties. The fact, however, remains that such a course has become absolutely essential and urgent. The public servants must be put on notice that they will be responsible to make good the loss caused by them to the State by their mala fide acts, to use a comprehensive expression to done the grounds mentioned herein above – that they should no longer be under the cosy impression that all that would happen in such a case is that their mala fide order or action would be set aside by the Court but that nothing would happen to them personally. They should be made aware that a mala fide act or action on their part carries the liability for damages/compensation. Creating personal liability of this kind would contribute greatly to good governance and would emphasise the need for transparent, fair and honest exercise of power. It would in no way dampen the initiative of the Ministers or officials nor would it inhibit them in any manner in effective discharge of their functions. A responsible government and the concept of accountability are not anti-thetical to good governance; on the contrary they promote it – they contribute to public good. Mere errors of judgment or *bona fide* mistakes would certainly not expose the public servants to such a consequence but where their actions are mala fide, i.e., falling within any of the six grounds mentioned hereinabove, they should be held responsible. If such acts result in loss to the State, they must be made liable to make good the same.

C. Necessity for a law providing for confiscation of illegally acquired assets of public servants

3.3.1 In the decision reported in Delhi Development Authority v. Skipper Construction Co. (P) Ltd. (AIR 1996 SC 2005), the Supreme Court made the following observations:

> "... a law providing for forfeiture of properties acquired by holders of 'public office' (including the offices/posts in the public sector corporations) by indulging in corrupt and illegal acts and deals, is a crying necessity in the present state of our society. The law must extend not only to – as does SAFEMA – properties acquired in the name of the holders of such property but also to properties held in the names of his spouse, children or other relatives and associates. Once it is proved that the holder of such office has indulged in corrupt acts, all such properties should be attached forthwith. The law should place the burden of proving that the attached properties were not acquired with the aid of monies/properties received in the course of corrupt deals upon the holder of that property as does SAFEMA whose validity has already been upheld by this Court

in the aforesaid decision of the larger Constitution Bench. Such a law has become an absolute necessity, if the canker of corruption is not to prove the death-knell of this nation. According to several perceptive observers, indeed, it has already reached near-fatal dimensions. It is for the Parliament to act in this matter, if they really mean business."

3.3.2 Indeed, in the above case the Supreme Court followed the law laid down by a nine-judge Constitution Bench in Attorney General of India v. Amratlal Prajivandas [1994 (5) SCC 54] while dealing with the constitutional validity of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (13 of 1976) which provided a similar forfeiture of illegally acquired assets of smugglers and foreign exchange violators. The nine-judge Bench, in a unanimous decision observed that the laudable object behind the said enactment was:

> "to forfeit the illegally acquired properties of the convict/detenue irrespective of the fact that such properties are held by or kept in the name of or screened in the name of any relative or associate as defined in the said two Explanations. The idea is not to forfeit the independent properties of such relatives or associates which they may have acquired independently but only to reach the properties of the convict/detenue or properties traceable to him, wherever they are, ignoring all the transactions with respect to those properties.".

3.3.3 SAFEMA, it may be pointed out, placed the burden of proof squarely upon the smuggler and foreign exchange manipulator to establish that the assets owned by him or by the members of his family have been lawfully acquired. It was pointed out in the said nine-judge Bench decision that such a course was inevitable in the light of the fact that only the person who acquired properties can explain how he has come to acquire those properties and that it is not possible for the authority to do so. It was observed in the said decision:

> "... The violation of foreign exchange laws and laws relating to export and import necessarily involves violation of tax laws. Indeed, it is well known fact that over the last few decades, smuggling, foreign exchange violation, tax evasion, drugs and crime have all got mixed-up. Evasion of taxes is integral to such activity. It would be difficult for any authority to say, in the absence of any accounts or other relevant material that among the properties acquired by smuggler, which of them or which portions of them are attributable to smuggling and foreign exchange violations and which properties or which portions thereof are attributable to violations of other laws (which the Parliament has the power to make). It is probably for this reason that the burden of proving that the properties specified in the show cause notice are not illegally acquired properties is placed upon the person concerned. May be this is the case where a dangerous disease requires a radical treatment. Bitter medicine is not bad medicine. In law it is not possible to say that definition is arbitrary or is couched in unreasonably wide terms..."

3.3.4 It is, therefore, quite appropriate that even in the proposed legislation to forfeit the properties of corrupt public servants, the burden of proof should be placed upon the holders of the property. This indeed is the principle of section 106 of the Indian Evidence Act. 1872. The said section along with the illustration appended to it reads as follows:

> "**106. Burden of proving fact especially within knowledge**: When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.
> *Illustrations:*
> (a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.
> (b) A is charged with traveling on a railway without a ticket. The burden of proving that he had a ticket is on him."

3.3.5 It is on this principle that in prevention of corruption statutes, the burden of proof is very often laid upon the accused. It has been held by the Supreme Court in C.S.D. Swami *versus* State (AIR 1960 SC

7) that "... the Legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the Court that his explanation was worthy of acceptance". This case was decided with reference to section 5(3) of Prevention of Corruption Act, 1947. The Court observed further "... section 5(3) of the Act does not create a new offence but only lays down a rule of evidence, enabling the Court to raise a presumption of guilt in certain circumstances" – and thus an exception to the general rule of burden of proof in criminal cases. To the same effect is the decision in State of Maharashtra *versus* Wasudeo (1981 SC 1186). Construing section 5, the Court held: "When section 5(1)(e) uses the words "for which the public servant is unable to satisfactorily account", it is implied that the burden is on such public servant to account for the sources for the acquisition of disproportionate assets", and that if he fails to satisfactorily account for his assets, he is liable to be convicted.

3.3.6 It is pointed out by some that where the property has been acquired several years ago, the person called upon to prove the sources of such acquisition may be under a severe handicap, inasmuch as he may not have kept or preserved the records relating to sources of such acquisition. This is however an aspect which the Court or Tribunal would certainly keep in mind while determining whether the person has discharged the burden that lay upon him.

3.3.7 The philosophical basis for such confiscation was explained by the Supreme Court in, the Attorney General of India, by invoking the concept of 'implied trust'. The relationship between the government and the public servant is of a fiduciary nature. In such a case, it was held, any benefit obtained by a fiduciary through a breach of duty belongs in equity to the beneficiary. It was further observed that a gift accepted by a person in a fiduciary position as an incentive for breach of his duty constituted a bribe and although in law it belonged to the fiduciary, in equity he not only became a debtor for the amount of the bribe to the person to whom the duty was owed, but he also held the bribe and any property acquired therewith on 'constructive trust' for that person. Any increase in the value of such property belonged to the person injured/beneficiary and that in case of any diminution in the asset, the wrong-doer was liable in person. It was also observed that unless there is a law providing for prompt forfeiture of illegally acquired assets, they would be spirited away beyond our shores to safe havens and numbered accounts.

3.3.8 Acting upon the observations of the Supreme Court in the above two judgments, the Law Commission of India submitted its 166th Report on "the Corrupt Public Servants (Forfeiture of property) Bill" recommending to the Central Government to introduce a Bill in Parliament for forfeiture of illegally acquired properties of corrupt public servants. A draft Bill was also enclosed to the said Report. It is again a matter of regret that the government has not thought it fit to take the desired steps.

3.3.9 We are of the opinion that a law as recommended hereinabove, has become absolutely inescapable in today's situation. It would clothe the State with an effective means of checking corruption. Nobody suggests that such an enactment would by itself check corruption. But even if a handful of cases concerning some notoriously corrupt persons are dealt with under such enactment, it will have a sobering effect upon other wrong-doers.

D. Enactment of a Public Interest Disclosure Act

3.4.1 One of the measures adopted in several western countries to fight corruption and mal-administration is enactment of Public Interest Disclosure Acts, which are popularly called Whistle-blower Acts. The object of such enactments is to improve accountability in government and public sector organizations by encouraging people not to turn a blind eye to mal-practice taking place in their organizations and to report the same to the specified authority. The motto of the British Act (Public Interest Disclosure Act, 1998) is "Address the message rather than the messenger; and resist the temptation to cover up serious mal-practices". The Act provides for protection of Whistle-blowers from dismissal and victimization by making appropriate provisions in that behalf.

3.4.2 An experienced corrupt public servant knows how to circumvent internal control proceedings. Such person indulges in such activity either by himself or in collusion with others, whether employees or outsiders. Even so, wherever corruption or mal-practice takes place, it cannot but be that some or the other person in the organization knows it or comes to know of it. The Act enables such person to lay such information before the specified authority and thus promote public interest. It is true that such Whistle-blowing has been looked upon until now with some kind of disfavour, but recently a growing

recognition has dawned upon all concerned that the persons who sound the alarm of serious mal-practice, corruption or fraudulent activity in government or public sector organizations deserve public thanks and support rather than punished and humiliated for being 'disloyal' to their employers or colleagues.

3.4.3 The Act is really aimed at improving accountability within the government and public sector by allowing the employees to inform the appropriate authorities of organizational or individual wrong-doing either in a confidential manner or by a public report. The Act should provide that the authority receiving such information should be an independent person and not be a part of the concerned government or public sector organization. If any information is received by him confidentially containing some allegations, he must investigate the same without publicly humiliating the suspect or the Whistle-blower. He must adopt appropriate methods to ensure the same. It must also be ensured that the persons who lay correct and true information about such illegalities should be rewarded which need not necessarily be financial in nature. It is equally necessary to ensure that this Whistle-blowing facility is not abused by malicious employees, out to achieve their personal grievance or vendetta.

3.4.4 Indeed, it is now believed that the law and the society must help create a culture wherein honest interchanges are respected and valued rather than punished. The Act must ensure that the informants are protected against retribution and any form of discrimination for reporting what they perceived to be wrong-doing, i.e., for *bona fide* disclosures which may ultimately turn out to be not entirely or substantially true.

3.4.5 It must be recognized, at the same time, that there are certain pitfalls in such a measure in the sense that it is liable to be abused by persons out of vindictiveness or for the purpose of retaliation or for claiming rewards. It must, however, be left to the appropriate authority to determine whether information laid before him confidentially is substantially correct information or whether the informant was acting *bona fide* or whether it is a totally false information actuated by malice or vindictiveness. There must be a provision for punishing persons who lay false information out of such inadmissible motives.

3.4.6 It is believed in many developed countries that while there are certainly some risks inherent in such a legislative measure, it is better to run these risks rather than allow corruption and fraud to continue or to leave the Whistle-blower to go to an outside agency. Undoubtedly, the balance between asking people to blow the whistle and telling them that they themselves could be subject to proceedings for laying incorrect information, is a fine one. The situations arising under such a legislative measure, if handled sensitively, may certainly prove a step forward rather than a step backward in the fight against corruption and mal-administration.

3.4.7 In the British Act, the person/authority specified to receive complaints of the above nature is called a regulator.

3.4.8 As the London Borough, Lambeth says in its Whistle Blowing Charter, "if you believe something is wrong, speak out".

3.4.9 In this connection, it would not be out of place to refer to an organization in U.K., "Public Concern At Work", active in this field which has received the recognition of the government of the U.K. In their White Paper, 'The Governance of Public Bodies', the government has accepted the important role Whistle-blowing can play in ensuring probity and accountability and in that connection referred to the said organization as 'the leading organization in this field'. The said organization has published a number of papers espousing the cause of Whistle-blowing including some case studies. It is stated in one of their papers as below:

"Standards in Public Life

> In policy terms the most important development in recent years has been the Nolan Committee's endorsement of whistle-blowing as a means of ensuring and demonstrating high standards in public bodies. Nolan's 1996 recommendations, which are reproduced on the back cover, were accepted by the Major Government in its 1997 White Paper on The Governance of Public Bodies. The work of the Committee has also clarified the meaning of whistle-blowing. As the White Paper remarks, "The Nolan Committee used the term 'whistle-blowing' to mean the

confidential raising of problems within an organization or within an independent review structure associated with that organization, not in the popular pejorative sense of leaking information to the media."

3.4.10 We have also looked into the whistle-blower Acts enacted by various countries viz., U.K., Australia, State of Michigan (USA) and Canada. We find that the Australian Act can serve as a model for our country, no doubt, with appropriate changes.

3.4.11 In this connection, we may refer to the episode relating to "Pentagon Papers" which ultimately resulted in the decision of the U.S. Supreme Court in New York Times v. United States (1971) 403 U.S. 713 = 29 L.Ed. 2d. 822. One of the employees, Daniel Ellsberg, working in the defence department, came across a classified study entitled "History of the U.S. Decision-making Process on Vietnam Policy". The study disclosed that the U.S. government has been withholding from public true and correct information regarding its involvement in Vietnam and that it has been guilty of misrepresenting to the American people the issues and the facts relating to their involvement in Vietnam conflict and other relevant facts vitally affecting the American lives and interests. He did not know whom to complain. There was no authority outside the government to whom he could turn. He therefore approached the two leading U.S. dailies, The New York Times and The Washington Post with the material (he had secretly made copies of it). The employee was arrested and harassed for allegedly compromising the national security. The government tried unsuccessfully to block the publication of the said study, popularly known as 'Pantagon Papers' in the aforesaid dailies. The affair turned out to be a serious embarrassment to the U.S. government, and to its successive Presidents responsible for the American involvement in Vietnam.

3.4.12 It is obvious that had there been an independent authority ('Regulator') to whom the employee could have turned with the information in his possession and had such authority been empowered to enquire into the matter and make necessary orders – and if called for in public interest, gone public with it, the proceedings would have ended in an orderly manner and public interest served much better and more promptly. It could also have saved many lives, both American and Vietnamese. It goes without saying that these disclosures led to public disenchantment with – nay, opposition to – Vietnam war in U.S. and to its ultimate withdrawal from Vietnam on 30th April, 1975.

3.4.13 It is understood that the Law Commission of India is in the process of drafting a Public Interest Disclosure Bill, for forwarding it to the Government of India.

E. Enactment of a Freedom of Information Act

3.5.1 Right to receive and the right to impart information has been held to be a part of freedom of speech and expression guaranteed by sub-clause (a) of clause (1) of article 19 of the Constitution subject of course to the reasonable restrictions, if any, that may be placed on such right in terms of and to the extent permitted by clause (2) of the said article. It has been held by the Supreme Court in Secretary, Ministry of I&B v. Cricket Association of Bengal (1995 (2) SCC 161) that:

> "The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-expression which is an important means of free conscience and self-fulfillment. It enables people to contribute to debates on social and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavours of all sorts. The right to communicate, therefore, includes right to communicate through any media that is available whether print or electronic or audio-visual such as advertisement, movie, article, speech, etc. That is why freedom of speech and expression includes freedom of the press. The freedom of the press in turn includes right to circulate and also to determine the volume of such circulation. This freedom includes the freedom to communicate or circulate one's opinion without interference to as large a population in the country, as well as abroad, as is possible to reach.".

5.2 The fundamental values underlying the concept of freedom of speech, and the functions that e freedom serves in a democratic society, are widely accepted. They can be summarized in the lowing form:

First, freedom of speech is essential to the development of the individual personality. The right express oneself and to communicate with others is central to the realization of one's cha-~ter and tentiality as a human being. Conversely, suppression of thought or opinion is an affront to a person's gnity and integrity. In this respect freedom of speech is an end in itself, not simply an instrument to :ain other ends. As such it is not necessarily subordinate to other goals of the society.

Second, freedom of speech is vital to the attainment and advancement of knowledge. As John uart Mill pointed out, an enlightened judgment is possible only if one is willing to consider all facts and eas, from whatever source, and to test one's conclusion against opposing views. Even speech that nveys false information or maligns ideas, has value, for it compels us to retest and rethink accepted sitions and thereby promotes greater understanding. From this function of free speech, it follows that e right to express oneself does not depend upon whether society judges the communication to be true false, good or bad, socially useful or harmful. All points of view, even a minority of one, are entitled to e heard.

i) Third, freedom of speech is a necessary part of our system of democratic government. overeignty resides in the people; in other words, the people are the masters and the government is their ervant. If the people are to perform their role as sovereign and instruct their government, they must ave access to all information, ideas, and points of view. This right of free speech is crucial not only in etermining policy but in checking the government in its implementation of policy. The implication of this osition is that the government has no authority to determine what may be said or heard by the citizens the community.

/) Fourth, freedom of speech is vital to the process of peaceful social change. It allows ideas to be sted in advance before action is taken, it legitimizes the decision reached, and it permits adaptation to ew conditions without the use of force! It does not eliminate conflict in a society, but it does direct onflict into more rational, less violent, channels. In the words of Justice William J. Brennan in New York imes v. Sullivan (1964), speech may often be "uninhibited, robust, and wide-open".

.5.3 It would not be out of place to quote from the oft-quoted judgment of Brandies J. in Whitney v. alifornia, the following observation:

> "... that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the ... government.".

.5.4 It must be recognized at the same time that today the freedom of expression and in particular ie freedom of information is under a grave threat. The "free market-place of ideas" – an expression sed in several U.S. Supreme Court judgments to denote freedom of speech and expression – is nalogous to the more general argument for a "free market economy", as is opined by Milton Friedman nd Jane Friedman in their book "Free to Choose". As indeed pointed out by Jerome Barron (Access to 'ress – A new First Amendment Right – 80 Harvard Law Review 1641-1967) "... if ever there were a elf-operating market place of ideas, it has long ceased to exist.... There is inequality in the power to ommunicate ideas just as there is inequality in economic bargaining power; to recognize the latter and eny the former is quixotic.... Changes in the communications industry have destroyed the equilibrium in iat market-place. While it may have been still possible in 1925 to believe with Justice Holmes that every dea is "acted on unless some other belief outweighs it or some failure of energy stifle the movement at s birth", it is impossible to believe it now. Yet the Holmesian theory is not abandoned, even though the dvent of Radio and television has made even more evident that philosophy's unreality..." Another jurist lerbert Marcuse similarly argues that "under the rule of monopolistic media – themselves the mere istruments of economic and political power – a mentality is created from which right and wrong, true and alse are pre-defined whenever they affect the vital interests of society" (Repressive Tolerance by Herbert Marcuse).

.5.5 How much more true all this sounds today when the television and other means of mass ommunication have become all-pervasive and all-encompassing. What they represent passes for

information and truth and our ideas and views are imperceptibly formed by what we hear on televisio read in newspapers.

3.5.6 It is true that Press and media perform an important and essential function in a democ society and that notwithstanding their ownership being in the hands of business tycoons notwithstanding their dependence on government-sponsored advertisements, they are performin highly valuable and useful function as guardian of the citizens' right to know and their right to impart t ideas and views to the government and the public. As has been rightly observed:

> "The functions that freedom of the press performs in a democratic society are, in general, the same as those served by the system of freedom of expression as a whole. Freedom of the press enhances the opportunity to achieve individual fulfillment, advances knowledge and the search for understanding, is vital to the process of self-government, and facilitates social change by the peaceful interchange of ideas. More particularly the press has been conceived as playing a special role in informing the public and in monitoring the performance of government. Often referred to as the "fourth estate," or the fourth branch of government, an independent press is one of the principal institutions in our society that possesses the resources and the capacity to confront the government and other centers of established authority. This concept of a free press was forcefully set forth by Justice Hugo L. Black in his opinion in New York Times Co. v United States (1971) (The Pentagon Papers case): "In the first Amendment, the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The government's power to censor the press was abolished so that the press would remain forever free to censure the government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government.".

3.5.7 The Press is thus an important agent in ensuring the citizens' right to receive and imp information as a measure of ensuring probity in governance.

3.5.8 Realising the importance of the freedom of speech and expression including the freedom receive and impart information, some of the advanced countries have enacted Freedom of Informat Acts. The object behind these enactments is to ensure that the governmental activity is transparent, and open. Except in matters of defence, atomic energy and matters concerning the security of country, there is no room for secrecy in the affairs of the government. Whether it is a matter of takin decision affecting the people or whether it is a transaction involving purchase or sale of governm property or whether the matter relates to entering into contracts - in all these matters, the governm should act in a transparent manner which means that any and every citizen who wishes to obtain a information with respect to any of those matters should be entitled to receive it. In this connection, may usefully refer to the Freedom of Information Act, 2000 enacted by the British Parliament on 3 November, 2000. The main purpose of the Act is to implement the principles set out in the White Pap insofar as it is appropriate to do so by primary legislation. Other matters will be dealt with in seconda legislation, codes of practice or by administrative action. The Act provides a right of access to record information held by public authorities, creates certain exemptions from the duty to disclose informati and establishes arrangements for enforcement and appeal. The Act amends the Data Protection A 1998 and the Public Records Act, 1958. Since the Act purports to implement the principles set out in t White Paper which was issued in December 1997, it may be appropriate to briefly refer to them. In t White Paper entitled "Your Right to Know: the Government's Proposals for a Freedom of Informati Act", the following scheme of the Act was indicated:

3.5.9 The new Act will provide for any individual, company or other body to have a right of access records or information of any data held by a wide range of public bodies. Applicants need not state th purpose in applying for information. The authorities are bound to make certain information public as matter of course.

3.5.10 Indeed, the authorities covered by the Act are required to make certain information public available without request (these include facts and analyses which the government considers important framing major policy proposals, explanatory material on dealing with the public, operational informati

costs, standards, targets and complaints procedures of public servants) and further give reasons for ministrative decisions. There should be no ministerial veto to prevent disclosures.

5.11 What is more, there is no exclusion in favour of the Cabinet or Cabinet Committees from the rview of the Act. Access will be allowed to documents and not merely to information. Of course, curity and intelligence services are excluded from the purview of the Act.

5.12 There is a similar exclusion – which has attracted a lot of criticism – in favour of criminal and il enforcement proceedings and the investigation and prosecution functions of the police, prosecutors d "other bodies carrying out law enforcement work such as the Department of Social Security or the migration Service", as well as the public sector employment records. There are certain other emptions too.

5.13 In view of the above scheme of the English Act, it may not be necessary to refer to its ovisions at any length.

5.14 The Government of India too has recognized the importance of this right and has accordingly roduced a Bill called the Freedom of Information Bill, 2000 (Bill No.98 of 2000) in Lok Sabha on 25th ly, 2000. The Bill, as it stands, does ensure to a large extent the freedom of information to citizens th respect to the functioning of the government. It casts an obligation upon public authorities to furnish ch information wherever asked for. It would have been better if the said Bill had also provided for the vernment making information public, without a request therefor from anyone, concerning matters volving major policy proposals and the major multilateral agreements proposed to be entered into. lis is for the reason that very often the people who are really going to be affected by such policies and reements are not even aware of them. The experience of WTO Agreements signed by the overnment of India in 1994, without taking the Parliament or the States or the people into confidence, d without a national debate on the pros and cons of the said Agreements, is a telling example. irporting to exercise their power under article 73 read with article 253 and entry 14 of List I of the venth Schedule to the Constitution, the Union Government has concluded several agreements vering not only the subjects in Lists I and III of the said Schedule but also with respect to subjects in st II, which are in the exclusive domain of the States – for example, Agriculture and Public Health. The gative effects of the said Agreements are becoming evident with each passing day and are seriously oding the viability of the domestic industries (which were built up with huge public funds), agriculture d trade. Be that as it may, the said Bill fills a great void though, it is true, several improvements are ssible in it. It is understood that the said Bill has been referred to a Standing Committee. We are closing herewith a copy of the recently enacted South African Freedom of Information Act (the omotion of Access to Information Act, 2000) (Annexure) which covers both the public bodies and ivate bodies. It can indeed serve as a model enactment for any country committed to concept of edom of information. The necessity and importance of an early enactment in terms of the said Bill - th some improvements - cannot be over-emphasised. It would be useful to notice the various ovisions of the English Act and the South African Act before finalizing the draft of the proposed Indian gislation.

Necessity for enacting a Lok Pal Bill in addition to the Central Vigilance Commission Act

stitution of Lok Pal

6.1 Another measure for ensuring probity in governance is the enactment of a Lok Pal Act and a entral Vigilance Commission Act. It would be appropriate to deal with the Lok Pal Act first.

6.2 In their interim report on the "Problem of Redress of Citizens' Grievances" submitted in 1966, e Administrative Reforms Commission recommended *inter alia* the setting up of the institution of Lok al. To give effect to this recommendation, a Bill called the Lok Pal and Lokayukta Bill, 1968 was roduced in the fourth Lok Sabha in 1968. It was referred to a Joint Committee of the two Houses of arliament and on the basis of its Report, the Bill was passed by Lok Sabha in 1969. But while the Bill as pending in the Rajya Sabha, the fourth Lok Sabha was dissolved with the result that the Bill lapsed.

6.3 In 1971, the Bill passed by the previous Lok Sabha was reintroduced in Lok Sabha under the me title but this Bill also lapsed on the dissolution of the fifth Lok Sabha.

3.6.4 The Bills introduced in 1968 and 1971 covered complaints in respect of not only allegation misconduct but also grievances as to mal-administration. Lok Pal was thought of as a single men body who could be described roughly as a person who would combine in himself the function ombudsman as known to the western countries such as Norway, Sweden, UK and the functions of Central Vigilance Commission as it was constituted under an administrative order of the Cer Government. Complaints could be made under the said Bill against the union ministers, union servants, union territory ministers and persons in the service of local authorities and corporations, ow or controlled by the Central Government. However, Members of Parliament and the State Chief Minis were not covered by the Bill. In short, these Bills were designed to check abuse of power, corruption other instances of mal-administration; liberty was given to the aggrieved persons to approach speci authorities.

3.6.5 In the year 1977, a fresh Bill called the Lok Pal Bill, 1977 was introduced in Lok Sabha. It again referred to a Joint Committee of both Houses of Parliament which submitted its Report in J 1978. While this Bill was under consideration of the Lok Sabha, it was prorogued first and subseque dissolved. Accordingly, this Bill also lapsed. It may be mentioned that the 1977 Bill did not take grievances as to mal-administration; it was confined to complaints as to misconduct or corruption aga specified categories of persons including Union Ministers, Members of Parliament, State Chief Minis and so on. This Bill brought within its purview the Prime Minister and MLAs of Union Territories as v Civil servants were excluded from its purview. The definition of 'misconduct' was widely worded include instances of abuse of power wherein a public man - if we can use that expression to denote persons brought within the purview of the Act - directly or indirectly, allows his position to be ta advantage of by his relatives or associates. The Bill also provided that a public man would be guilt misconduct if he fails to act in accordance with norms of integrity and conduct which ought to be follo by the class of public men to which he belongs. Of course the Joint Committee to which this Bill referred had recommended that the said requirement be omitted. Be that as it may, this Bill also lapsed.

3.6.6 In the year 1985, another Lok Pal Bill was introduced in Lok Sabha on the pattern of the 1 Bill. However the office of the Prime Minister was excluded from its purview. The Lok Pal was to b single member body and its jurisdiction was confined to cases of corruption leaving out n administration and grievances. Be that as it may, this Bill also lapsed for the same reason as in the c of other such Bills.

3.6.7 In the year 1989, another Lok Pal Bill was introduced. Under this, the Lok Pal was to be a thr member body and the office of the Prime Minister was also brought within its purview. There were so changes in the matter of eligibility for appointment and removal which it may not be necessary to ment here.

3.6.8 In the year 1996, yet another Lok Pal Bill was introduced in the Lok Sabha on 13th Septemt 1996. It was referred to the Department related Parliamentary Standing Committee on Home Affairs examination. The Standing Committee submitted its report to the Parliament on 9th May, 1997. before the government could finalise its thinking on the various recommendations of the Committee, Lok Sabha was dissolved on 4th December, 1997. Consequently, the Bill lapsed.

3.6.9 Another attempt at enacting the Lok Pal Act was made by the introduction of a Lok Pal Bil the Lok Sabha on 3rd August, 1998, being Bill No. 90 of 1998. This Bill sought to provide for setting the office of Lok Pal with a chairperson and two members with a fixed term. To ensure the members their independence, it is provided that they shall not be removed from their office except by an or made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by committee consisting of the Chief Justice of India and two other judges of the Supreme Court, next to Chief Justice in seniority, in which inquiry the member has been informed of the charges against him a given a reasonable opportunity of being heard in respect of those charges. The chairman and memb are to be appointed by the President on the recommendation of the committee consisting of the V President of India (chairman), Prime Minister, Speaker of Lok Sabha; Minister of Home Affairs, Leader the House to which the Prime Minister does not belong, Leader of the Opposition in the Lok Sabha a Leader of the Opposition in the Rajya Sabha. . The jurisdiction of the Lok Pal under this Bill is to inqu into allegations constituting an offence punishable under the Prevention of Corruption Act, 1988. T Prime Minister, Union Ministers and Members of Parliament are within its purview. Clause 12 of the provided that any person other than a public servant may make a complaint under that legislation to t Lok Pal (the expression 'complaint' is defined by sub-clause (c) to clause 2 to mean "a complaint allegi

that a public functionary has committed any offence punishable under the Prevention of Corruption Act, 1988". The expression 'public functionary' means the Prime Minister, Union Ministers and Members of Parliament, both past and present). If it becomes necessary in the course of its inquiry, the Lok Pal is also empowered to inquire into any act or conduct of any person other than a public functionary insofar as it is necessary for an effective disposal of the matter within his jurisdiction. Clause 13 provides for preliminary scrutiny of complaints by Lok Pal whereas clause 14 provides for the procedure to be followed by Lok Pal in conducting any inquiry. Clause 15 clothes the Lok Pal with the power to summon any person or document from any person or authority. The Lok Pal is also vested with the powers of search and seizure by clause 16. Chapter IV of the Bill which contains only one clause, namely, clause 18, creates an obligation on every Member of Parliament to furnish a return of all assets owned by him and members of his family and all liabilities incurred by him and the members of his family, before the Lok Pal, within a period of 90 days from the date he enters upon his office and continue to do so every year within 90 days of the commencement of each financial year. The declaration has to be filed in the prescribed form. The expression 'family' is defined to include the spouse and dependent children of such member. This is certainly a defect. It would be more appropriate if the net is spread wider to include even major children and close relatives like father-in-law, mother-in-law, brothers, brothers-in-law and close associates.

3.6.10 While examining the provisions of the Bill, we have come to believe that while bringing the Prime Minister within the purview of the Lok Pal may be a desirable step, it is necessary at the same time to regulate and circumscribe that power. In our Constitutional system, i.e., under the parliamentary form of government, the Prime Minister occupies a unique position. He is the kingpin of the entire governmental structure. It is his image, his reputation and his personality that pervades the entire government. The image of the government is very often identified with the image of the Prime Minister. Because of the extraordinary power a Prime Minister wields in a parliamentary system like ours, it is sometimes referred to by jurists as 'prime ministerial form of government'. A Prime Minister is normally the leader of the majority party in the Lok Sabha or the leader of the coalition, if a coalition forms the government. Because of his very position and the power he wields, he attracts a good amount of opposition, criticism, allegations and what not. If a Lok Pal were to take up each and every allegation or accusation made against the Prime Minister by a political party or a group or a person, it would hobble the Prime Minister in an effective discharge of his functions. He can not afford to remain under a cloud all the time nor can the nation afford a Prime Minister under a cloud all the time. Probably for this reason, in some of the earlier Bills, the Prime Minister was kept out of the purview of the Lok Pal. But, as we have said earlier, while it may be a desirable step to bring the Prime Minister within the purview of Lok Pal, it should at the same time be provided that before the Lok Pal undertakes any investigation, inquiry or any other proceeding against the Prime Minister, he should first obtain the permission in writing of the President therefor. It means that the Lok Pal shall place all the relevant material before the President and must satisfy the President with the facts and circumstances which call for an investigation and inquiry into those allegations and charges. The requirement of obtaining President's permission would be in the nature of a check upon a routine or mechanical initiation of inquiry by Lok Pal against the Prime Minister. One has to keep in mind in this behalf the distinction between legitimacy and legality. Legitimacy is a political concept. The Prime Minister normally represents the will of the majority of the people, being the leader of the majority of elected representatives. The legitimacy to rule belongs to him and his Council of Ministers. As against this, Lok Pal, a mere appointee, cannot be so empowered as to erode the image, reputation and personality of the Prime Minister by seeking to investigate or inquire into each and every allegation. The requirements of President's prior permission or sanction as it may be called would ensure that an investigation or inquiry into an allegation against the Prime Minister is taken up only where it is backed by substantial and acceptable evidence. The nation cannot afford to have a Prime Minister under a cloud, unless there are real and substantial grounds to believe that he may have been guilty of some serious misconduct. There is also a belief that the Prime Minister of a country should not be subjected to Lok Pal as this would severely impair his independence and freedom of judgement. The Prime Minister should have a free hand and absolute independence which is most necessary. Even if a particular Prime Minister is inclined that he should be subjected to Lok Pal, his readiness should not weigh with the Commission. There is a need to reconcile national interest and public interest and keeping in view how prime ministerial discretion is exercised, it would be a retrograde step. Anyhow, a new Bill titled The Lok Pal Bill, 2001 covering the Prime Minister also was introduced in Lok Sabha on 14th August, 2001.

3.6.11 In this connection, it would not be out of place to refer to the institution of the Independent Counsel created by Title VI of the Ethics in Government Act in USA. The Independent Counsel Act

provides for appointment of an "independent counsel" to investigate and if appropriate prosecute certain high ranking government officials for violations of federal criminal laws. The Act requires the Attorney General, if he is satisfied on receipt of information that it is "sufficient to constitute grounds to investigate whether any person (covered by the Act) may have violated any federal criminal law", to conduct a preliminary investigation of the matter. When the Attorney General has completed this investigation, or 90 days has elapsed, he is required to report to a special court (the Special Division) created by the Act "for the purpose of appointing independent counsels". If the Attorney General determines that "there are no reasonable grounds to believe that further investigation is warranted", he must notify the Special Division of this result. In such a case, "the Division of the court shall have no power to appoint an independent counsel". If the Attorney General determines that there are "reasonable grounds to believe that further investigation or prosecution is warranted," then, he "shall apply to the Division of the court for the appointment of an independent counsel". The Attorney General's application to the court shall contain sufficient information to assist the court in selecting an independent counsel and in defining that independent counsel's prosecutorial jurisdiction. Upon receiving such information, the Special Division "shall appoint an appropriate independent counsel and shall define that independent counsel's prosecutorial jurisdiction". The independent counsel's jurisdiction is very wide. He is vested with the full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General and any other officer or employee of the Department of Justice. He can conduct grand jury proceedings and other investigations, he can participate in civil and criminal court proceedings and litigation and is also empowered to file appeals against any decision in any case in which he has participated in an official capacity. His powers include initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing information and handling all aspects of any case in the name of the United States. He is entitled to call for assistance from any department or authority. Moreover, when a matter is referred to an independent counsel under the Act, the Attorney General in the Justice Department is required to suspend all investigations and proceedings with respect to the said matter.

3.6.12 The validity of the Independent Counsel Act was challenged in the federal courts. The matter ultimately reached the United States Supreme Court. While a majority of seven judges led by Rehnquist C.J. upheld the validity of the Act holding that it does not curtail or infringe the powers of the President vested in him by clause 2 of section 2 of Article II of the U.S. Constitution, Scalia J. dissented (another Judge Kennedy J. took no part in the decision of the case) – Morrison v. Olson, 487 U.S. 654 (1988). Though the dissenting opinion of Scalia J. was criticized at that time as highly conservative, the events since then have proved him right. The manner in which an independent counsel appointed to investigate the Whitewater affair allegedly implicating President Bill Clinton and his wife was hijacked to take in unrelated issues is an instructive instance. Not able to find any substance against the President in the Whitewater issue, the Independent Counsel picked upon a case of suicide by a member of the White House staff and finding nothing therein shifted to Paula Jones' affair. While investigating the Paula Jones' affair, the independent counsel, Kenneth Starr, stumbled upon the Monica Lewinsky affair and everyone knows how the whole thing was blown up beyond all sensible and reasonable proportions leading to the impeachment proceedings and trial of President Clinton in Senate. The following observations of Scalia J. in the aforementioned case are pertinent:

> "What every prosecutor is practically required to do is to select the cases for prosecution and to select those in which the offense is the most flagrant, the public harm the greatest, and the proof the most certain. If the prosecutor is obliged to choose his case, it follows that he can choose his defendants. Therein is the most dangerous power of the prosecutor; that he will pick people that he thinks he should get, rather than cases that need to be prosecuted. With the law books filled with a great assortment of crimes, a prosecutor stands a fair chance of finding at least a technical violation of some act on the part of almost everyone. In such a case, it is not a question of discovering the commission of a crime and then looking for the man who has committed it, it is a question of picking the man and then searching the law books, or putting investigators to work, to pin some offense on him. It is in this realm – in which the prosecutor picks some person whom he dislikes or desires to embarrass, or selects some group of unpopular persons and then looks for an offence, that the greatest danger of abuse or prosecuting power lies. It is here that law enforcement becomes personal, and the real crime becomes that of being unpopular with the predominant or governing group, being attached to the wrong political views, or being personally obnoxious to or in the way of the prosecutor

himself..... The mini-Executive that is the independent counsel, however, operating in an area where so little is law and so much is discretion, is intentionally cut off from the unifying influence of the Justice Department, and from the perspective that multiple responsibilities provide. What would normally be regarded as a technical violation (there are no rules defining such things), may in his or her small world assume the proportions of an indictable offense. What would normally be regarded as an investigation that has reached the level of pursuing such picayune matters that it should be concluded, may to him or her be an investigation that ought to go on for another year. How frightening it must be to have your own independent counsel and staff appointed, with nothing else to do but to investigate you until investigation is no longer worthwhile – with whether it is worthwhile not depending upon what such judgments usually hinge on, competing responsibilities. And to have that counsel and staff decide, with no basis for comparison, whether what you have done is bad enough, willful enough, and provable enough, to warrant an indictment..... The notion that every violation of law should be prosecuted, including – indeed, especially – every violation by those in high places, is an attractive one, and it would be risky to argue in an election campaign that that is not an absolutely overriding value. Fiat justitia, ruat coelum. Let justice be done, though the heavens may fall. The reality is, however, that it is not an absolutely overriding value.....".

3.6.13 It is in the context of all the above circumstances, that we are inclined to suggest that there ought to be a proviso to clause 12 of the Lok Pal Bill in the following terms:

> **"Provided that before taking up any investigation or inquiry against the Prime Minister on the basis of any complaint or information received, the Lok Pal shall obtain the prior permission in writing of the President therefor."**

3.6.14 Coming back the Bill, it is difficult to predict whether the present Bill succeed in becoming an Act or would it meet the same fate as its predecessors. But so far as it goes, the Bill is welcome though in certain respects it requires to be strengthened. The Bill rightly provides that a proceeding before the Lok Pal shall to be deemed to be a judicial proceeding within the meaning of section 193 of Indian Penal Code (clause 15(2)) and further that it is not necessary for the Lok Pal to maintain secrecy or other restriction upon the disclosure of information as provided in the Official Secrets Act, 1923 or any other provision of law. But the Bill does not say that the conclusions arrived at by the Lok Pal shall be final and that if any public functionary is found guilty he should resign from his office including his membership of the Parliament/Legislature forthwith. Instead of doing that, section 17 merely speaks of the conclusions of the Lok Pal being communicated to the competent authority. (The expression "competent authority" is defined by sub-clause (b) in clause 2 of the Bill to mean (i) in the case of Prime Minister, the House of People; (ii) in the case of a member of the Council of Ministers other than Prime Minister, the Prime Minister and (iii) in the case of a Member of Parliament other than a minister, Rajya Sabha or Lok Sabha, as the case may be). Maybe, the Constitution may have to be amended to provide for an effective Lok Pal, with his own machinery of investigation.

Central Vigilance Commission

3.7.1 So far as the Central Vigilance Commission (CVC) is concerned, it has a long antecedent history. Pursuant to the recommendations of the Santanam Committee constituted by the Government of India to advise the government in respect of matters pertaining to maintenance of integrity in administration, the CVC was established in 1964. The jurisdiction of CVC extended to all public servants and employees of central public sector undertakings, nationalized banks and autonomous organizations *vide* the resolution dated February 11, 1964 of the Government of India, Ministry of Home Affairs. It continued to function as such but without much effect until the Supreme Court directed in Vineet Narain v. Union of India (1997 (7) SCALE 656) [AIR 1998 SC 889], on 18th December, 1997, to give a statutory shape to the CVC and to endow it with wider powers including supervision over Central Bureau of Investigation (CBI) and the Enforcement Directorate (ED). Indeed the Supreme Court, while giving the said directions had relied upon the report of the Independent Review Committee (IRC) comprising Shri B.G. Deshmukh, former Cabinet Secretary, Shri N.N. Vohra, Principal Secretary to the PM and Shri S.V. Giri, Central Vigilance Commissioner, which Committee was constituted under the Government Order dated 8th September, 1997. The directions of the Supreme Court are quite elaborate and they extend to the appointment,

powers and functioning of CVC, CBI and ED, all designed to insulate the said institutions from political control and to invest them with good amount of independence coupled with accountability. (Those interested in perusing the said directions may refer to the aforementioned decision of the Supreme Court.) Pursuant to the said directions, the Central Government has drafted a Bill, being Bill No. 137 of 1999, called the Central Vigilance Commission Bill, 1999 and has introduced the same in Lok Sabha on 20th December, 1999. It appears to be still pending before the Parliament. Meanwhile, the CVC is acting under the authority of the decision of the Supreme Court referred to above. It is imperative that the Parliament passes the said Bill as early as possible, keeping in mind the directions contained in the decision of the Supreme Court in Vineet Narain.

Civil Services Commission Board

3.8.1 An ancillary suggestion in this behalf that can be implemented without much ado, but which may have extremely beneficial results, is the constitution of a Civil Services Commission Board for overseeing appointment and transfer to senior posts. The idea is to take away the power of transfer from the political executive which, according to the universally held opinion, has not only been abused but has also been used in such a manner as to make the bureaucracy, including the IAS, plaint, toothless and corrupt. Maybe a Constitutional amendment is called for to provide for the composition of such a Board. The composition of the Board need not be exclusively non-political. It can be headed by the Prime Minister or the Home Minister and its jurisdiction restricted to certain high-level posts in the bureaucracy.

Suggestions of Central Vigilance Commission

3.9 Yet another ancillary idea floated by Shri N. Vittal, Central Vigilance Commissioner is to make the corruption-free governance, a fundamental right of the citizen. He has suggested that an article be inserted in Part III declaring such a right of the citizens. At any rate, Shri Vittal suggests, a provision to that effect must be included in Part IV (the Directive Principles of State Policy). He is of the opinion that such a provision would enable the Central and State Governments to legislate standards of probity and the rules governing the delivery of services to consumers of those services and in the matter of transfer of public employees. He is also of the opinion that insertion of such a right will provide an avenue for the civil society to demand transparency, fair procedures and decent behaviour on the part of the officials as also to demand public involvement in all matters affecting the public.

Ethics in Government Act of the United States of America

3.10 In this context, it would not be out of place to refer to certain provisions of the Ethics in Government Act enacted by the US Congress in 1978. Section 101 which carries the heading "persons required to file" says that "(a) within 30 days of assuming the position of an officer or employee described in sub-section (f), an individual shall file a report containing the information described in section 102(b) unless the individual has left another position described in sub-section (f) within 30 days prior to assuming such new position or has already filed a report under this title with respect to nomination for the new position or as a candidate for the position. Sub-section (f) includes the President, the Vice President, each officer or employee in the executive branch, all government servants, members of the congress, officers or employees of the Congress, judicial officers and employees of the judiciary. Section 102 provides the matters which such declaration should contain. It is a very lengthy section and it is not feasible to extract the whole of it. Suffice it to mention that the section provides for a full, true and complete disclosure of all kinds of assets including mortgages, movable assets, benefits under trusts and so on. Section 103 prescribes the time within which the report should be filed and the person before whom they should be filed. Section 104 empowers the Attorney General to bring a civil action in an appropriate US district court against any individual who knowingly and wilfully files a false declaration. Section 105 provides for custody of the declarations; it expressly provides that public shall have access to such declarations. Any US citizen is entitled to use the said reports for any lawful purpose. Section 106 provides for review and scrutiny of these reports by specified authorities. Section 108 declares that the Comptroller General shall have access to financial disclosure reports filed under the Act for the purpose of effectively discharging his statutory functions.

It is a matter for consideration whether it would be advisable for the Parliament to enact a legislation similar to the said U.S. Act.

G. Strengthening of the Criminal Judicial System

3.11 This is one of the most important requisites for ensuring probity in governance. The criminal judicial system consists of the police/investigating agency, the prosecuting agency, the advocates, witnesses and finally the judiciary. Inasmuch as this topic is dealt with in another paper, the same is not being dilated upon in this Consultation Paper.

QUESTIONNAIRE
ON
PROBITY IN GOVERNANCE

1. What, according to you, are the precise reasons for the increasing menace of corruption in India?

2. Do you find that –

   (a) the laws are inadequate Yes ☐ No ☐

   (b) the laws are adequate, but their implementation and enforcement are lagging behind Yes ☐ No ☐

3. What are your suggestions for amendments to –

   (a) Indian Penal Code

   (b) Prevention of Corruption Act, 1988

4. An essential requirement of an efficient and effective system of governance and for socio-economic development of the nation is probity in governance. Do you agree to this assertion?

   Yes ☐ No ☐

5. Do you agree that the control on public administration is fragile and the division of powers between the political, executive and bureaucracy is ambiguous?

   Yes ☐ No ☐

6. Do you agree that the present process of the State withdrawing from various sectors will reduce the chances of corruption?

   Yes ☐ No ☐

7. According to Scandinavian economist-sociologist Mr.Gunnyar Myrdal, India is a "soft society" that is where there is no discipline and which has neither the political will to enact the laws necessary for its progress and development nor has the political will to implement them. Do you agree to the above view?

   Yes ☐ No ☐

8. Though the Benami Transactions (Prohibition) Act, 1988 was enacted as far back as 1988, the Central Government has not yet framed any rules for the effective use of the provisions of the Act. Do you agree that by framing the requisite rules by the Central Government, the law will become sufficiently effective? If not, what are your specific suggestions for making the law effective in this regard?

Yes ☐ No ☐

Suggestions:

9. Unless the fruits of corruption (that is the property acquired by corrupt means by public servants and others) are taken away by a law of forfeiture of property. it is difficult to effectively remove corruption. Do you subscribe to this proposition?

Yes ☐ No ☐

10. Should the Benami Transactions (Prohibitions) Act, 1988 be amended specifically empowering the appropriate authority appointed under the said Act to forfeit the assets illegally acquired by a public servant and held by him or any one else as *Benami* and no compensation should be given to any body in such cases?

Yes ☐ No ☐

11. Similarly the law should define appropriate authority in respect of property illegally acquired by ministers and other persons in public life other than public servants. Do you agree to this suggestion?

Yes ☐ No ☐

12. Should civil remedies against corruption be provided?

Yes ☐ No ☐

13. Should the burden of proof that a property is not held *benami* be placed on the holder of the property?

Yes ☐ No ☐

14. Do you agree that the competent authorities need to observe only the minimum requirements of principles of Natural Justice in dealing with the forfeiture of *Benami* property acquired by corrupt means?

Yes ☐ No ☐

15. In the matter of a review petition relating to the case against Satish Sharma in the Supreme Court of India, the court has held that a minister of the Government is a part of the Government and therefore, the Government cannot be directed to pay damages to itself. This decision gives rise to a situation which cry out for clarity. Should it not, therefore, be necessary to coherently lay down the principles on which damages could be levied upon the public servants for their acts of misfeasance, malfeasance and nonfeasance for promotion of good governance?

Yes ☐ No ☐

16. Do you agree that with a view to putting an end to all kinds of legal controversies and technicalities, it is advisable to enact a law on the lines of Section 60 of the Andhra Pradesh Co-

operative Societies Act, 1964, which reads as under, with an additional provision for exemplary damages in case of abuse of power;-

"60. Surcharge. - (1) Where in the course of an audit under section 50 or any inquiry under section 51 or an inspection under section 52 or section 53, or the winding up of a society, it appears that any person who is or was entrusted with the organization, affairs or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or has been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or willful negligence or has made any payment contrary to the provisions of this Act, the rules or the bye-laws, the Registrar himself, or any person specially authorized by him in this behalf, of his own motion or on the application of the committee, liquidator or any creditor or contributory may, inquire into the context of such person or officer or servant and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorized as aforesaid thinks just or to contribute to such sums to the assets of the society by way of compensation in respect of the misappropriation, misapplication of the funds, fraudulent retainer, breach of trust or wilful negligence as the Registrar or the person authorized as aforesaid thinks just:

Provided that no order shall be passed against any person referred to in sub-section unless the person concerned has been given an opportunity of making his representation.

(2) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by his act.".

Yes ☐ No ☐

17. Do you agree that the principles of section 60 of the Andhra Pradesh Co-operative Societies Act, 1964 should be extended to the governing machinery at the Union and State levels where the elected members form the Government and run and manage the affairs of the state with the assistance of a permanent bureaucracy?

Yes ☐ No ☐

18. Should it not be provided that in case malafide action by public servants, they should be made liable to make good the loss suffered by the state?

Yes ☐ No ☐

19. In Satish Sharma and Sheila Kaul's cases, it is found that they are not mere cases of monitory loss to the state; they are much more grievous. They are cases of misuse of official positions, an act outside the authority. In such cases, the paper suggests, it may not be possible to prove actual corruption nor is it necessary to prove it. Hence, a law providing imposition of exemplary damages should be made. Such a law would have the merit of obviating several questions like whether the Government can be asked to pay damages to itself, whether the power to grant or allot some benefit can be called property, whether such action of the public servant "which term includes members of Parliament/legislators and ministers constitutes a tortious action, whether damages/exemplary damages can be awarded for such acts and if so, on what basis and to what extent; whether public office is a trust and questions of *locus standi* and so on. Do you agree with these suggestions? Please give your detailed views.

Yes ☐ No ☐

Suggestions:

20. The violation of foreign exchange laws and laws relating to export and import necessarily involve violation of tax laws as well. Indeed, it is a well known fact that over the last few decades, smuggling, foreign exchange violation, tax evasion, drugs trafficking and crimes have all got mixed up. In these circumstances, it is felt that only a person who acquired properties can explain how he has come to acquire those properties and that it is not possible for the competent authority to do so. Hence it is suggested that the burden of proof that the property specified in the show cause notice are not illegally acquired properties should be placed upon the person concerned.

(a) Do you agree to the above suggestion?

Yes ☐ No ☐

(b) If you do not agree, please specify your suggestions in this regard.

Suggestions

21. The Paper observes that unless there is a law providing for prompt forfeiture of illegally acquired assets, such assets would be spirited away beyond our shores to safe havens and numbered accounts. For this purpose, the Law Commission of India, vide its 166th Report, recommended to the Central Government for enactment of a legislation for forfeiture of illegally acquired properties by corrupt public servants. This would clothe the state with an effective means of checking corruption. What are your specific suggestions in this regard?

Suggestions

22. The Paper suggests that as a step to fight against corruption and mal-administration leading to probity and accountability in governance, the Government should undertake a legislation of a Public Interest Disclosure Act which is popularly called in the western countries as a **Whistle-blower's Act** encouraging persons to sound an alarm of serious malpractices, corruption or fraudulent activity in Government or public sector organization. The informants should be protected from any form of discrimination, punishment and humiliation for being disloyal to their employers or colleagues on this account. However, there must be a provision for punishing persons who lay false information actuated by or out of malice and vindictiveness. What, according to you, should be the broad framework of such a legislation in India?

Suggestions

23. The Press has been conceived as playing a special role in informing the public and in monitoring the performance of Government. It is often termed as the "Fourth Estate". The Press is, thus, an important agent in ensuring the citizen's right to receive and impart information as a measure of probity in governance. How far, according to you, the Press in India discharge their duties in this regard?

Suggestions

24. The Freedom of Information Bill, 2000 which was introduced in Lok Sabha on 25th July, 2000 has not yet been enacted. It may be seen that the Promotion of Access to Information Act, 2000 enacted by the Republic of South Africa, as annexed to the Consultation Paper is more comprehensive in nature than the Indian Bill. Would you like to suggest modifications of the Freedom of Information Bill, 2000?

Yes ☐ No ☐

If your answer is in the affirmative, please give detailed suggestions in this regard.

Suggestions

24. Do you agree to the suggestion that except for matters relating to defence, atomic energy and matters concerning the security of the country, there is no room for secrecy in the affairs of the Government?

Yes ☐ No ☐

25. Do you agree that the lack of freedom of information in Governmental activities especially relating to major multilateral agreements and policy proposals is a major cause which hinders national debate and leads to negative effects on the people?

Yes ☐ No ☐

26. The Lok Pal legislation is pending before Parliament. Should the investigations/ inquiry in respect of allegations against the Prime Minister by Lok Pal be with the previous sanction of the President so as to ensure that such investigation or inquiry would be backed up by real, substantial and acceptable evidence and not on petty political rivalry?

Yes ☐ No ☐

27. Do you agree to the suggestion to amend the Constitution of India for making the institution of Lok Pal as a Constitutional institution to make that office more effective and dignified?

Yes ☐ No ☐

28. Do you consider it appropriate to amend the Constitution of India for constituting a Civil Services Commission Board for overseeing appointments and transfer of officers to senior posts so as to avoid frequent political interference in such matters?

Yes ☐ No ☐

29. (a) Do you support the idea of making corruption free governance as a Fundamental Right of the citizens (by amending Part III of the Constitution); or

Yes ☐ No ☐

(b) In case your answer to (a) is in the negative, do you support the idea of making a provision in Part IV (Directive Principles of State Policy) of the Constitution of India directing the state to endeavour to make a corruption-free governance paving way for the society to demand transparency, fair procedure and decent behaviour on the part of the officials and to demand public involvement in all matters affecting the public.

Yes ☐ No ☐

30. The Ethics in Government Act by the U.S. Congress in 1978 provided for filing of financial disclosure statements by certain public authorities before assuming their office and that these statements are open for and use in evidence against them by the public. Do you agree with the suggestion that a similar legislation should be undertaken by Parliament requiring all persons aspiring for and holding public offices and their family members should make declaration of their assets?

Yes ☐ No ☐

31. What are your suggestions for strengthening the criminal judicial system in the country for ensuring probity in governance?

Suggestions:

32. Do you have any further suggestions to make on the issues on probity in governance discussed in the Consultation Paper? Please give details.

Suggestions:

1207 LJ&CA/2002—41A.

ANNEXURE
[See para 3.5.14]

PROMOTION OF ACCESS TO INFORMATION ACT

REPUBLIC OF SOUTH AFRICA

ACT

To give effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights; and to provide for matters connected therewith.

PREAMBLE

RECOGNISING THAT—

* the system of government in South Africa before 27 April 1994, amongst others, resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations;
* section 8 of the Constitution provides for the horizontal application of the rights in the Bill of Rights to juristic persons to the extent required by the nature of the rights and the nature of those juristic persons;
* section 32(1)*(a)* of the Constitution provides that everyone has the right of access to any information held by the State;
* section 32(1)*(b)* of the Constitution provides for the horizontal application of the right of access to information held by another person to everyone when that information is required for the exercise or protection of any rights;
* and national legislation must be enacted to give effect to this right in section 32 of the Constitution;

AND BEARING IN MIND THAT—

* the State must respect, protect, promote and fulfil, at least, all the rights in the Bill of Rights which is the cornerstone of democracy in South Africa;
* the right of access to any information held by a public or private body may be limited to the extent that the limitations are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom as contemplated in section 36 of the Constitution;
* reasonable legislative measures may, in terms of section 32(2) of the Constitution, be provided to alleviate the administrative and financial burden on the State in giving effect to its obligation to promote and fulfil the right of access to information;

AND IN ORDER TO—

* foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information;
* actively promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

CONTENTS OF ACT

Section

PART 1
INTRODUCTORY PROVISIONS

CHAPTER 1
DEFINITIONS AND INTERPRETATION

1. Definitions
2. Interpretation of Act

CHAPTER 2
GENERAL APPLICATION PROVISIONS

3. Act applies to record whenever it came into existence
4. Records held by official or independent contractor of public or private body
5. Application of other legislation prohibiting or restricting disclosure
6. Application of other legislation providing for access
7. Act not applying to records required for criminal or civil proceedings after commencement of proceedings
8. Part applicable when performing functions as public or private body

CHAPTER 3
GENERAL INTRODUCTORY PROVISIONS

9. Objects of Act
10. Guide on how to use Act

PART 2
ACCESS TO RECORDS OF PUBLIC BODIES

CHAPTER 1
RIGHT OF ACCESS, AND SPECIFIC APPLICATION PROVISIONS

11. Right of access to records of public bodies
12. Act not applying to certain public bodies or officials thereof
13. Body determined to be part of another public body

CHAPTER 2
PUBLICATION AND AVAILABILITY OF CERTAIN RECORDS

14. Manual on functions of, and index of records held by, public body
15. Voluntary disclosure and automatic availability of certain records
16. Information in telephone directory

CHAPTER 3
MANNER OF ACCESS

17. Designation of deputy information officers, and delegation
18. Form of requests
19. Duty to assist requesters
20. Transfer of requests
21. Preservation of records until final decision on request
22. Fees
23. Records that cannot be found or do not exist
24. Deferral of access
25. Decision on request and notice thereof
26. Extension of period to deal with request
27. Deemed refusal of request
28. Severability
29. Access and forms of access

30. Access to health or other records
31. Language of access
32. Reports to Human Rights Commission

CHAPTER 4
GROUNDS FOR REFUSAL OF ACCESS TO RECORDS

33. Interpretation
34. Mandatory protection of privacy of third party who is natural person
35. Mandatory protection of certain records of South African Revenue Service
36. Mandatory protection of commercial information of third party
37. Mandatory protection of certain confidential information, and protection of certain other confidential information, of third party
38. Mandatory protection of safety of individuals, and protection of property
39. Mandatory protection of police dockets in bail proceedings, and protection of law enforcement and legal proceedings
40. Mandatory protection of records privileged from production in legal proceedings
41. Defence, security and international relations of Republic
42. Economic interests and financial welfare of Republic and commercial activities of public bodies
43. Mandatory protection of research information of third party, and protection of research information of public body
44. Operations of public bodies
45. Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources
46. Mandatory disclosure in public interest

CHAPTER 5
THIRD PARTY NOTIFICATION AND INTERVENTION

47. Notice to third parties
48. Representations and consent by third parties
49. Decision on representations for refusal and notice thereof

PART 3
ACCESS TO RECORDS OF PRIVATE BODIES

CHAPTER 1
RIGHT OF ACCESS

50. Right of access to records of private bodies

CHAPTER 2
PUBLICATION AND AVAILABILITY OF CERTAIN RECORDS

51. Manual
52. Voluntary disclosure and automatic availability of certain records

CHAPTER 3
MANNER OF ACCESS

53. Form of request
54. Fees
55. Records that cannot be found or do not exist
56. Decision on request and notice thereof
57. Extension of period to deal with request
58. Deemed refusal of request
59. Severability
60. Form of access
61. Access to health or other records

CHAPTER 4
GROUNDS FOR REFUSAL OF ACCESS TO RECORDS

62. Interpretation
63. Mandatory protection of privacy of third party who is natural person

64. Mandatory protection of commercial information of third party
65. Mandatory protection of certain confidential information of third party
66. Mandatory protection of safety of individuals, and protection of property
67. Mandatory protection of records privileged from production in legal proceedings
68. Commercial information of private body
69. Mandatory protection of research information of third party, and protection of research information of private body
70. Mandatory disclosure in public interest

CHAPTER 5
THIRD PARTY NOTIFICATION AND INTERVENTION

71. Notice to third parties
72. Representations and consent by third parties
73. Decision on representations for refusal and notice thereof

PART 4
APPEALS AGAINST DECISIONS

CHAPTER 1
INTERNAL APPEALS AGAINST DECISIONS OF INFORMATION OFFICERS OF CERTAIN PUBLIC BODIES

74. Right of internal appeal to relevant authority
75. Manner of internal appeal, and appeal fees
76. Notice to and representations by other interested parties
77. Decision on internal appeal and notice thereof

CHAPTER 2
APPLICATIONS TO COURT

78. Applications regarding decisions of information officers or relevant authorities of public bodies or heads of private bodies
79. Procedure
80. Disclosure of records to, and non-disclosure by, court
81. Proceedings are civil
82. Decision on application

PART 5
HUMAN RIGHTS COMMISSION

83. Additional functions of Human Rights Commission
84. Report to National Assembly by Human Rights Commission
85. Expenditure of Human Rights Commission in terms of Act

PART 6
TRANSITIONAL ARRANGEMENTS

86. Application of other legislation providing for access
87. Extended periods for dealing with requests during first two years
88. Correction of personal information

PART 7
GENERAL PROVISIONS

89. Liability
90. Offences
91. Amendment of Public Protector Act 23 of 1994
92. Regulations
93. Short title and commencement

SCHEDULE

PART 1
INTRODUCTORY PROVISIONS

CHAPTER 1
DEFINITIONS AND INTERPRETATION

Definitions

1. In this Act, unless the context otherwise indicates—

"access fee" means a fee prescribed for the purposes of section 22(6) or 54(6), as the case may be;

"application" means an application to a court in terms of section 78;

"Constitution" means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

"court" means—

(a) the Constitutional Court acting in terms of section 167(6)*(a)* of the Constitution; or

(b) (i) a High Court or another court of similar status; or

(ii) a Magistrate's Court, either generally or in respect of a specified class of decisions in terms of this Act, designated by the Minister, by notice in the *Gazette*, and presided over by a magistrate designated in writing by the Minister, after consultation with the Magistrates Commission,

within whose area of jurisdiction—

(aa) the decision of the information officer or relevant authority of a public body or the head of a private body has been taken;

(bb) the public body or private body concerned has its principal place of administration or business; or

(cc) the requester or third party concerned is domiciled or ordinarily resident;

"evaluative material" means an evaluation or opinion prepared for the purpose of determining

(a) the suitability, eligibility or qualifications of the person to whom or which the evaluation or opinion relates

(i) for employment or for appointment to office;

(ii) for promotion in employment or office or for continuance in employment or office;

(iii) for removal from employment or office; or

(iv) for the awarding of a scholarship, award, bursary, honour or similar benefit; or

(b) whether any scholarship, award, bursary, honour or similar benefit should be continued, modified, cancelled or renewed;

"head" of, or in relation to, a private body means—

(a) in the case of a natural person, that natural person or any person duly authorised by that natural person;

(b) in the case of a partnership, any partner of the partnership or any person duly authorised by the partnership;

(c) in the case of a juristic person—

(i) the chief executive officer or equivalent officer of the juristic person or any person duly authorised by that officer; or

(ii) the person who is acting as such or any person duly authorised by such acting person;

"health practitioner" means an individual who carries on, and is registered in terms of legislation to carry on, an occupation which involves the provision of care or treatment for the physical or mental health or for the well-being of individuals;

"Human Rights Commission" means the South African Human Rights Commission referred to in section 181(1)*(b)* of the Constitution;

"individual's next of kin" means—

(a) an individual to whom the individual was married immediately before the individual's death;

(b) an individual with whom the individual lived as if they were married immediately before the individual's death;

(c) a parent, child, brother or sister of the individual; or

(d) if—

(i) there is no next of kin referred to in paragraphs *(a)*, *(b)* and *(c)*; or
(ii) the requester concerned took all reasonable steps to locate such next of kin, but was unsuccessful,

an individual who is related to the individual in the second degree of affinity or consanguinity;

"information officer" of, or in relation to, a public body—

(a) in the case of a national department, provincial administration or organisational component—
(i) mentioned in Column 1 of Schedule 1 or 3 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), means the officer who is the incumbent of the post bearing the designation mentioned in Column 2 of the said Schedule 1 or 3 opposite the name of the relevant national department, provincial administration or organisational component or the person who is acting as such; or
(ii) not so mentioned, means the Director-General, head, executive director or equivalent officer, respectively, of that national department, provincial administration or organisational component, respectively;

(b) in the case of a municipality, means the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No.117 of 1998), or the person who is acting as such; or

(c) in the case of any other public body, means the chief executive officer, or equivalent officer, of that public body or the person who is acting as such;

"internal appeal" means an internal appeal to the relevant authority in terms of section 74;

"international organisation" means an international organisation—

(a) of states; or

(b) established by the governments of states;

"Minister" means the Cabinet member responsible for the administration of justice;

"notice" means notice in writing, and "notify" and "notified" have corresponding meanings;

"objects of this Act" means the objects of this Act referred to in section 9;

"official", in relation to a public or private body, means—

(a) any person in the employ (permanently or temporarily and full-time or part-time) of the public or private body, as the case may be, including the head of the body, in his or her capacity as such; or

(b) a member of the public or private body, in his or her capacity as such;

"person" means a natural person or a juristic person;

"personal information" means information about an identifiable individual, including, but not limited to—

(a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the individual;

(b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

(c) any identifying number, symbol or other particular assigned to the individual;

(d) the address, fingerprints or blood type of the individual;

(e) the personal opinions, views or preferences of the individual, except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual;

(f) correspondence sent by the individual that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;

(g) the views or opinions of another individual about the individual;

(h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual, but excluding the name of the other individual where it appears with the views or opinions of the other individual; and

(i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual,

but excludes information about an individual who has been dead for more than 20 years;

"personal requester" means a requester seeking access to a record containing personal information about the requester;

"prescribed" means prescribed by regulation in terms of section 92;

"private body" means—

(a) a natural person who carries or has carried on any trade, business or profession, but only in such capacity;

(b) a partnership which carries or has carried on any trade, business or profession; or

(c) any former or existing juristic person,

but excludes a public body;

"public safety or environmental risk" means harm or risk to the environment or the public (including individuals in their workplace) associated with—

(a) a product or service which is available to the public;

(b) a substance released into the environment, including, but not limited to, the workplace;

(c) a substance intended for human or animal consumption;

(d) a means of public transport; or

(e) an installation or manufacturing process or substance which is used in that installation or process;

"public body" means—

(a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or

(b) any other functionary or institution when—

(i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any legislation;

"record" of, or in relation to, a public or private body, means any recorded information—

(a) regardless of form or medium;

(b) in the possession or under the control of that public or private body, respectively; and

(c) whether or not it was created by that public or private body, respectively;

"relevant authority", in relation to—

(a) a public body referred to in paragraph *(a)* of the definition of "public body" in the national sphere of government, means—

(i) in the case of the Office of the Presidency, the person designated in writing by the President; or

(ii) in any other case, the Minister responsible for that public body or the person designated in writing by that Minister;

(b) a public body referred to in paragraph *(a)* of the definition of "public body" in the provincial sphere of government, means—

(i) in the case of the Office of a Premier, the person designated in writing by the Premier; or

(ii) in any other case, the member of the Executive Council responsible for that public body or the person designated in writing by that member; or

(c) a municipality, means—

(i) the mayor;

(ii) the speaker; or

(iii) any other person,

designated in writing by the Municipal Council of that municipality;

"request for access", in relation to—

(a) a public body, means a request for access to a record of a public body in terms of section 11; or

(b) a private body, means a request for access to a record of a private body in terms of section 50;

"requester", in relation to—

(a) a public body, means—

(i) any person (other than a public body contemplated in paragraph *(a)* or *(b)*(i) of the definition of "public body", or an official thereof) making a request for access to a record of that public body; or

(ii) a person acting on behalf of the person referred to in subparagraph (i);

(b) a private body, means—

(i) any person, including, but not limited to, a public body or an official thereof, making a request for access to a record of that private body; or

(ii) a person acting on behalf of the person contemplated in subparagraph (i);

"subversive or hostile activities" means—

(a) aggression against the Republic;

(b) sabotage or terrorism aimed at the people of the Republic or a strategic asset of the Republic, whether inside or outside the Republic;

(c) an activity aimed at changing the constitutional order of the Republic by the use of force or violence; or

(d) a foreign or hostile intelligence operation;

"third party", in relation to a request for access to—

(a) a record of a public body, means any person (including, but not limited to, the government of a foreign state, an international organisation or an organ of that government or organisation) other than—

(i) the requester concerned; and

(ii) a public body; or

(b) a record of a private body, means any person (including, but not limited to, a public body) other than the requester,

but, for the purposes of sections 34 and 63, the reference to "person" in paragraphs *(a)* and *(b)* must be construed as a reference to "natural person";

"this Act" includes any regulation made and in force in terms of section 92;

"transfer", in relation to a record, means transfer in terms of section 20(1) or (2), and "transferred" has a corresponding meaning;

"working days" means any days other than Saturdays, Sundays or public holidays, as defined in section 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994).

Interpretation of Act

2. (1) When interpreting a provision of this Act, every court must prefer any reasonable interpretation of the provision that is consistent with the objects of this Act over any alternative interpretation that is inconsistent with those objects.

(2) Section 12 must not be construed as excluding—

(a) the Cabinet and its committees; or

(b) an individual member of Parliament or of a provincial legislature,

from the operation of the definition of "requester" in relation to a private body in section 1, section 49 and all other provisions of this Act related thereto.

(3) For the purposes of this Act, the South African Revenue Service, established by section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), and referred to in section 35(1), is a public body.

CHAPTER 2
GENERAL APPLICATION PROVISIONS

Act applies to record whenever it came into existence

3. This Act applies to –

(a) a record of a public body; and

(b) a record of a private body,

regardless of when the record came into existence.

Records held by official or independent contractor of public or private body

4. For the purposes of this Act, but subject to section 12, a record in the possession or under the control of—

(a) an official of a public body or private body in his or her capacity as such; or

(b) an independent contractor engaged by a public body or private body in the capacity as such contractor,

is regarded as being a record of that public body or private body, respectively.

Application of other legislation prohibiting or restricting disclosure

5. This Act applies to the exclusion of any provision of other legislation that—

(a) prohibits or restricts the disclosure of a record of a public body or private body; and

(b) is materially inconsistent with an object, or a specific provision, of this Act.

Application of other legislation providing for access

6. Nothing in this Act prevents the giving of access to—

(a) a record of a public body in terms of any legislation referred to in Part 1 of the Schedule; or

(b) a record of a private body in terms of any legislation referred to in Part 2 of the Schedule.

Act not applying to records required for criminal or civil proceedings after commencement of proceedings

7. (1) This Act does not apply to a record of a public body or a private body if—

(a) that record is requested for the purpose of criminal or civil proceedings;

(b) so requested after the commencement of such criminal or civil proceedings, as the case may be; and

(c) the production of or access to that record for the purpose referred to in paragraph *(a)* is provided for in any other law.

(2) Any record obtained in a manner that contravenes subsection (1) is not admissible as evidence in the criminal or civil proceedings referred to in that subsection unless the exclusion of such record by the court in question would, in its opinion, be detrimental to the interests of justice.

Part applicable when performing functions as public or private body

8. (1) For the purposes of this Act, a public body referred to in paragraph *(b)*(ii) of the definition of "public body" in section 1, or a private body—

(a) may be either a public body or a private body in relation to a record of that body; and

(b) may in one instance be a public body and in another instance be a private body, depending on whether that record relates to the exercise of a power or performance of a function as a public body or as a private body.

(2) A request for access to a record held for the purpose or with regard to the exercise of a power or the performance of a function—

(a) as a public body, must be made in terms of section 11; or

(b) as a private body, must be made in terms of section 50.

(3) The provisions of Parts 1, 2, 4, 5, 6 and 7 apply to a request for access to a record that relates to a power or function exercised or performed as a public body.

(4) The provisions of Parts 1, 3, 4, 5, 6 and 7 apply to a request for access to a record that relates to a power or function exercised or performed as a private body.

CHAPTER 3
GENERAL INTRODUCTORY PROVISIONS

Objects of Act

9. The objects of this Act are—

(a) to give effect to the constitutional right of access to—

(i) any information held by the State; and

(ii) any information that is held by another person and that is required for the exercise or protection of any rights;

(b) to give effect to that right—

(i) subject to justifiable limitations, including, but not limited to, limitations aimed at the reasonable protection of privacy, commercial confidentiality and effective, efficient and good governance; and

(ii) in a manner which balances that right with any other rights, including the rights in the Bill of Rights in Chapter 2 of the Constitution;

(c) to give effect to the constitutional obligations of the State of promoting a human rights culture and social justice, by including public bodies in the definition of "requester", allowing them, amongst others, to access informa-

tion from private bodies upon compliance with the four requirements in this Act, including an additional obligation for certain public bodies in certain instances to act in the public interest;

(d) to establish voluntary and mandatory mechanisms or procedures to give effect to that right in a manner which enables persons to obtain access to records of public and private bodies as swiftly, inexpensively and effortlessly as reasonably possible; and

(e) generally, to promote transparency, accountability and effective governance of all public and private bodies by, including, but not limited to, empowering and educating everyone—

(i) to understand their rights in terms of this Act in order to exercise their rights in relation to public and private bodies;

(ii) to understand the functions and operation of public bodies; and

(iii) to effectively scrutinise, and participate in, decision-making by public bodies that affects their rights.

Guide on how to use Act

10. (1) The Human Rights Commission must, within 18 months after the commencement of this section, compile in each official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right contemplated in this Act.

(2) The guide must, without limiting the generality of subsection (1), include a description of—

(a) the objects of this Act;

(b) the postal and street address, phone and fax number and, if available, electronic mail address of—

(i) the information officer of every public body; and

(ii) every deputy information officer of every public body appointed in terms of section 17(1);

(c) such particulars of every private body as are practicable;

(d) the manner and form of a request for

(i) access to a record of a public body contemplated in section 11; and

(ii) access to a record of a private body contemplated in section 50;

(e) the assistance available from the information officer of a public body in terms of this Act;

(f) the assistance available from the Human Rights Commission in terms of this Act;

(g) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act, including the manner of lodging—

(i) an internal appeal; and

(ii) an application with a court against a decision by the information officer of a public body, a decision on internal appeal or a decision of the head of a private body;

(h) the provisions of sections 14 and 51 requiring a public body and private body, respectively, to compile a manual, and how to obtain access to a manual;

(i) the provisions of sections 15 and 52 providing for the voluntary disclosure of categories of records by a public body and private body, respectively;

(j) the notices issued in terms of sections 22 and 54 regarding fees to be paid in relation to requests for access; and

(k) the regulations made in terms of section 92.

(3) The Human Rights Commission must, if necessary, update and publish the guide at intervals of not more than two years.

(4) The guide must be made available as prescribed.

PART 2
ACCESS TO RECORDS OF PUBLIC BODIES

CHAPTER 1
RIGHT OF ACCESS, AND SPECIFIC APPLICATION PROVISIONS

Right of access to records of public bodies

11. (1) A requester must be given access to a record of a public body if—

(a) that requester complies with all the procedural requirements in this Act relating to a request for access to that record; and

(b) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.

(2) A request contemplated in subsection (1) includes a request for access to a record containing personal information about the requester.

(3) A requester's right of access contemplated in subsection (1) is, subject to this Act, not affected by—

(a) any reasons the requester gives for requesting access; or

(b) the information officer's belief as to what the requester's reasons are for requesting access.

Act not applying to certain public bodies or officials thereof

12. This Act does not apply to a record of—

(a) the Cabinet and its committees;

(b) the judicial functions of—

(i) a court referred to in section 166 of the Constitution;

(ii) a Special Tribunal established in terms of section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996); or

(iii) a judicial officer of such court or Special Tribunal; or

(c) an individual member of Parliament or of a provincial legislature in that capacity.

Body determined to be part of another public body

13. For the purpose of this Act, the Minister may, on his or her own accord or on the request of the relevant public body or bodies or a body referred to in paragraph *(c)*, in the prescribed manner and by notice in the *Gazette*—

(a) determine that a public body is to be regarded as part of another public body;

(b) determine that a category of public bodies is to be regarded as one public body with such information officer as the Minister designates; and

(c) if there is doubt as to whether a body is a separate public body or forms part of a public body, determine that the body

(i) is a separate public body; or

(ii) forms part of a public body.

CHAPTER 2
PUBLICATION AND AVAILABILITY OF CERTAIN RECORDS

Manual on functions of, and index of records held by, public body

14. (1) Within six months after the commencement of this section or the coming into existence of a public body, the information officer of the public body concerned must compile in at least three official languages a manual containing—

(a) a description of its structure and functions;

(b) the postal and street address, phone and fax number and, if available, electronic mail address of the information officer of the body and of every deputy information officer of the body appointed in terms of section 17(1);

(c) a description of the guide referred to in section 10, if available, and how to obtain access to it;

(d) sufficient detail to facilitate a request for access to a record of the body, a description of the subjects on which the body holds records and the categories of records held on each subject;

(e) the latest notice, in terms of section 15(2), if any, regarding the categories of records of the body which are available without a person having to request access in terms of this Act;

(f) a description of the services available to members of the public from the body and how to gain access to those services;

(g) a description of any arrangement or provision for a person (other than a public body referred to in paragraph *(a)* or *(b)*(i) of the definition of "public body"

in section 1) by consultation, making representations or otherwise, to participate in or influence—

(i) the formulation of policy; or

(ii) the exercise of powers or performance of duties,

by the body;

(h) a description of all remedies available in respect of an act or a failure to act by the body; and

(i) such other information as may be prescribed.

(2) A public body must, if necessary, update and publish its manual referred to in subsection (1) at intervals of not more than one year.

(3) Each manual must be made available as prescribed.

(4)*(a)* If the functions of two or more public bodies are closely connected, the Minister may on request or of his or her own accord determine that the two or more bodies compile one manual only.

(b) The public bodies in question must share the cost of the compilation and making available of such manual as the Minister determines.

(5) For security, administrative or financial reasons, the Minister may, on request or of his or her own accord by notice in the *Gazette*, exempt any public body or category of public bodies from any provision of this section for such period as the Minister thinks fit.

Voluntary disclosure and automatic availability of certain records

15. (1) The information officer of a public body, referred to in paragraph *(a)* or *(b)*(i) of the definition of "public body" in section 1, must, on a periodic basis not less frequently than once each year, submit to the Minister a description of—

(a) the categories of records of the public body that are automatically available without a person having to request access in terms of this Act, including such categories available—

(i) for inspection in terms of legislation other than this Act;

(ii) for purchase or copying from the body; and

(iii) from the body free of charge; and

(b) how to obtain access to such records.

(2) On a periodic basis not less frequently than once each year and at the cost of the relevant public body, the Minister must, by notice in the *Gazette*—

(a) publish every description submitted in terms of subsection (1); or

(b) update every description so published,

as the case may be.

(3) The only fee payable (if any) for access to a record included in a notice in terms of subsection (2) is a prescribed fee for reproduction.

(4) The information officer of a public body may delete any part of a record contemplated in subsection (1)*(a)* which, on a request for access, may or must be refused in terms of Chapter 4 of this Part.

(5) Section 11 and any other provisions in this Act related to that section do not apply to any category of records included in a notice in terms of subsection (2).

Information in telephone directory

16. The Director-General of the national department responsible for government communications and information services must at that department's cost ensure the publication of the postal and street address, phone and fax number and, if available, electronic mail address of the information officer of every public body in every telephone directory issued for general use by the public as are prescribed.

CHAPTER 3
MANNER OF ACCESS

Designation of deputy information officers, and delegation

17. (1) For the purposes of this Act, each public body must, subject to legislation governing the employment of personnel of the public body concerned, designate such number of persons as deputy information officers as are necessary to render the public body as accessible as reasonably possible for requesters of its records.

(2) The information officer of a public body has direction and control over every deputy information officer of that body.

(3) The information officer of a public body may delegate a power or duty conferred or imposed on that information officer by this Act to a deputy information officer of that public body.

(4) In deciding whether to delegate a power or duty in terms of subsection (3), the information officer must give due consideration to the need to render the public body as accessible as reasonably possible for requesters of its records.

(5) Any power or duty delegated in terms of subsection (3) must be exercised or performed subject to such conditions as the person who made the delegation considers necessary.

(6) Any delegation in terms of subsection (3)—

(a) must be in writing;

(b) does not prohibit the person who made the delegation from exercising the power concerned or performing the duty concerned himself or herself; and

(c) may at any time be withdrawn or amended in writing by that person.

(7) Any right or privilege acquired, or any obligation or liability incurred, as a result of a decision in terms of a delegation in terms of subsection (3) is not affected by any subsequent withdrawal or amendment of that decision.

Form of requests

18. (1) A request for access must be made in the prescribed form to the information officer of the public body concerned at his or her address or fax number or electronic mail address.

(2) The form for a request of access prescribed for the purposes of subsection (1) must at least require the requester concerned—

(a) to provide sufficient particulars to enable an official of the public body concerned to identify—

(i) the record or records requested; and

(ii) the requester;

(b) to indicate which applicable form of access referred to in section 29(2) is required;

(c) to state whether the record concerned is preferred in a particular language;

(d) to specify a postal address or fax number of the requester in the Republic;

(e) if, in addition to a written reply, the requester wishes to be informed of the decision on the request in any other manner, to state that manner and the necessary particulars to be so informed; and

(f) if the request is made on behalf of a person, to submit proof of the capacity in which the requester is making the request, to the reasonable satisfaction of the information officer.

(3)*(a)* An individual who because of illiteracy or a disability is unable to make a request for access to a record of a public body in accordance with subsection (1), may make that request orally.

(b) The information officer of that body must reduce that oral request to writing in the prescribed form and provide a copy thereof to the requester.

Duty to assist requesters

19. (1) If a requester informs the information officer of—

(a) a public body that he or she wishes to make a request for access to a record of that public body; or

(b) a public body (other than a public body referred to in paragraph *(a)* or *(b)*(i) of the definition of "public body" in section 1) that he or she wishes to make a request for access to a record of another public body;

the information officer must render such reasonable assistance, free of charge, as is necessary to enable that requester to comply with section 18(1).

(2) If a requester has made a request for access that does not comply with section 18(1), the information officer concerned may not refuse the request because of that non-compliance unless the information officer has—

(a) notified that requester of an intention to refuse the request and stated in the notice—

(i) the reasons for the contemplated refusal; and

(ii) that the information officer or another official identified by the information officer would assist that requester in order to make the request in a form that would remove the grounds for refusal;

(b) given the requester a reasonable opportunity to seek such assistance;

(c) as far as reasonably possible, furnished the requester with any information (including information about the records, other than information on the basis of which a request for access may or must be refused in terms of any provision of Chapter 4 of this Part, held by the body which are relevant to the request) that would assist the making of the request in that form; and

(d) given the requester a reasonable opportunity to confirm the request or alter it to comply with section 18(1).

(3) When computing any period referred to in section 25(1), the period commencing on the date on which notice is given in terms of subsection (2) and ending on the date on which the person confirms or alters the request for access concerned must be disregarded.

(4) If it is apparent on receipt of a request for access that it should have been made to another public body, the information officer of the public body concerned must—

(a) render such assistance as is necessary to enable the person to make the request, to the information officer of the appropriate public body; or

(b) transfer the request in accordance with section 20 to the last-mentioned information officer,

whichever will result in the request being dealt with earlier.

Transfer of requests

20. (1) If a request for access is made to the information officer of a public body in respect of which—

(a) the record is not in the possession or under the control of that body but is in the possession of another public body;

(b) the record's subject matter is more closely connected with the functions of another public body than those of the public body of the information officer to whom the request is made; or

(c) the record contains commercial information contemplated in section 42 in which any other public body has a greater commercial interest,

the information officer to whom the request is made must as soon as reasonably possible, but in any event within 14 days after the request is received--

(i) transfer the request to the information officer of the other public body or, if there is in the case of paragraph *(c)* more than one other public body having a commercial interest, the other public body with the greatest commercial interest; and

(ii) if the public body of the information officer to whom the request is made is in possession of the record and considers it helpful to do so to enable the information officer of the other public body to deal with the request, send the record or a copy of the record to that information officer.

(2) If a request for access is made to the information officer of a public body in respect of which—

(a) the record is not in the possession or under the control of the public body of that information officer and the information officer does not know which public body has possession or control of the record;

(b) the record's subject matter is not closely connected to the functions of the public body of that information officer and the information officer does not know whether the record is more closely connected with the functions of another public body than those of the public body of the information officer to whom the request is made; and

(c) the record—

(i) was created by or for another public body; or

(ii) was not so created by or for any public body, but was received first by another public body,

the information officer to whom the request is made, must as soon as reasonably possible, but in any event within 14 days after the request is received, transfer the request to the information officer of the public body by or for which the record was created or which received it first, as the case may be.

(3) Subject to subsection (4), the information officer to whom a request for access is transferred, must give priority to that request in relation to other requests as if it were received by him or her on the date it was received by the information officer who transferred the request.

(4) If a request for access is transferred, any period referred to in section 25(1) must be computed from the date the request is received by the information officer to whom the request is transferred.

(5) Upon the transfer of a request for access, the information officer making the transfer must immediately notify the requester of—

(a) the transfer;

(b) the reasons for the transfer; and

(c) the period within which the request must be dealt with.

Preservation of records until final decision on request

21. If the information officer of a public body has received a request for access to a record of the body, that information officer must take the steps that are reasonably necessary to preserve the record, without deleting any information contained in it, until the information officer has notified the requester concerned of his or her decision in terms of section 25 and—

(a) the periods for lodging an internal appeal, an application with a court or an appeal against a decision of that court have expired; or

(b) that internal appeal, application or appeal against a decision of that court or other legal proceedings in connection with the request has been finally determined,

whichever is the later.

Fees

22. (1) The information officer of a public body to whom a request for access is made, must by notice require the requester, other than a personal requester, to pay the prescribed request fee (if any), before further processing the request.

(2) If—

(a) the search for a record of a public body in respect of which a request for access by a requester, other than a personal requester, has been made; and

(b) the preparation of the record for disclosure (including any arrangements contemplated in section 29(2)*(a)* and *(b)*(i) and (ii)*(aa)*),

would, in the opinion of the information officer of the body, require more than the hours prescribed for this purpose for requesters, the information officer must by notice require the requester, other than a personal requester, to pay as a deposit the prescribed portion (being not more than one third) of the access fee which would be payable if the request is granted.

(3) The notice referred to in subsection (1) or (2) must state—

(a) the amount of the deposit payable in terms of subsection (2), if applicable;

(b) that the requester may lodge an internal appeal or an application with a court, as the case may be, against the tender or payment of the request fee in terms of subsection (1), or the tender or payment of a deposit in terms of subsection (2), as the case may be; and

(c) the procedure (including the period) for lodging the internal appeal or application, as the case may be.

(4) If a deposit has been paid in respect of a request for access which is refused, the information officer concerned must repay the deposit to the requester.

(5) The information officer of a public body must withhold a record until the requester concerned has paid the applicable fees (if any).

(6) A requester whose request for access to a record of a public body has been granted must pay an access fee for reproduction and for search and preparation contemplated in subsection (7)*(a)* and *(b)*, respectively, for any time reasonably required in excess of the prescribed hours to search for and prepare (including making any arrangements contemplated in section 29(2)*(a)* and *(b)*(i) and (ii)*(aa)*) the record for disclosure.

(7) Access fees prescribed for the purposes of subsection (6) must provide for a reasonable access fee for—

(a) the cost of making a copy of a record, or of a transcription of the content of a

record, as contemplated in section 29(2)*(a)* and *(b)*(i), (ii)*(bb)*, (iii) and (v) and, if applicable, the postal fee; and

(b) the time reasonably required to search for the record and prepare (including making any arrangements contemplated in section 29(2)*(a)* and *(b)*(i) and (ii)*(aa)*) the record for disclosure to the requester.

(8) The Minister may, by notice in the *Gazette*—

(a) exempt any person or category of persons from paying any fee referred to in this section;

(b) determine that any fee referred to in this section is not to exceed a certain maximum amount;

(c) determine the manner in which any fee referred to in this section is to be calculated;

(d) determine that any fee referred to in this section does not apply to a category of records;

(e) exempt any person of record or category of persons or records for a stipulated period from any fee referred to in subsection (6); and

(f) determine that where the cost of collecting any fee referred to in this section exceeds the amount charged, such fee does not apply.

Records that cannot be found or do not exist

23. (1) If—

(a) all reasonable steps have been taken to find a record requested; and

(b) there are reasonable grounds for believing that the record—

(i) is in the public body's possession but cannot be found; or

(ii) does not exist,

the information officer of a public body must, by way of affidavit or affirmation, notify the requester that it is not possible to give access to that record.

(2) The affidavit or affirmation referred to in subsection (1) must give a full account of all steps taken to find the record in question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the information officer.

(3) For the purposes of this Act, the notice in terms of subsection (1) is to be regarded as a decision to refuse a request for access to the record.

(4) If, after notice is given in terms of subsection (1), the record in question is found, the requester concerned must be given access to the record unless access is refused on a ground for refusal contemplated in Chapter 4 of this Part.

Deferral of access

24. (1) If the information officer of a public body decides to grant a request for access to a record, but that record

(a) is to be published within 90 days after the receipt or transfer of the request or such further period as is reasonably necessary for printing and translating the record for the purpose of publishing it;

(b) is required by law to be published but is yet to be published; or

(c) has been prepared for submission to any legislature or a particular person but is yet to be submitted,

the information officer may defer giving access to the record for a reasonable period.

(2) If access to a record is deferred in terms of subsection (1), the information officer must notify the requester concerned—

(a) that the requester may, within 30 days after that notice is given, make representations to the information officer why the record is required before such publication or submission; and

(b) of the likely period for which access is to be deferred.

(3) If a requester makes representations in terms of subsection (2)*(a)*, the information officer must, after due consideration of those representations, grant the request for access only if there are reasonable grounds for believing that the requester will suffer substantial prejudice if access to the record is deferred for the likely period referred to in subsection (2)*(b)*.

Decision on request and notice thereof

25. (1) The information officer to whom a request for access is made or transferred, must, subject to section 26 and Chapter 5 of this Part, as soon as reasonably possible, but in any event within 30 days, after the request is received—

(a) decide in accordance with this Act whether to grant the request; and

(b) notify the requester of the decision and, if the requester stated, as contemplated in section 18(2)*(e)*, that he or she wishes to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible.

(2) If the request for access is granted, the notice in terms of subsection (1)*(b)* must state—

(a) the access fee (if any) to be paid upon access;

(b) the form in which access will be given: and

(c) that the requester may lodge an internal appeal or an application with a court, as the case may be, against the access fee to be paid or the form of access granted, and the procedure (including the period) for lodging the internal appeal or application, as the case may be.

(3) If the request for access is refused, the notice in terms of subsection (1)*(b)* must—

(a) state adequate reasons for the refusal, including the provisions of this Act relied upon;

(b) exclude, from such reasons, any reference to the content of the record; and

(c) state that the requester may lodge an internal appeal or an application with a court, as the case may be, against the refusal of the request, and the procedure (including the period) for lodging the internal appeal or application, as the case may be.

Extension of period to deal with request

26. (1) The information officer to whom a request for access has been made or transferred, may extend the period of 30 days referred to in section 25(1) (in this section referred to as the "original period") once for a further period of not more than 30 days, if

(a) the request is for a large number of records or requires a search through a large number of records and compliance with the original period would unreasonably interfere with the activities of the public body concerned;

(b) the request requires a search for records in, or collection thereof from, an office of the public body not situated in the same town or city as the office of the information officer that cannot reasonably be completed within the original period;

(c) consultation among divisions of the public body or with another public body is necessary or desirable to decide upon the request that cannot reasonably be completed within the original period;

(d) more than one of the circumstances contemplated in paragraphs *(a)*, *(b)* and *(c)* exist in respect of the request making compliance with the original period not reasonably possible; or

(e) the requester consents in writing to such extension.

(2) If a period is extended in terms of subsection (1), the information officer must, as soon as reasonably possible, but in any event within 30 days, after the request is received or transferred, notify the requester of that extension.

(3) The notice in terms of subsection (2) must state—

(a) the period of the extension;

(b) adequate reasons for the extension, including the provisions of this Act relied upon; and

(c) that the requester may lodge an internal appeal or an application with a court, as the case may be, against the extension, and the procedure (including the period) for lodging the internal appeal or application, as the case may be.

Deemed refusal of request

27. If an information officer fails to give the decision on a request for access to the requester concerned within the period contemplated in section 25(1), the information officer is, for the purposes of this Act, regarded as having refused the request.

Severability

28. (1) If a request for access is made to a record of a public body containing information which may or must be refused in terms of any provision of Chapter 4 of this Part, every part of the record which—

(a) does not contain; and

(b) can reasonably be severed from any part that contains,

any such information must, despite any other provision of this Act, be disclosed.

(2) If a request for access to—

(a) a part of a record is granted; and

(b) the other part of the record is refused,

as contemplated in subsection (1), the provisions of section 25(2) apply to paragraph *(a)* of this section and the provisions of section 25(3) to paragraph *(b)* of this section.

Access and forms of access

29. (1) If a requester has been given notice in terms of section 25(1) that his or her request for access has been granted, that requester must, subject to subsections (3) and (9) and section 31—

(a) if an access fee is payable, upon payment of that fee; or

(b) if no access fee is payable, immediately,

be given access in the applicable forms referred to in subsection (2) as the requester indicated in the request, and in the language contemplated in section 31.

(2) The forms of access to a record in respect of which a request of access has been granted, are the following:

(a) If the record is in written or printed form, by supplying a copy of the record or by making arrangements for the inspection of the record;

(b) if the record is not in written or printed form—

(i) in the case of a record from which visual images or printed transcriptions of those images are capable of being reproduced by means of equipment which is ordinarily available to the public body concerned, by making arrangements to view those images or be supplied with copies or transcriptions of them;

(ii) in the case of a record in which words or information are recorded in such manner that they are capable of being reproduced in the form of sound by equipment which is ordinarily available to the public body concerned—

(aa) by making arrangements to hear those sounds; or

(bb) if the public body is capable of producing a written or printed transcription of those sounds by the use of equipment which is ordinarily available to it, by supplying such a transcription;

(iii) in the case of a record which is held on computer, or in electronic or machine-readable form, and from which the public body concerned is capable of producing a printed copy of—

(aa) the record, or a part of it; or

(bb) information derived from the record,

by using computer equipment and expertise ordinarily available to the public body, by supplying such a copy;

(iv) in the case of a record available or capable of being made available in computer readable form, by supplying a copy in that form; or

(v) in any other case, by supplying a copy of the record.

(3) If a requester has requested access in a particular form, access must, subject to section 28, be given in that form, unless to do so would—

(a) interfere unreasonably with the effective administration of the public body concerned;

(b) be detrimental to the preservation of the record; or

(c) amount to an infringement of copyright not owned by the State or the public body concerned.

(4) If a requester has requested access in a particular form and for a reason referred to in subsection (3) access in that form is refused but access is given in another form, the fee charged may not exceed what would have been charged if that requester had been given access in the form requested.

(5) If a requester with a disability is prevented by that disability from reading, viewing or listening to the record concerned in the form in which it is held by the public body

concerned, the information officer of the body must, if that requester so requests, take reasonable steps to make the record available in a form in which it is capable of being read, viewed or heard by the requester.

(6) If a record is made available in accordance with subsection (5), the requester may not be required to pay an access fee which is more than the fee which he or she would have been required to pay but for the disability.

(7) If a record is made available in terms of this section to a requester for inspection, viewing or hearing, the requester may make copies of or transcribe the record using the requester's equipment, unless to do so would—

(a) interfere unreasonably with the effective administration of the public body concerned;

(b) be detrimental to the preservation of the record; or

(c) amount to an infringement of copyright not owned by the State or the public body concerned.

(8) If the supply to a requester of a copy of a record is required by this section, the copy must, if so requested, be supplied by posting it to him or her.

(9) If an internal appeal or an application to a court, as the case may be, is lodged against the granting of a request for access to a record, access to the record may be given only when the decision to grant the request is finally confirmed.

Access to health or other records

30. (1) If the information officer who grants, in terms of section 11, a request for access to a record provided by a health practitioner in his or her capacity as such about the physical or mental health, or well-being—

(a) of the requester; or

(b) if the request has been made on behalf of the person to whom the record relates, of that person,

(in this section, the requester and person referred to paragraphs *(a)* and *(b)*, respectively, are referred to as the "relevant person"), is of the opinion that the disclosure of the record to the relevant person might cause serious harm to his or her physical or mental health, or well-being, the information officer may, before giving access in terms of section 29, consult with a health practitioner who, subject to subsection (2), has been nominated by the relevant person.

(2) If the relevant person is

(a) under the age of 16 years, a person having parental responsibilities for the relevant person must make the nomination contemplated in subsection (1); or

(b) incapable of managing his or her affairs, a person appointed by the court to manage those affairs must make that nomination.

(3)*(a)* If, after being given access to the record concerned, the health practitioner consulted in terms of subsection (1) is of the opinion that the disclosure of the record to the relevant person would be likely to cause serious harm to his or her physical or mental health, or well-being, the information officer may only give access to the record if the requester proves to the satisfaction of the information officer that adequate provision is made for such counselling or arrangements as are reasonably practicable before, during or after the disclosure of the record to limit, alleviate or avoid such harm to the relevant person.

(b) Before access to the record is so given to the requester, the person responsible for such counselling or arrangements must be given access to the record.

Language of access

31. A requester whose request for access to a record of a public body has been granted must, if the record—

(a) exists in the language that the requester prefers, be given access in that language; or

(b) does not exist in the language so preferred or the requester has no preference or has not indicated a preference, be given access in any language the record exists in.

Reports to Human Rights Commission

32. The information officer of each public body must annually submit to the Human Rights Commission a report stating in relation to the public body—

(a) the number of requests for access received;
(b) the number of requests for access granted in full;
(c) the number of requests for access granted in terms of section 46;
(d) the number of requests for access refused in full and refused partially and the number of times each provision of this Act was relied on to refuse access in full or partial;
(e) the number of cases in which the periods stipulated in section 25(1) were extended in terms of section 26(1);
(g) the number of internal appeals lodged with the relevant authority and the number of cases in which, as a result of an internal appeal, access was given to a record;
(h) the number of internal appeals which were lodged on the ground that a request for access was regarded as having been refused in terms of section 27;
(i) the number of applications to a court which were lodged on the ground that an internal appeal was regarded as having been dismissed in terms of section 77(7); and
(j) such other matters as may be prescribed.

CHAPTER 4
GROUNDS FOR REFUSAL OF ACCESS TO RECORDS

Interpretation

33. (1) The information officer of a public body—

(a) must refuse a request for access to a record contemplated in section 34(1), 35(1), 36(1), 37(1)*(a)*, 38*(a)*, 39(1)*(a)*, 40 or 43(1); or
(b) may refuse a request for access to a record contemplated in section 37(1)*(b)*, 38*(b)*, 39(1)*(b)*, 41(1)*(a)* or *(b)*, 42(1) or (3), 43(2), 44(1) or (2) or 45,

unless the provisions of section 46 apply.

(2) A provision of this Chapter in terms of which a request for access to a record must or may or may not be refused, may not be construed as—

(a) limited in its application in any way by any other provision of this Chapter in terms of which a request for access to a record must or may or may not be refused; and
(b) not applying to a particular record by reason that another provision of this Chapter in terms of which a request for access to a record must or may or may not be refused, also applies to that record.

Mandatory protection of privacy of third party who is natural person

34. (1) Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual.

(2) A record may not be refused in terms of subsection (1) insofar as it consists of information—

(a) about an individual who has consented in terms of section 48 or otherwise in writing to its disclosure to the requester concerned;
(b) that was given to the public body by the individual to whom it relates and the individual was informed by or on behalf of the public body, before it is given, that the information belongs to a class of information that would or might be made available to the public;
(c) already publicly available;
(d) about an individual's physical or mental health, or well-being, who is under the care of the requester and who is—
  (i) under the age of 18 years; or
  (ii) incapable of understanding the nature of the request,
  and if giving access would be in the individual's best interests;
(e) about an individual who is deceased and the requester is—

(i) the individual's next of kin; or
(ii) making the request with the written consent of the individual's next of kin; or

(f) about an individual who is or was an official of a public body and which relates to the position or functions of the individual, including, but not limited to—
(i) the fact that the individual is or was an official of that public body;
(ii) the title, work address, work phone number and other similar particulars of the individual;
(iii) the classification, salary scale or remuneration and responsibilities of the position held or services performed by the individual; and
(iv) the name of the individual on a record prepared by the individual in the course of employment.

Mandatory protection of certain records of South African Revenue Service

35. (1) Subject to subsection (2), the information officer of the South African Revenue Service, referred to in section 2(3), must refuse a request for access to a record of that Service if it contains information which was obtained or is held by that Service for the purposes of enforcing legislation concerning the collection of revenue as defined in section 1 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997).

(2) A record may not be refused in terms of subsection (1) insofar as it consists of information about the requester or the person on whose behalf the request is made.

Mandatory protection of commercial information of third party

36. (1) Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of the body if the record contains—

(a) trade secrets of a third party;

(b) financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or

(c) information supplied in confidence by a third party the disclosure of which could reasonably be expected—
(i) to put that third party at a disadvantage in contractual or other negotiations; or
(ii) to prejudice that third party in commercial competition.

(2) A record may not be refused in terms of subsection (1) insofar as it consists of information—

(a) already publicly available;

(b) about a third party who has consented in terms of section 48 or otherwise in writing to its disclosure to the requester concerned; or

(c) about the results of any product or environmental testing or other investigation supplied by, carried out by or on behalf of a third party and its disclosure would reveal a serious public safety or environmental risk.

(3) For the purposes of subsection (2)*(c)*, the results of any product or environmental testing or other investigation do not include the results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other investigation.

Mandatory protection of certain confidential information, and protection of certain other confidential information, of third party

37. (1) Subject to subsection (2), the information officer of a public body—

(a) must refuse a request for access to a record of the body if the disclosure of the record would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement; or

(b) may refuse a request for access to a record of the body if the record consists of information that was supplied in confidence by a third party—
(i) the disclosure of which could reasonably be expected to prejudice the future supply of similar information, or information from the same source; and
(ii) if it is in the public interest that similar information, or information from the same source, should continue to be supplied.

(2) A record may not be refused in terms of subsection (1) insofar as it consists of information—

(a) already publicly available; or

(b) about the third party concerned that has consented in terms of section 48 or otherwise in writing to its disclosure to the requester concerned.

Mandatory protection of safety of individuals, and protection of property

38. The information officer of a public body—

(a) must refuse a request for access to a record of the body if its disclosure could reasonably be expected to endanger the life or physical safety of an individual; or

(b) may refuse a request for access to a record of the body if its disclosure would be likely to prejudice or impair—

(i) the security of—

(aa) a building, structure or system, including, but not limited to, a computer or communication system;

(bb) a means of transport; or

(cc) any other property; or

(ii) methods, systems, plans or procedures for the protection of—

(aa) an individual in accordance with a witness protection scheme;

(bb) the safety of the public, or any part of the public; or

(cc) the security of property contemplated in subparagraph (i)*(aa)*, *(bb)* or *(cc)*.

Mandatory protection of police dockets in bail proceedings, and protection of law enforcement and legal proceedings

39. (1) The information officer of a public body—

(a) must refuse a request for access to a record of the body if access to that record is prohibited in terms of section 60(14) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); or

(b) may refuse a request for access to a record of the body if—

(i) the record contains methods, techniques, procedures or guidelines for—

(aa) the prevention, detection, curtailment or investigation of a contravention or possible contravention of the law; or

(bb) the prosecution of alleged offenders,

and the disclosure of those methods, techniques, procedures or guidelines could reasonably be expected to prejudice the effectiveness of those methods, techniques, procedures or guidelines or lead to the circumvention of the law or facilitate the commission of an offence;

(ii) the prosecution of an alleged offender is being prepared or about to commence or pending and the disclosure of the record could reasonably be expected—

(aa) to impede that prosecution; or

(bb) to result in a miscarriage of justice in that prosecution; or

(iii) the disclosure of the record could reasonably be expected—

(aa) to prejudice the investigation of a contravention or possible contravention of the law which is about to commence or is in progress or, if it has been suspended or terminated, is likely to be resumed;

(bb) to reveal, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law;

(cc) to result in the intimidation or coercion of a witness, or a person who might be or has been called as a witness, in criminal proceedings or other proceedings to enforce the law;

(dd) to facilitate the commission of a contravention of the law, including, but not limited to, subject to subsection (2), escape from lawful detention; or

(ee) to prejudice or impair the fairness of a trial or the impartiality of an adjudication.

(2) A record may not be refused in terms of subsection (1)*(b)*(iii)*(dd)* insofar as it consists of information about the general conditions of detention of persons in custody.

(3)*(a)* If a request for access to a record of a public body must or may be refused in terms of subsection (1)*(a)* or *(b)*, or could, if it existed, be so refused, and the disclosure of the existence or non-existence of the record would be likely to cause the harm contemplated in subsection (1)*(a)* or *(b)*, the information officer concerned may refuse to confirm or deny the existence or non-existence of the record.

(b) If the information officer so refuses to confirm or deny the existence or non-existence of the record, the notice referred to in section 25(3) must—

(i) state that fact;

(ii) identify the provision of subsection (1)*(a)* or *(b)* in terms of which access would have been refused if the record had existed;

(iii) state adequate reasons for the refusal, as required by section 25(3), in so far as they can be given without causing the harm contemplated in any provision of subsection (1)*(a)* or *(b)*; and

(iv) state that the requester concerned may lodge an internal appeal or an application with a court, as the case may be, against the refusal as required by section 25(3).

Mandatory protection of records privileged from production in legal proceedings

40. The information officer of a public body must refuse a request for access to a record of the body if the record is privileged from production in legal proceedings unless the person entitled to the privilege has waived the privilege.

Defence, security and international relations of Republic

41. (1) The information officer of a public body may refuse a request for access to a record of the body if its disclosure

(a) could reasonably be expected to cause prejudice to—

(i) the defence of the Republic;

(ii) the security of the Republic; or

(iii) subject to subsection (3), the international relations of the Republic; or

(b) would reveal information—

(i) supplied in confidence by or on behalf of another state or an international organisation;

(ii) supplied by or on behalf of the Republic to another state or an international organisation in terms of an arrangement or international agreement, contemplated in section 231 of the Constitution, with that state or organisation which requires the information to be held in confidence; or

(iii) required to be held in confidence by an international agreement or customary international law contemplated in section 231 or 232, respectively, of the Constitution.

(2) A record contemplated in subsection (1), without limiting the generality of that subsection, includes a record containing information—

(a) relating to military tactics or strategy or military exercises or operations undertaken in preparation of hostilities or in connection with the detection, prevention, suppression or curtailment of subversive or hostile activities;

(b) relating to the quantity, characteristics, capabilities, vulnerabilities or deployment of—

(i) weapons or any other equipment used for the detection, prevention, suppression or curtailment of subversive or hostile activities; or

(ii) anything being designed, developed, produced or considered for use as weapons or such other equipment;

(c) relating to the characteristics, capabilities, vulnerabilities, performance, potential, deployment or functions of—

(i) any military force, unit or personnel; or

(ii) any body or person responsible for the detection, prevention, suppression or curtailment of subversive or hostile activities;

(d) held for the purpose of intelligence relating to—

(i) the defence of the Republic;

(ii) the detection, prevention, suppression or curtailment of subversive or hostile activities; or

(iii) another state or an international organisation used by or on behalf of the Republic in the process of deliberation and consultation in the conduct of international affairs;

(e) on methods of, and scientific or technical equipment for, collecting, assessing or handling information referred to in paragraph *(d)*;

(f) on the identity of a confidential source and any other source of information referred to in paragraph *(d)*;

(g) on the positions adopted or to be adopted by the Republic, another state or an international organisation for the purpose of present or future international negotiations; or

(h) that constitutes diplomatic correspondence exchanged with another state or an international organisation or official correspondence exchanged with diplomatic missions or consular posts of the Republic.

(3) A record may not be refused in terms of subsection (1)*(a)*(iii) if it came into existence more than 20 years before the request.

(4)*(a)* If a request for access to a record of a public body may be refused in terms of subsection (1), or could, if it existed, be so refused, and the disclosure of the existence or non-existence of the record would be likely to cause the harm contemplated in any provision of subsection (1), the information officer concerned may refuse to confirm or deny the existence or non-existence of the record.

(b) If the information officer so refuses to confirm or deny the existence or non-existence of the record, the notice referred to in section 25(3) must—

(i) state that fact;

(ii) identify the provision of subsection (1) in terms of which access would have been refused if the record had existed;

(iii) state adequate reasons for the refusal, as required by section 25(3), in so far as they can be given without causing the harm contemplated in subsection (1); and

(iv) state that the requester may lodge an internal appeal or an application with a court, as the case may be, against the refusal as required by section 25(3).

Economic interests and financial welfare of Republic and commercial activities of public bodies

42. (1) The information officer of a public body may refuse a request for access to a record of the body if its disclosure would be likely to materially jeopardise the economic interests or financial welfare of the Republic or the ability of the government to manage the economy of the Republic effectively in the best interests of the Republic.

(2) The information referred to in subsection (1) includes, without limiting the generality of that subsection, information about—

(a) a contemplated change in, or maintenance of, a policy substantially affecting the currency, coinage, legal tender, exchange rates or foreign investment;

(b) a contemplated change in or decision not to change—

(i) credit or interest rates;

(ii) customs or excise duties, taxes or any other source of revenue;

(iii) the regulation or supervision of financial institutions;

(iv) government borrowing; or

(v) the regulation of prices of goods or services, rents or wages, salaries or other incomes; or

(c) a contemplated—

(i) sale or acquisition of immovable or movable property; or

(ii) international trade agreement.

(3) Subject to subsection (5), the information officer of a public body may refuse a request for access to a record of the body if the record—

(a) contains trade secrets of the State or a public body;

(b) contains financial, commercial, scientific or technical information, other than trade secrets, the disclosure of which would be likely to cause harm to the commercial or financial interests of the State or a public body;

(c) contains information, the disclosure of which could reasonably be expected—

(i) to put a public body at a disadvantage in contractual or other negotiations; or

(ii) to prejudice a public body in commercial competition; or

(d) is a computer program, as defined in section 1(1) of the Copyright Act, 1978 (Act No. 98 of 1978), owned by the State or a public body, except insofar as it is required to give access to a record to which access is granted in terms of this Act.

(4) The information referred to in subsection (2)*(c)*(i) includes, without limiting the generality of that subsection, information about an agreement, or contemplated agreement, to transfer any interest in or right to shares in the capital of a public body to any person which is not a public body referred to in paragraph *(a)* or *(b)*(i) of the definition of "public body".

(5) A record may not be refused in terms of subsection (3) insofar as it consists of information—

(a) already publicly available;

(b) about or owned by a public body, other than the public body to which the request is made, which has consented in writing to its disclosure to the requester concerned; or

(c) about the results of any product or environmental testing or other investigation supplied by, carried out by or on behalf of a public body, and its disclosure would reveal a serious public safety or environmental risk.

(6) For the purposes of subsection (5)*(c)*, the results of any product or environmental testing or other investigation do not include the results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other investigation.

(7) If a request for access to a record contemplated in subsection (5)*(c)* is granted and the testing or other investigation was carried out by or on behalf of the public body from which the record is requested, the information officer must at the same time as access to the record is given, provide the requester with a written explanation of the methods used in conducting the testing or other investigation.

Mandatory protection of research information of third party, and protection of research information of public body

43. (1) The information officer of a public body must refuse a request for access to a record of the body if the record contains information about research being or to be carried out by or on behalf of a third party, the disclosure of which would be likely to expose -

(a) the third party;

(b) a person that is or will be carrying out the research on behalf of the third party; or

(c) the subject matter of the research,

to serious disadvantage.

(2) The information officer of a public body may refuse a request for access to a record of the body if the record contains information about research being or to be carried out by or on behalf of a public body, the disclosure of which would be likely to expose—

(a) the public body;

(b) a person that is or will be carrying out the research on behalf of the public body; or

(c) the subject matter of the research,

to serious disadvantage.

Operations of public bodies

44. (1) Subject to subsections (3) and (4), the information officer of a public body may refuse a request for access to a record of the body—

(a) if the record contains—

(i) an opinion, advice, report or recommendation obtained or prepared; or

(ii) an account of a consultation, discussion or deliberation that has occurred, including, but not limited to, minutes of a meeting,

for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law; or

(b) if—

(i) the disclosure of the record could reasonably be expected to frustrate the deliberative process in a public body or between public bodies by inhibiting the candid—

(aa) communication of an opinion, advice, report or recommendation; or

(bb) conduct of a consultation, discussion or deliberation; or

(ii) the disclosure of the record could, by premature disclosure of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy.

(2) Subject to subsection (4), the information officer of a public body may refuse a request for access to a record of the body if—

(a) the disclosure of the record could reasonably be expected to jeopardise the effectiveness of a testing, examining or auditing procedure or method used by a public body;

(b) the record contains evaluative material, whether or not the person who supplied it is identified in the record, and the disclosure of the material would breach an express or implied promise which was—

(i) made to the person who supplied the material; and

(ii) to the effect that the material or the identity of the person who supplied it, or both, would be held in confidence; or

(c) the record contains a preliminary, working or other draft of an official of a public body.

(3) A record may not be refused in terms of subsection (1) if the record came into existence more than 20 years before the request concerned.

(4) A record may not be refused in terms of subsection (1) or (2) insofar as it consists of an account of, or a statement of reasons required to be given in accordance with section 5 of the Promotion of Administrative Justice Act, 2000.

Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources

45. The information officer of a public body may refuse a request for access to a record of the body if—

(a) the request is manifestly frivolous or vexatious; or

(b) the work involved in processing the request would substantially and unreasonably divert the resources of the public body.

Mandatory disclosure in public interest

46. Despite any other provision of this Chapter, the information officer of a public body must grant a request for access to a record of the body contemplated in section 34(1), 36(1), 37(1)*(a)* or *(b)*, 38*(a)* or *(b)*, 39(1)*(a)* or *(b)*, 40, 41(1)*(a)* or *(b)*, 42(1) or (3), 43(1) or (2), 44(1) or (2) or 45, if

(a) the disclosure of the record would reveal evidence of—

(i) a substantial contravention of, or failure to comply with, the law; or

(ii) an imminent and serious public safety or environmental risk; and

(b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.

CHAPTER 5
THIRD PARTY NOTIFICATION AND INTERVENTION

Notice to third parties

47. (1) The information officer of a public body considering a request for access to a record that might be a record contemplated in section 34(1), 35(1), 36(1), 37(1) or 43(1) must take all reasonable steps to inform a third party to whom or which the record relates of the request.

(2) The information officer must inform a third party in terms of subsection (1)—

(a) as soon as reasonably possible, but in any event, within 21 days after that request is received or transferred; and

(b) by the fastest means reasonably possible.

(3) When informing a third party in terms of subsection (1), the information officer must—

(a) state that he or she is considering a request for access to a record that might be a record contemplated in section 34(1), 35(1), 36(1), 37(1) or 43(1), as the case may be, and describe the content of the record;

(b) furnish the name of the requester;

(c) describe the provisions of section 34(1), 35(1), 36(1), 37(1) or 43(1), as the case may be;

(d) in any case where the information officer believes that the provisions of section 46 might apply, describe those provisions, specify which of the circumstances referred to in section 46*(a)* in the opinion of the information officer might apply and state the reasons why he or she is of the opinion that section 46 might apply; and

(e) state that the third party may, within 21 days after the third party is informed—

(i) make written or oral representations to the information officer why the request for access should be refused; or

(ii) give written consent for the disclosure of the record to the requester.

(4) If a third party is not informed orally of a request for access in terms of subsection (1), the information officer must give a written notice stating the matters referred to in subsection (3) to the third party.

Representations and consent by third parties

48. (1) A third party that is informed in terms of section 47(1) of a request for access, may, within 21 days after the third party has been informed—

(a) make written or oral representations to the information officer concerned why the request should be refused; or

(b) give written consent for the disclosure of the record to the requester concerned.

(2) A third party that obtains knowledge about a request for access other than in terms of section 47(1) may—

(a) make written or oral representations to the information officer concerned why the request should be refused; or

(b) give written consent for the disclosure of the record to the requester concerned.

Decision on representations for refusal and notice thereof

49. (1) The information officer of a public body must, as soon as reasonably possible, but in any event within 30 days after every third party is informed as required by section 47—

(a) decide, after giving due regard to any representations made by a third party in terms of section 48, whether to grant the request for access; and

(b) notify the third party so informed and a third party not informed in terms of section 47(1), but that made representations in terms of section 48 or is located before the decision is taken, of the decision.

(2) If, after all reasonable steps have been taken as required by section 47(1), a third party is not informed of the request in question and the third party did not make any representations in terms of section 48, any decision whether to grant the request for access must be made with due regard to the fact that the third party did not have the opportunity to make representations in terms of section 48 why the request should be refused.

(3) If the request for access is granted, the notice in terms of subsection (1)*(b)* must state—

(a) adequate reasons for granting the request, including the provisions of this Act relied upon;

(b) that the third party may lodge an internal appeal or an application, as the case may be, against the decision within 30 days after notice is given, and the procedure for lodging the internal appeal or application, as the case may be; and

(c) that the requester will be given access to the record after the expiry of the applicable period contemplated in paragraph *(b)*, unless such internal appeal or application with a court is lodged within that period.

(4) If the information officer of a public body decides in terms of subsection (1) to grant the request for access concerned, he or she must give the requester access to the record concerned after the expiry of 30 days after notice is given in terms of subsection (1)*(b)*, unless an internal appeal or an application with a court, as the case may be, is lodged against the decision within that period.

PART 3
ACCESS TO RECORDS OF PRIVATE BODIES

CHAPTER 1
RIGHT OF ACCESS

Right of access to records of private bodies

50. (1) A requester must be given access to any record of a private body if—

(a) that record is required for the exercise or protection of any rights;

(b) that person complies with the procedural requirements in this Act relating to a request for access to that record; and

(c) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.

(2) In addition to the requirements referred to in subsection (1), when a public body, referred to in paragraph *(a)* or *(b)*(i) of the definition of "public body" in section 1, requests access to a record of a private body for the exercise or protection of any rights, other than its rights, it must be acting in the public interest.

(3) A request contemplated in subsection (1) includes a request for access to a record containing personal information about the requester or the person on whose behalf the request is made.

CHAPTER 2
PUBLICATION AND AVAILABILITY OF CERTAIN RECORDS

Manual

51. (1) Within six months after the commencement of this section or the coming into existence of the private body concerned, the head of a private body must compile a manual containing—

(a) the postal and street address, phone and fax number and, if available, electronic mail address of the head of the body;

(b) a description of the guide referred to in section 10, if available, and how to obtain access to it;

(c) the latest notice in terms of section 52(2), if any, regarding the categories of record of the body which are available without a person having to request access in terms of this Act;

(d) a description of the records of the body which are available in accordance with any other legislation;

(e) sufficient detail to facilitate a request for access to a record of the body, a description of the subjects on which the body holds records and the categories of records held on each subject; and

(f) such other information as may be prescribed.

(2) The head of a private body must on a regular basis update the manual referred to in subsection (1).

(3) Each manual must be made available as prescribed.

(4) For security, administrative or financial reasons, the Minister may, on request or of his or her own accord, by notice in the *Gazette*, exempt any private body or category of private bodies from any provision of this section for such period as the Minister thinks fit.

Voluntary disclosure and automatic availability of certain records

52. (1) The head of a private body may, on a voluntary and periodic basis, submit to the Minister a description of—

(a) the categories of records of the private body that are automatically available without a person having to request access in terms of this Act, including such categories available—

(i) for inspection in terms of legislation other than this Act;

(ii) for purchase or copying from the private body;

(iii) from the private body free of charge; and

(b) how to obtain access to such records.

(2) If appropriate the Minister must, on a periodic basis and by notice in the *Gazette*—

(a) publish any description so submitted; and

(b) update any description so published.

(3) The only fee payable (if any) for access to a record described in a list so published is a prescribed fee for reproduction.

(4) The head of a private body may delete any part of a record contemplated in subsection (1)*(a)* which, on a request for access, may or must be refused in terms of Chapter 4 of this Part.

(5) Section 50 and any other provisions in this Act related to that section do not apply to any category of records included in a notice in terms of subsection (2).

CHAPTER 3
MANNER OF ACCESS

Form of request

53. (1) A request for access to a record of a private body must be made in the prescribed form to the private body concerned at its address, fax number or electronic mail address.

(2) The form for a request for access prescribed for the purposes of subsection (1) must at least require the requester concerned—

(a) to provide sufficient particulars to enable the head of the private body concerned to identify—
  (i) the record or records requested; and
  (ii) the requester;
(b) to indicate which form of access is required;
(c) to specify a postal address or fax number of the requester in the Republic;
(d) to identify the right the requester is seeking to exercise or protect and provide an explanation of why the requested record is required for the exercise or protection of that right;
(e) if, in addition to a written reply, the requester wishes to be informed of the decision on the request in any other manner, to state that manner and the necessary particulars to be so informed; and
(f) if the request is made on behalf of a person, to submit proof of the capacity in which the requester is making the request, to the reasonable satisfaction of the head.

Fees

54. (1) The head of a private body to whom a request for access is made must by notice require the requester, other than a personal requester, to pay the prescribed request fee (if any), before further processing the request.

(2) If—

(a) the search for a record of a private body in respect of which a request for access by a requester, other than a personal requester, has been made; and
(b) the preparation of the record for disclosure (including any arrangements contemplated in section 29(2)*(a)* and *(b)*(i) and (ii)*(aa)*),

would, in the opinion of the head of the private body concerned, require more than the hours prescribed for this purpose for requesters, the head must by notice require the requester, other than a personal requester, to pay as a deposit the prescribed portion (being not more than one third) of the access fee which would be payable if the request is granted.

(3) The notice referred to in subsection (1) or (2) must state—

(a) the amount of the deposit payable in terms of subsection (2), if applicable;
(b) that the requester may lodge an application with a court against the tender or payment of the request fee in terms of subsection (1), or the tender or payment of a deposit in terms of subsection (2), as the case may be; and
(c) the procedure (including the period) for lodging the application.

(4) If a deposit has been paid in respect of a request for access which is refused, the head of the private body concerned must repay the deposit to the requester.

(5) The head of a private body may withhold a record until the requester concerned has paid the applicable fees (if any).

(6) A requester whose request for access to a record of a private body has been granted must pay an access fee for reproduction and for search and preparation contemplated in subsection (7)*(a)* and *(b)*, respectively, for any time reasonably required in excess of the

prescribed hours to search for and prepare (including making any arrangements contemplated in section 29(2)*(a)* and *(b)*(i) and (ii)*(aa)*) the record for disclosure.

(7) Access fees prescribed for the purposes of subsection (6) must provide for a reasonable access fee for—

(a) the cost of making a copy of a record, or of a transcription of the content of a record, as contemplated in section 29(2)*(a)* and *(b)*(i), (ii)*(bb)*, (iii) and (v) and, if applicable, the postal fee; and

(b) the time reasonably required to search for the record and prepare (including making any arrangements contemplated in section 29(2)*(a)* and *(b)*(i) and (ii)*(aa)*) the record for disclosure to the requester.

(8) The Minister may, by notice in the *Gazette*—

(a) exempt any person or category of persons from paying any fee referred to in this section;

(b) determine that any fee referred to in this section is not to exceed a certain maximum amount;

(c) determine the manner in which any fee referred to in this section is to be calculated;

(d) determine that any fee referred to in this section does not apply to a category of records;

(e) exempt any person or record or category of persons or records for a stipulated period from any fee referred to in subsection (6); and

(f) determine that where the cost of collecting any fee referred to in this section exceeds the amount charged, such fee does not apply.

Records that cannot be found or do not exist

55. (1) If—

(a) all reasonable steps have been taken to find a record requested; and

(b) there are reasonable grounds for believing that the record—

(i) is in the private body's possession but cannot be found; or

(ii) does not exist,

the head of a private body must, by way of affidavit or affirmation, notify the requester that it is not possible to give access to that record.

(2) The affidavit or affirmation referred to in subsection (1) must give a full account of all steps taken to find the record in question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the head.

(3) For the purposes of this Act, the notice in terms of subsection (1) is to be regarded as a decision to refuse a request for access to the record concerned.

(4) If, after notice is given in terms of subsection (1), the record in question is found, the requester concerned must be given access to the record unless access is refused on a ground for refusal contemplated in Chapter 4 of this Part.

Decision on request and notice thereof

56. (1) Subject to Chapter 5 of this Part, the head of the private body to whom the request is made must, as soon as reasonably possible, but in any event within 30 days, after the request has been received or after the particulars required in terms of section 53(2) have been received—

(a) decide in accordance with this Act whether to grant the request; and

(b) notify the requester of the decision and, if the requester stated, as contemplated in section 53(2)*(c)*, that he or she wishes to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible.

(2) If the request for access is granted, the notice in terms of subsection (1)*(b)* must state—

(a) the access fee (if any) to be paid upon access;

(b) the form in which access will be given; and

(c) that the requester may lodge an application with a court against the access fee to be paid or the form of access granted, and the procedure for lodging the application.

(3) If the request for access is refused, the notice in terms of subsection (1)*(b)* must—

(a) state adequate reasons for the refusal, including the provisions of this Act relied on;

(b) exclude, from any such reasons, any reference to the content of the record; and

(c) state that the requester may lodge an application with a court against the refusal of the request, and the procedure (including the period) for lodging the application.

Extension of period to deal with request

57. (1) The head of a private body to whom a request for access has been made, may extend the period of 30 days referred to in section 56(1) (in this section referred to as the "original period") once for a further period of not more than 30 days, if—

(a) the request is for a large number of records or requires a search through a large number of records and compliance with the original period would unreasonably interfere with the activities of the private body concerned;

(b) the request requires a search for records in, or collection thereof from, an office of the private body not situated in the same town or city as the office of the head that cannot reasonably be completed within the original period;

(c) consultation among divisions of the private body or with another private body is necessary or desirable to decide upon the request that cannot reasonably be completed within the original period;

(d) more than one of the circumstances contemplated in paragraphs *(a)*, *(b)* and *(c)* exist in respect of the request making compliance with the original period not reasonably possible; or

(e) the requester consents in writing to such extension.

(2) If a period is extended in terms of subsection (1), the head of the private body must, as soon as reasonably possible, but in any event within 30 days, after the request is received, notify the requester of that extension, the period of the extension and the reasons for the extension.

(3) The notice in terms of subsection (2) must state—

(a) the period of the extension;

(b) adequate reasons for the extension, including the provisions of this Act relied upon; and

(c) that the requester may lodge an application with a court against the extension, and the procedure (including the period) for lodging the application.

Deemed refusal of request

58. If the head of a private body fails to give the decision on a request for access to the requester concerned within the period contemplated in section 56(1), the head of the private body is, for the purposes of this Act, regarded as having refused the request.

Severability

59. (1) If a request for access is made to a record of a private body containing information which may or must be refused in terms of any provision of Chapter 4 of this Part, every part of the record which—

(a) does not contain; and

(b) can reasonably be severed from any part that contains,

any such information must, despite any other provision of this Act, be disclosed.

(2) If a request for access to—

(a) a part of a record is granted; and

(b) the other part of the record is refused,

as contemplated in subsection (1), the provisions of section 56(2) apply to paragraph *(a)* of this section and the provisions of section 56(3) to paragraph *(b)* of this section.

Form of access

60. If access is granted to a record of a private body, the head of that body must, as soon as reasonably possible after notification in terms of section 56, but subject to section 57, give access in—

(a) such form as the requester reasonably requires; or

(b) if no specific form of access is required by the requester, such form as the head reasonably determines.

Access to health or other records

61. (1) If the head of a private body who grants, in terms of section 50, a request for access to a record provided by a health practitioner in his or her capacity as such about the physical or mental health, or well-being—

(a) of the requester; or

(b) if the request has been made on behalf of the person to whom the record relates, of that person,

(in this section, the requester and person referred to paragraphs *(a)* and *(b)*, respectively, are referred to as the "relevant person"), is of the opinion that the disclosure of the record to the relevant person might cause serious harm to his or her physical or mental health, or well-being, the information officer may, before giving access in terms of section 60, consult with a health practitioner who, subject to subsection (2), has been nominated by the relevant person.

(2) If the relevant person is—

(a) under the age of 16 years, a person having parental responsibilities for the relevant person must make the nomination contemplated in subsection (1); or

(b) incapable of managing his or her affairs, a person appointed by the court to manage those affairs must make that nomination.

(3)*(a)* If, after being given access to the record concerned, the health practitioner consulted in terms of subsection (1) is of the opinion that the disclosure of the record to the relevant person, would be likely to cause serious harm to his or her physical or mental health, or well-being, the head may only give access to the record if the requester proves to the satisfaction of the head that adequate provision is made for such counselling or arrangements as are reasonably practicable before, during or after the disclosure of the record to limit, alleviate or avoid such harm to the relevant person.

(b) Before access to the record is so given to the requester, the person responsible for such counselling or arrangements must be given access to the record.

CHAPTER 4
GROUNDS FOR REFUSAL OF ACCESS TO RECORDS

Interpretation

62. A provision of this Chapter in terms of which a request for access to a record must or may or may not be refused, must not be construed as—

(a) limited in its application in any way by any other provision of this Chapter in terms of which a request for access to a record must or may or may not be refused; and

(b) not applying to a particular record by reason that another provision of this Chapter in terms of which a request for access to a record must or may or may not be refused, also applies to that record.

Mandatory protection of privacy of third party who is natural person

63. (1) Subject to subsection (2), the head of a private body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual.

(2) A record may not be refused in terms of subsection (1) insofar as it consists of information—

(a) about an individual who has consented in terms of section 72 or otherwise in writing to its disclosure to the requester concerned;

(b) already publicly available;

(c) that was given to the private body by the individual to whom it relates and the individual was informed by or on behalf of the private body, before it is given, that the information belongs to a class of information that would or might be made available to the public;

(d) about an individual's physical or mental health, or well-being, who is under the care of the requester and who is—

(i) under the age of 18 years; or

(ii) incapable of understanding the nature of the request,

and if giving access would be in the individual's best interests;

(e) about an individual who is deceased and the requester is—

1207 LJ&CA/2002—43E

(i) the individual's next of kin; or
(ii) making the request with the written consent of the individual's next of kin; or

(f) about an individual who is or was an official of a private body and which relates to the position or functions of the individual, including, but not limited to—

(i) the fact that the individual is or was an official of that private body;
(ii) the title, work address, work phone number and other similar particulars of the individual;
(iii) the classification, salary scale or remuneration and responsibilities of the position held or services performed by the individual; and
(iv) the name of the individual on a record prepared by the individual in the course of employment.

Mandatory protection of commercial information of third party

64. (1) Subject to subsection (2), the head of a private body must refuse a request for access to a record of the body if the record contains—

(a) trade secrets of a third party;
(b) financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or
(c) information supplied in confidence by a third party, the disclosure of which could reasonably be expected—
(i) to put that third party at a disadvantage in contractual or other negotiations; or
(ii) to prejudice that third party in commercial competition.

(2) A record may not be refused in terms of subsection (1) insofar as it consists of information about—

(a) a third party who has consented in terms of section 72 or otherwise in writing to its disclosure to the requester concerned;
(b) the results of any product or environmental testing or other investigation supplied by, carried out by or on behalf of a third party and its disclosure would reveal a serious public safety or environmental risk.

(3) For the purposes of subsection (2)*(b)*, the results of any product or environmental testing or other investigation do not include the results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other investigation.

Mandatory protection of certain confidential information of third party

65. The head of a private body must refuse a request for access to a record of the body if its disclosure would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement.

Mandatory protection of safety of individuals, and protection of property

66. The head of a private body—

(a) must refuse a request for access to a record of the body if its disclosure could reasonably be expected to endanger the life or physical safety of an individual; or
(b) may refuse a request for access to a record of the body if its disclosure would be likely to prejudice or impair—
(i) the security of—
(aa) a building, structure or system, including, but not limited to, a computer or communication system;
(bb) a means of transport; or
(cc) any other property; or
(ii) methods, systems, plans or procedures for the protection of—
(aa) an individual in accordance with a witness protection scheme;
(bb) the safety of the public, or any part of the public; or

(cc) the security of property contemplated in subparagraph (i)*(aa)*, *(bb)* or *(cc)*.

Mandatory protection of records privileged from production in legal proceedings

67. The head of a private body must refuse a request for access to a record of the body if the record is privileged from production in legal proceedings unless the person entitled to the privilege has waived the privilege.

Commercial information of private body

68. (1) Subject to subsection (2), the head of a private body may refuse a request for access to a record of the body if the record—

(a) contains trade secrets of the private body;

(b) contains financial, commercial, scientific or technical information, other than trade secrets, of the private body, the disclosure of which would be likely to cause harm to the commercial or financial interests of the body;

(c) contains information, the disclosure of which could reasonably be expected—

(i) to put the private body at a disadvantage in contractual or other negotiations; or

(ii) to prejudice the body in commercial competition; or

(d) is a computer program, as defined in section 1(1) of the Copyright Act, 1978 (Act No. 98 of 1978), owned by the private body, except insofar as it is required to give access to a record to which access is granted in terms of this Act.

(2) A record may not be refused in terms of subsection (1) insofar as it consists of information about the results of any product or environmental testing or other investigation supplied by, carried out by or on behalf of the private body and its disclosure would reveal a serious public safety or environmental risk.

(3) For the purposes of subsection (2), the results of any product or environmental testing or other investigation do not include the results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other investigation.

Mandatory protection of research information of third party, and protection of research information of private body

69. (1) The head of a private body must refuse a request for access to a record of the body if the record contains information about research being or to be carried out by or on behalf of a third party, the disclosure of which would be likely to expose—

(a) the third party;

(b) a person that is or will be carrying out the research on behalf of the third party; or

(c) the subject matter of the research,

to serious disadvantage.

(2) The head of a private body may refuse a request for access to a record of the body if the record contains information about research being or to be carried out by or on behalf of the private body, the disclosure of which would be likely to expose—

(a) the private body;

(b) a person that is or will be carrying out the research on behalf of the private body; or

(c) the subject matter of the research,

to serious disadvantage.

Mandatory disclosure in public interest

70. Despite any other provision of this Chapter, the head of a private body must grant a request for access to a record of the body contemplated in section 63(1), 64(1), 65, 66*(a)* or *(b)*, 67, 68(1) or 69(1) or (2) if—

(a) the disclosure of the record would reveal evidence of—

(i) a substantial contravention of, or failure to comply with, the law; or

(ii) imminent and serious public safety or environmental risk; and

(b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.

CHAPTER 5
THIRD PARTY NOTIFICATION AND INTERVENTION

Notice to third parties

71. (1) The head of a private body considering a request for access to a record that might be a record contemplated in section 63(1), 64(1), 65 or 69(1), must take all reasonable steps to inform a third party to whom or which the record relates of the request.

(2) The head must inform a third party in terms of subsection (1)—

(a) as soon as reasonably possible, but in any event within 21 days after that request is received; and

(b) by the fastest means reasonably possible.

(3) When informing a third party in terms of subsection (1), the head must—

(a) state that he or she is considering a request for access to a record that might be a record contemplated in section 63(1), 64(1), 65 or 69(1), as the case may be, and describe the content of the record;

(b) furnish the name of the requester;

(c) describe the provisions of section 63(1), 64(1), 65 or 69(1), as the case may be;

(d) in any case where the head believes that the provisions of section 70 might apply, describe those provisions, specify which of the circumstances referred to in section 70*(a)* in the opinion of the head might apply and state the reasons why he or she is of the opinion that section 70 might apply; and

(e) state that the third party may, within 21 days after the third party is informed—

(i) make written or oral representations to the head why the request for access should be refused; or

(ii) give written consent for the disclosure of the record to the requester.

(4) If a third party is informed orally of a request for access in terms of subsection (1), the head must give a written notice stating the matters referred to in subsection (3) to the third party.

Representations and consent by third parties

72. (1) A third party that is informed in terms of section 71(1) of a request for access, may, within 21 days after being so informed

(a) make written or oral representations to the head concerned why the request should be refused; or

(b) give written consent for the disclosure of the record to the requester concerned.

(2) A third party that obtains knowledge about a request for access other than in terms of section 71(1) may —

(a) make written or oral representations to the head concerned why the request should be refused; or

(b) give written consent for the disclosure of the record to the requester concerned.

Decision on representations for refusal and notice thereof

73. (1) The head of a private body must, as soon as reasonably possible, but in any event within 30 days after every third party is informed as required by section 71—

(a) decide, after giving due regard to any representations made by a third party in terms of section 72, whether to grant the request for access; and

(b) notify the third party so informed and a third party not informed in terms of section 71, but that made representations in terms of section 72 or is located before the decision is taken, of the decision.

(2) If, after all reasonable steps have been taken as required by section 71, a third party is not informed of a request, any decision whether to grant the request for access must be made with due regard to the fact that the third party did not have the opportunity to make representations in terms of section 72 why the request should be refused.

(3) If the request is granted, the notice in terms of subsection (1)*(b)* must state—

(a) adequate reasons for granting the request, including the provisions of this Act relied upon to justify the granting;

(b) that the third party may lodge an application with a court against the decision of the head within 30 days after notice is given, and the procedure for lodging the application; and

(c) that the requester will be given access to the record after the expiry of the applicable period contemplated in paragraph *(b)*, unless an application with a court is lodged within that period.

(4) If the head of the private body decides in terms of subsection (1) to grant the request for access concerned, he or she must give the requester access to the record concerned after the expiry of 30 days after notice is given in terms of subsection (1)*(b)*, unless an application with a court is lodged against the decision within that period.

PART 4
APPEALS AGAINST DECISIONS

CHAPTER 1
INTERNAL APPEALS AGAINST DECISIONS OF INFORMATION OFFICERS OF CERTAIN PUBLIC BODIES

Right of internal appeal to relevant authority

74. (1) A requester may lodge an internal appeal against a decision of the information officer of a public body referred to in paragraph *(a)* of the definition of "public body" in section 1—

(a) to refuse a request for access; or

(b) taken in terms of section 22, 26(1) or 29(3),

in relation to that requester with the relevant authority.

(2) A third party may lodge an internal appeal against a decision of the information officer of a public body referred to in paragraph *(a)* of the definition of "public body" in section 1 to grant a request for access.

Manner of internal appeal, and appeal fees

75. (1) An internal appeal—

(a) must be lodged in the prescribed form—

(i) within 60 days;

(ii) if notice to a third party is required by section 49(1)*(b)*, within 30 days after notice is given to the appellant of the decision appealed against or, if notice to the appellant is not required, after the decision was taken;

(b) must be delivered or sent to the information officer of the public body concerned at his or her address, fax number or electronic mail address;

(c) must identify the subject of the internal appeal and state the reasons for the internal appeal and may include any other relevant information known to the appellant;

(d) if, in addition to a written reply, the appellant wishes to be informed of the decision on the internal appeal in any other manner, must state that manner and provide the necessary particulars to be so informed;

(e) if applicable, must be accompanied by the prescribed appeal fee referred to in subsection (3); and

(f) must specify a postal address or fax number.

(2)*(a)* If an internal appeal is lodged after the expiry of the period referred to in subsection (1)*(a)*, the relevant authority must, upon good cause shown, allow the late lodging of the internal appeal.

(b) If that relevant authority disallows the late lodging of the internal appeal, he or she must give notice of that decision to the person that lodged the internal appeal.

(3)*(a)* A requester lodging an internal appeal against the refusal of his or her request for access must pay the prescribed appeal fee (if any).

(b) If the prescribed appeal fee is payable in respect of an internal appeal, the decision on the internal appeal may be deferred until the fee is paid.

(4) As soon as reasonably possible, but in any event within 10 working days after receipt of an internal appeal in accordance with subsection (1), the information officer of the public body concerned must submit to the relevant authority—

(a) the internal appeal together with his or her reasons for the decision concerned; and.

(b) if the internal appeal is against the refusal or granting of a request for access, the name, postal address, phone and fax number and electronic mail address, whichever is available, of any third party that must be notified in terms of section 47(1) of the request.

Notice to and representations by other interested persons

76. (1) If a relevant authority is considering an internal appeal against the refusal of a request for access to a record contemplated in section 34(1), 35(1), 36(1), 37(1) or 43(1), the authority must inform the third party to whom or which the record relates of the internal appeal, unless all necessary steps to locate the third party have been unsuccessful.

(2) The relevant authority must inform a third party in terms of subsection (1)—

(a) as soon as reasonably possible, but in any event within 30 days after the receipt of the internal appeal; and

(b) by the fastest means reasonably possible.

(3) When informing a third party in terms of subsection (1), the relevant authority must—

(a) state that he or she is considering an internal appeal against the refusal of a request for access to a record contemplated in section 34(1), 35(1), 36(1), 37(1) or 43(1), as the case may be, and describe the content of the record and the provisions of section 34(1), 35(1), 36(1), 37(1) or 43(1), as the case may be;

(b) furnish the name of the appellant;

(c) in any case where that authority believes that the provisions of section 46 might apply, describe those provisions, specify which of the circumstances referred to in section 46*(a)* in the opinion of the head might apply and state the reasons why he or she is of the opinion that section 46 might apply; and

(d) state that the third party may, within 21 days after the third party is informed, make written representations to that authority why the request for access should not be granted.

(4) If a third party is informed orally of an internal appeal in terms of subsection (1), the relevant authority must, on request, give a written notice stating the matters referred to in subsection (3) to the third party.

(5) A third party that is informed of an internal appeal in terms of subsection (1), may within 21 days after the third party has been informed, make written representations to the relevant authority why the request for access should not be granted.

(6) A third party that obtains knowledge about an internal appeal other than in terms of subsection (1) may—

(a) make written or oral representations to the relevant authority why the request for access should be refused; or

(b) give written consent for the disclosure of the record to the requester concerned.

(7) If the relevant authority is considering an internal appeal against the granting of a request for access, the authority must give notice of the internal appeal to the requester concerned.

(8) The relevant authority must—

(a) notify the requester concerned in terms of subsection (7) as soon as reasonably possible, but in any event within 30 days after the receipt of the internal appeal; and

(b) state in that notice that the third party may within 21 days after notice is given, make written representations to that authority why that request should be granted.

(9) A requester to whom or which notice is given in terms of subsection (7) may within 21 days after that notice is given, make written representations to the relevant authority why the request for access should be granted.

Decision on internal appeal and notice thereof

77. (1) The decision on an internal appeal must be made with due regard to—

(a) the particulars stated in the internal appeal in terms of section 75(1)*(c)*;

(b) any reasons submitted by the information officer in terms of section 75(4)*(a)*;
(c) any representations made in terms of section 76(5), (6) or (9); and
(d) if a third party cannot be located as contemplated in section 76(1), the fact that the third party did not have the opportunity to make representations in terms of section 76(5) why the internal appeal should be dismissed.

(2) When deciding on the internal appeal the relevant authority may confirm the decision appealed against or substitute a new decision for it.

(3) The relevant authority must decide on the internal appeal—
(a) as soon as reasonably possible, but in any event within 30 days after the internal appeal is received by the information officer of the body;
(b) if a third party is informed in terms of section 76(1), as soon as reasonably possible, but in any event within 30 days; or
(c) if notice is given in terms of section 76(7)—
(i) within five working days after the requester concerned has made written representations in terms of section 76(9); or
(ii) in any other case within 30 days after notice is so given.

(4) The relevant authority must, immediately after the decision on an internal appeal—
(a) give notice of the decision to—
(i) the appellant;
(ii) every third party informed as required by section 76(1); and
(iii) the requester notified as required by section 76(7); and
(b) if reasonably possible, inform the appellant about the decision in any other manner stated in terms of section 75(1)*(d)*.

(5) The notice in terms of subsection (4)*(a)* must
(a) state adequate reasons for the decision, including the provision of this Act relied upon;
(b) exclude, from such reasons, any reference to the content of the record;
(c) state that the appellant, third party or requester, as the case may be, may lodge an application with a court against the decision on internal appeal—
(i) within 60 days; or
(ii) if notice to a third party is required by subsection (4)*(a)*(ii), within 30 days,
after notice is given, and the procedure for lodging the application; and
(d) if the relevant authority decides on internal appeal to grant a request for access and notice to a third party—
(i) is not required by subsection (4)*(a)*(ii), that access to the record will forthwith be given; or
(ii) is so required, that access to the record will be given after the expiry of the applicable period for lodging an application with a court against the decision on internal appeal referred to in paragraph *(c)*, unless that application is lodged before the end of that applicable period.

(6) If the relevant authority decides on internal appeal to grant a request for access and notice to a third party—
(a) is not required by subsection (4)*(a)*(ii), the information officer of the body must forthwith give the requester concerned access to the record concerned; or
(b) is so required, the information officer must, after the expiry of 30 days after the notice is given to every third party concerned, give the requester access to the record concerned, unless an application with a court is lodged against the decision on internal appeal before the end of the period contemplated in subsection (5)*(c)*(ii) for lodging that application.

(7) If the relevant authority fails to give notice of the decision on an internal appeal to the appellant within the period contemplated in subsection (3), that authority is, for the purposes of this Act, regarded as having dismissed the internal appeal.

CHAPTER 2
APPLICATIONS TO COURT

Applications regarding decisions of information officers or relevant authorities of public bodies or heads of private bodies

78. (1) A requester or third party referred to in section 74 may only apply to a court for appropriate relief in terms of section 82 after that requester or third party has

exhausted the internal appeal procedure against a decision of the information officer of a public body provided for in section 74.

(2) A requester—

(a) that has been unsuccessful in an internal appeal to the relevant authority of a public body;

(b) aggrieved by a decision of the relevant authority of a public body to disallow the late lodging of an internal appeal in terms of section 75(2);

(c) aggrieved by a decision of the information officer of a public body referred to in paragraph *(b)* of the definition of "public body" in section 1—

(i) to refuse a request for access; or

(ii) taken in terms of section 22, 26(1) or 29(3); or

(d) aggrieved by a decision of the head of a private body—

(i) to refuse a request for access; or

(ii) taken in terms of section 54, 57(1) or 60,

may, by way of an application, within 30 days apply to a court for appropriate relief in terms of section 82.

(3) A third party—

(a) that has been unsuccessful in an internal appeal to the relevant authority of a public body;

(b) aggrieved by a decision of the information officer of a public body referred to in paragraph *(b)* of the definition of "public body" in section 1 to grant a request for access; or

(c) aggrieved by a decision of the head of a private body in relation to a request for access to a record of that body,

may, by way of an application, within 30 days apply to a court for appropriate relief in terms of section 82.

Procedure

79. (1) The Rules Board for Courts of Law, established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), must within 12 months after the commencement of this section, make and implement rules of procedure for—

(a) a court in respect of applications in terms of section 78; and

(b) a court to receive representations *ex parte* referred to in section 80(3)*(a)*.

(2) Before the implementation of the rules of procedure in terms of subsection (1)*(a)*, an application in terms of section 78 may only be lodged with a High Court or another court of similar status.

(3) Any rule made in terms of subsection (1) must, before publication in the *Gazette*, be approved by Parliament.

Disclosure of records to, and non-disclosure by, court

80. (1) Despite this Act and any other law, any court hearing an application, or an appeal against a decision on that application, may examine any record of a public or private body to which this Act applies, and no such record may be withheld from the court on any grounds.

(2) Any court contemplated in subsection (1) may not disclose to any person, including the parties to the proceedings concerned, other than the public or private body referred to in subsection (1)—

(a) any record of a public or private body which, on a request for access, may or must be refused in terms of this Act; or

(b) if the information officer of a public body, or the relevant authority of that body on internal appeal, in refusing to grant access to a record in terms of section 39(3) or 41(4), refuses to confirm or deny the existence or non-existence of the record, any information as to whether the record exists.

(3) Any court contemplated in subsection (1) may—

(a) receive representations *ex parte*;

(b) conduct hearings in camera; and

(c) prohibit the publication of such information in relation to the proceedings as the court determines, including information in relation to the parties to the proceedings and the contents of orders made by the court in the proceedings.

Proceedings are civil

81. (1) For the purposes of this Chapter proceedings on application in terms of section 78 are civil proceedings.

(2) The rules of evidence applicable in civil proeeedings apply to proceedings on application in terms of section 78.

(3) The burden of establishing that—

(a) the refusal of a request for access; or

(b) any decision taken in terms of section 22, 26(1), 29(3), 54, 57(1) or 60,

complies with the provisions of this Act rests on the party claiming that it so complies.

Decision on application

82. The court hearing an application may grant any order that is just and equitable, including orders—

(a) confirming, amending or setting aside the decision which is the subject of the application concerned;

(b) requiring from the information officer or relevant authority of a public body or the head of a private body to take such action or to refrain from taking such action as the court considers necessary within a period mentioned in the order;

(c) granting an interdict, interim or specific relief, a declaratory order or compensation; or

(d) as to costs.

PART 5
HUMAN RIGHTS COMMISSION

Additional functions of Human Rights Commission

83. (1) The Human Rights Commission must—

(a) compile and make available a guide on how to use this Act as contemplated in section 10; and

(b) submit reports to the National Assembly as contemplated in section 84.

(2) The Human Rights Commission must, to the extent that financial and other resources are available—

(a) develop and conduct educational programmes to advance the understanding of the public, in particular of disadvantaged communities, of this Act and of how to exercise the rights contemplated in this Act;

(b) encourage public and private bodies to participate in the development and conduct of programmes referred to in paragraph *(a)* and to undertake such programmes themselves; and

(c) promote timely and effective dissemination of accurate information by public bodies about their activities.

(3) The Human Rights Commission may—

(a) make recommendations for—

(i) the development, improvement, modernisation, reform or amendment of this Act or other legislation or common law having a bearing on access to information held by public and private bodies, respectively; and

(ii) procedures in terms of which public and private bodies make information electronically available;

(b) monitor the implementation of this Act;

(c) if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act;

(d) recommend to a public or private body that the body make such changes in the manner in which it administers this Act as the Commission considers advisable;

(e) train information officers of public bodies;

(f) consult with and receive reports from public and private bodies on the problems encountered in complying with this Act;

(g) obtain advice from, consult with, or receive and consider proposals or recommendations from, any public or private body, official of such a body or member of the public in connection with the Commission's functions in terms of this Act;

(h) for the purposes of section 84*(b)*(x), request the Public Protector to submit to the Commission information with respect to—
  (i) the number of complaints lodged with the Public Protector in respect of a right conferred or duty imposed by this Act;
  (ii) the nature and outcome of those complaints; and
(i) generally, inquire into any matter, including any legislation, the common law and any practice and procedure, connected with the objects of this Act.

(4) For the purpose of the annual report referred to in section 84 and if so requested by the Human Rights Commission, the head of a private body may furnish to that Commission information about requests for access to records of the body.

(5) If appropriate, and if financial and other resources are available, an official of a public body must afford the Human Rights Commission reasonable assistance for the effective performance of its functions in terms of this Act.

Report to National Assembly by Human Rights Commission

84. The Human Rights Commission must include in its annual report to the National Assembly referred to in section 181(5) of the Constitution—
(a) any recommendation in terms of section 83(3)*(a)*; and
(b) in relation to each public body, particulars of—
  (i) the number of requests for access received;
  (ii) the number of requests for access granted in full;
  (iii) the number of requests for access granted in terms of section 46;
  (iv) the number of requests for access refused in full and refused partially and the number of times each provision of this Act was relied on to refuse access in full or partially;
  (v) the number of cases in which the periods stipulated in section 25(1) were extended in terms of section 26(1);
  (vi) the number of internal appeals lodged with the relevant authority and the number of cases in which, as a result of an internal appeal, access was given to a record or a part thereof;
  (vii) the number of internal appeals which were lodged on the ground that a request for access was regarded as having been refused in terms of section 27;
  (viii) the number of applications made to every court and the outcome thereof and the number of decisions of every court appealed against and the outcome thereof;
  (ix) the number of applications to every court which were lodged on the ground that an internal appeal was regarded as having been dismissed in terms of section 77(7);
  (x) the number of complaints lodged with the Public Protector in respect of a right conferred or duty imposed by this Act and the nature and outcome thereof; and
  (xi) such other matters as may be prescribed.

Expenditure of Human Rights Commission in terms of Act

85. Any expenditure in connection with the performance of the Human Rights Commission's functions in terms of this Act must be defrayed from moneys appropriated by Parliament to that Commission for that purpose.

PART 6
TRANSITIONAL PROVISIONS

Application of other legislation providing for access

86. (1) The Minister must, within 12 months after the commencement of section 6, introduce a Bill in Parliament proposing the amendment of—
(a) Part 1 of the Schedule to include the provisions of legislation which provide for or promote access to a record of a public body; and
(b) Part 2 of the Schedule to include the provisions of legislation which provide for or promote access to a record of a private body.

(2) Until the amendment of this Act contemplated in subsection (1) takes effect, any other legislation not referred to in the Schedule which provides for access to a record of

a public body or a private body in a manner which, including, but not limited to, the payment of fees, is not materially more onerous than the manner in which access may be obtained in terms of Part 2 or 3 of this Act, respectively, access may be given in terms of that legislation.

Extended periods for dealing with requests during first two years

87. (1) For—

(a) 12 months from the date that Part 2 takes effect in respect of a public body, the reference to—

(i) 30 days in section 25(1) and any other reference to that period in other provisions of this Act;

(ii) 30 days in section 49(1) and any other reference to that period in other provisions of this Act,

must be construed as a reference to 90 days in respect of that public body; and

(b) 12 months following the 12 months referred to in paragraph *(a)*, the reference to—

(i) 30 days in section 25(1) and any other reference to that period in other provisions of this Act;

(ii) 30 days in section 49(1) and any other reference to that period in other provisions of this Act,

must be construed as a reference to 60 days in respect of the public body concerned.

(2) The periods of 90 days and 60 days referred to in subsection (1)*(a)* and *(b)*, respectively, may not be extended in terms of section 26.

(3) Parliament must, after a period of 12 months, but within a period of 18 months, after the commencement of this section, review the operation of this section.

Correction of personal information

88. If no provision for the correction of personal information in a record of a public or private body exists, that public or private body must take reasonable steps to establish adequate and appropriate internal measures providing for such correction until legislation providing for such correction takes effect.

PART 7
GENERAL PROVISIONS

Liability

89. No person is criminally or civilly liable for anything done in good faith in the exercise or performance or purported exercise or performance of any power or duty in terms of this Act.

Offences

90. A person who with intent to deny a right of access in terms of this Act—

(a) destroys, damages or alters a record;

(b) conceals a record; or

(c) falsifies a record or makes a false record,

commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years.

Amendment of Public Protector Act 23 of 1994

91. Section 6 of the Public Protector Act, 1994 (Act No. 23 of 1994), is hereby amended—

(a) by the substitution in paragraph *(c)* of subsection (4) for the expression "authority." of the expression "authority; and"; and

(b) by the addition to subsection (4) of the following paragraph:

"*(d)* on his or her own initiative, on receipt of a complaint or on request relating to the operation or administration of the Promotion of Access to Information Act, 2000, endeavour, in his or her sole discretion, to resolve any dispute by—

(i) mediation, conciliation or negotiation;
(ii) advising, where necessary, any complainant regarding appropriate remedies; or
(iii) any other means that may be expedient in the circumstances.

Regulations

92. (1) The Minister may, by notice in the *Gazette*, make regulations regarding—
(a) any matter which is required or permitted by this Act to be prescribed;
(b) any matter relating to the fees contemplated in sections 22 and 54;
(c) any notice required by this Act;
(d) uniform criteria to be applied by the information officer of a public body when deciding which categories of records are to be made available in terms of section 15; and
(e) any administrative or procedural matter necessary to give effect to the provisions of this Act.

(2) Any regulation in terms of subsection (1) must, before publication in the *Gazette*, be submitted to Parliament.

(3) Any regulation in terms of subsection (1) which—
(a) relates to fees; or
(b) may result in financial expenditure for the State,
must be made by the Minister acting in consultation with the Minister of Finance.

Short title and commencement

93. (1) This Act is the Promotion of Access to Information Act, 2000, and takes effect on a date determined by the President by proclamation in the *Gazette*.

(2) Different dates may be so determined in respect of
(a) different provisions of this Act;
(b) different categories of public bodies, including, but not limited to, different public bodies contemplated in—
(i) paragraph *(a)*;
(ii) paragraph *(b)*(i); and
(iii) paragraph *(b)*(ii),
of the definition of "public body" in section 1; and
(c) different categories of private bodies.

SCHEDULE

Part 1

(Section 6(a))

Number and year of law	Short title	Section
Act 107 of 1998	National Environmental Management Act, 1998	Section 31(1)

Part 2

(Section 6(b))

Number and year of law	Short title	Section
Act 107 of 1998	National Environmental Management Act, 1998	Section 31(2)



NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

LIABILITY OF THE STATE IN TORT

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating public debate and eliciting public response.

January 8, 2001
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Advisory Panel

on

Strengthening of the institutions of Parliamentary Democracy; (Working of the Legislature, Executive and Judiciary; their accountability; problems of Administrative, Social and Economic Cost of Political Instability; Exploring the possibilities of stability within the discipline of Parliamentary Democracy)

Member-in-charge

Justice Shri B.P. Jeevan Reddy

Chairperson

Justice Shri H.R. Khanna

Members

- Shri K. Parasaran
- Dr. Jayaprakash Narayan
- Dr. V. A. Pai Panandikar

Member-Secretary

Dr. Raghbir Singh

1207 LJ&CA/2002—44A.

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CONTENTS

		Pages
apter 1	Introduction	673
apter 2	Constitutional provisions	674
apter 3	Pre-constitutional Judicial decisions	676
apter 4	Post-constitution Judicial Rulings	678
apter 5	Sovereign and non sovereign functions	681
apter 6	Need for Legislation	687
apter 7	Cases involving Fundamental Rights	689
apter 8	Exercise of statutory functions	691
hapter 9	An analysis of the present position	693
hapter 10	Recommendation	694
apter 11	Protection clauses	698
	Questionnaire	702

CHAPTER 1

"Law is the great civilizing machinery. It liberates the desire to build and subdues the desire to destroy. And if war can tear us apart, Law can unite us – out of fear, or love or reason, or all three. Law is the greatest human invention. All the rest, give man mastery over his world. Law gives him mastery over himself". Lyndon B. Johnson, TIME September 24, 1965 page 48.

INTRODUCTION

1.1 Justice: the end and the means

Justice has been regarded as one of the greatest concerns of mankind on this planet. Edmund Burke said, that justice is itself the "great standing policy of civil society". Scholars of political science and legal theory tell us, that the administration of justice is one of the primary objects for which society was formed. Our Constitution, in its very preamble, speaks of justice as one of the great values which its makers have cherished.

It is for these reasons, that this Commission, entrusted with the task of reviewing the working of the Constitution, has taken up, on a priority basis, a study of the law relating to liability of the State in tort. Aristotle said that the law is a pledge, that the citizens of a State will do justice to one another. Our Constitution goes much beyond that. It takes a pledge, that justice shall inform all institutions of the national life.

1.2 Unsatisfactory state of the law

It follows, that the law that contains the principles that will govern the liability of the State, for torts committed by its agencies, should be just in its substance, reasonably certain in its form and fairly predictable in its working. This Commission, as a result of its studies, found that the law on the subject-matter of this Report fails to satisfy these criteria. It traces its source to an archaic provision, which is almost two centuries old. It is found to be suffering from conflicting views, owing to the loose and imprecise criteria that have come to be adopted. It deserves a close second look in the present century, in the larger interests of society.

1.3 Role of the State tort law

In any modern society, interactions between the State and the citizens are large in their number, frequent in their periodicity and important from the point of view of their effect on the lives and fortunes of citizens. Such interactions often raise legal problems, whose solution requires an application of various provisions and doctrines. A large number of the problems so arising fall within the area of the law of torts. This is because, where relief through a civil court is desired, the tort law figures much more frequently, than any other branch of law. By definition, a tort is a civil wrong, (not being a breach of contract or a breach of trust or other wrong) for which the remedy is unliquidated damages. It thus encompasses all wrongs for which a legal remedy is considered appropriate. It is the vast reservoir from which jurisprudence can still draw its nourishing streams. Given this importance of tort law, and given the vast role that the State performs in modern times, one would reasonably expect that the legal principles relating to an important area of tort law, namely, liability of the State in tort, would be easily ascertainable. However, at present, this ideal is not at all achieved, in

reality, in India. It is for this reason that we have considered it necessary to consider the subject and to suggest certain reforms.

1.4 Scheme of discussion

In India, the provisions on the subject are so shaped, that one has necessarily to go to the past, in order to understand the present. For this reason, it has been considered desirable in this Report, to deal, in the beginning, with certain historical aspects and to examine what was the position before the Constitution. This involves a study of a few important pre-Constitution decisions. How far the situation has changed (if at all) after the Constitution, would be the next logical inquiry. The ultimate object, of course, has been to evolve a solution that can pave the way towards the drafting of a satisfactory statute on the subject.

CHAPTER 2

CONSTITUTIONAL PROVISIONS

2.1 Article 300 of the Constitution Law

The law in India with respect to the liability of the State for the tortious acts of its servants has become entangled with the nature and character of the role of the East India Company prior to 1858. It is therefore necessary to trace the course of development of the law on this subject, as contained in article 300 of the Constitution.

Clause (1) of Article 300 of the Constitution provides first, that the Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State; secondly, that the Government of India or the Government of a State may sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or be sued, "if this Constitution had not been enacted", and thirdly, that the second mentioned rule shall be subject to any provisions which may be made by an Act of Parliament or of the Legislature of such State, enacted by virtue of powers conferred by the Constitution.

Even though more than 50 years have elapsed since the commencement of the Constitution, no law has so far been made by Parliament as contemplated by article 300, notwithstanding the fact that the legal position emerging from the article has given rise to a good amount of confusion. Even the judgments of the Supreme Court have not been uniform and have not helped to remove the confusion on the subject, as would be evident from what is stated hereinafter.

2.2 Act of 1833

Under the Act of 1833 (3 and 4 William IV ch. 85), enacted by the British Parliament, the governance of India was entrusted to the East India Company. The Act declared that the Company held the territories in trust for His Majesty, his heirs and successors. When the governance of India was taken over by the British Crown in 1858, an Act was passed in that year (Act 21 and 22 Vic. ch.106), entitled the Government of India Act, 1858, Section 65 of that Act declared that the Government's liability in this behalf shall

be the same as that of the Company. It would be appropriate to set out the section in full:

> "The Secretary of State in Council shall and may sue and be sued as well in India as in England by the name of the Secretary of State in Council as a body corporate; and all persons and bodies politic shall and may have and take the same suits, remedies and proceedings, legal and equitable, against the Secretary of State in Council of India, as they could have done against the said Company; and the property and effects hereby vested in Her Majesty for the purposes of to Government of India, or acquired for the said purposes, shall be subject and liable to the same judgments and executions as they would, while vested in the said Company, have been liable, to in respect of debts and liabilities lawfully contracted and incurred by the said Company."

2.3 Act of 1915

This very provision, contained in the Act of 1858, was practically continued by section 32 of the Government of India Act, 1915. Sub-sections (1) and (2) of that section read as follows:

> "(1) The Secretary of State in Council may sue and be sued by the name of the Secretary of State in Council, as a body corporate.
> (2) Every person shall have the same remedies against the Secretary of State in Council as he might have had against the East India Company, if the Government of India Act 1858, and this Act had not been passed.",

2.4 Act of 1935

Even when the Government of India Act, 1935, was enacted, (replacing the Act of 1915), the same legal position was continued by section 176(1) of the Act, which read as follows:

> "The Federation may sue or be sued by the name of the Federation of India and a Provincial Government may sue or be sued by the name of the Province, and, without prejudice to the subsequent provisions of this Chapter, may, subject to any provisions which may be made by an Act of the Federal or a Provincial Legislature enacted by virtue of powers conferred on that Legislature by this Act, sue or be sued in relation to their respective affairs in the like cases as the Secretary of State in Council might have sued or been sued if this Act had not been passed."

2.5 Resultant position

Thus, article 300 of the Constitution practically takes us back to the Act of 1858, which, in its turn, leads us to a consideration of the nature and extent of the liability of the East India Company.

CHAPTER 3

PRE-CONSTITUTION JUDICIAL DECISIONS

3.1 Scope of the Chapter

Several important judicial decisions dealing with the liability of the State in tort were pronounced in India in the period before the Constitution; and we propose to refer to a few of them, confining ourselves to the most important of those decisions.

3.2 The Calcutta view: P & O Case

A consideration of the pre-Constitution cases (as to Government's liability in tort) begins with the a judgment of the Supreme Court of Calcutta in the case. *P. & O. Steam Navigation Co. Vs. Secretary of State.* The case was actually reported as an Appendix to one of the Bombay High Court Reports – 5 B. H. C. R. App. P. 1. A servant of the plaintiff-company was proceeding on a highway in Calcutta, driving a carriage which was drawn by a pair of horses belonging to the plaintiff. He met with an accident, caused by negligence of the servants of the Government. For the loss cased by the accident, the plaintiff claimed damages against the Secretary of State for India. Sir Barnes Peacock C. J. (of the Supreme Court) observed that the doctrine that the "King can done wrong", had not application to the East India Company. The company would have been liable in such cases and the Secretary of State was thereafter also liable (He was interpreting section 65, Government of India Act, 1858, which equated the liability of the Secretary of State for India with that of the East India Company). On this holding, it was not necessary for Peacock C.J. to discuss the distinction between sovereign and non-sovereign functions. But he made a distinction between the two and observed, that if a tort were committed by a public servant in the discharge of sovereign functions, no action would lie against the Government – e.g. if the tort was committed while carrying on hostilities or seizing enemy property as prize.

The doctrine of immunity for acts done in the exercise of "sovereign functions", enunciated in the *P & O case*, was applied by the Calcutta High Court in *Nobin Chander Dey Vs. Secretary of State*, (1873) ILR 1 Cal. 1. In that case, the plaintiff contended that the Government had made a contract with him for the issue of a licence for the sale of ganja and had committed breach of the contract. The High Court held as under:

(i) On the evidence, no breach of contract had been proved.
(ii) Even if there was a contract, the act was done in exercise of sovereign power and, therefore it was not actionable. The High Court expressly followed the P & O ruling (discussed supra).

3.3 The Madras and Allahabad view: Immunity confined to acts of State

In *Secretary of State Vs. Hari Bhanji*, (1882) ILR 5 Mad. 273, the Madras High Court held that State immunity was confined to acts of State. Turner CJ, in coming to this conclusion, pointed out that in the P & O Case (Supreme Court, Calcutta), Peacock CJ did not go beyond acts of State, while giving illustrations of situations where the immunity was available. The position was thus explained (in the Madras case):

> "The act of State, of which the municipal courts of British India are debarred from taking cognisance, are acts done in the exercise of

> sovereign power, which do not profess to be justified by municipal law .....where an act complained of is professedly done under the sanction of municipal law, and in exercise of powers conferred by that law, the fact that it is done by the sovereign powers and is not an act which could possibly be done by a private individual does not oust the jurisdiction of the civil court".

It should, however, be mentioned that the Madras judgment in Hari Bhanji (supra) also adds, that the Government may not be liable for acts connected with public safety (even though they are not acts of State).

The Madras High Court re-iterated this view in *Ross Vs. Secretary of State*, AIR 1915 Mad. 434.

The Allahabad High Court took a similar view in *Kishanchand Vs. Secretary of State*, (1881), ILR 2 All 829.

However, in Secretary of *State Vs. Cockraft*, AIR 1915 Mad 993; ILR 39 Mad. 35, making or repairing a military road was held to be a sovereign function and the Government was held to be not liable, for the negligence of its servants in the stacking of gravel on a road resulting in a carriage accident injuring the plaintiff. (The more liberal approach of Hari Bhanji was thus slightly modified).

3.4 The Bombay view: Immunity available only for acts of State

In the Bombay case of 1949 – *Rao Vs. Advani*, AIR 1949 Bom. 277, 51 Bom LR 342, Chagla CJ and Tendolkar J., held that the Madras view (Hari Bhanji case) was correct. The Bombay case was not one of a claim to damages for tort, but related to a petition for certiorari to quash a Government order for the requisitioning of property, as proper notice had not been given. On appeal, the Supreme Court – *State of Bombay Vs. Khushaldas Advani*, AIR 1950 SC 222; (1950) SCR 621, reversed the High Court, holding that natural justice was not required to be observed, before requisitioning any property. B K. Mukherjea J. (as he then was), approved the Madras view and accepted the definition of "act of State given in *Eshugbayi Vs. Government of Nigerla*, (1931) AC 662, 671 (Privy Council). Other judges of the Supreme Court did not express any views on this point. Mukherjea J. took care to point out, that in the P & O case, the question at issue was, whether the Secretary of State for India could be sued for a tort committed in the course of a business. Whether he could be sued for cases not connected with business, was not at issue, in the P & O case.

3.5 Other cases

There are several other rulings of the pre-Constitution era on the subject of liability of the State in tort. However, for the purpose of the present Report, it is considered unnecessary to go into them, since they mostly follow one or other of the cases cited in this Chapter.

CHAPTER 4

POST-CONSTITUTION JUDICIAL RULINGS

4.1 Scope of the Chapter

In this Chapter, we propose to examine some of the important rulings during the post-Constitution period on the subject under consideration. The survey is not intended to be exhaustive. But we hope, that the representative decisions illustrating the principal conflicting approaches, will find adequate reflection in this Chapter.

4.2 Vidyawati case – A broad appraoch

So far as the Supreme Court is concerned, *State of Rajasthan Vs. Vidyawati*, AIR 1962 SC 933 is the first post-Constitution judgment on the subject under consideration.

That was a case where the driver of a Government jeep, which was being used by the Collector of Udaipur, knocked down a person walking on the footpath by the side of a public road. The injured person died three days later, in the hospital. The legal representatives of the deceased sued the State of Rajasthan and the driver for compensation / damages for the tortious act committed by the driver. It was found by the court, as a fact, that the driver was rash and negligent in driving the jeep and that the accident was the result of such driving on his part. The suit was decreed by the trial court, and also by the High Court. The appeal against the High Court judgment was dismissed by the Supreme Court.

4.3 Supreme Court view

The position of law, obtaining both prior and subsequent to 1858, the position obtaining under article 300 of the Constitution and the facts and circumstances leading to the formation of the State of Rajasthan, were all reviewed by the Supreme Court in *State of Rajasthan Vs. Vidyawati*, (supra), which held as under:

"The State of Rajasthan has not shown that the Rajasthan Union, its predecessor, was not liable by any rule of positive enactment or by Common Law. It is clear from what has been said above, that the Dominion of India, or any constituent Province of the Dominion, would have been liable in view of the provisions aforesaid of the Government of India Act, 1858. We have not been shown any provision of law, statutory or otherwise, which would exonerate the Rajasthan Union form vicarious liability for the acts of its servants, analogous to the Common Law of England. It was impossible, by reason of the maxim "The King can do no wrong", to sue the Crown for the tortious act of its servant. But it was realised in the United Kingdom, that that rule had become outmoded in the context of modern developments in statecraft, and Parliament intervened by enacting the Crown Proceedings Act, 1947, which came into force on January 1, 1948. Hence the very citadel of the absolute rule of immunity of the sovereign has now been blown up. Section 2 (1) of the Act provides that the "Crown shall be subject to all those liabilities, in tort, to which it would be subject, if it were a private person of full age and capacity, in respect of torts committed by its servants or agents, subject to the other provisions of this Act. As already pointed out, the law applicable to India in respect of torts committed by a servant of the Government was very much in advance of the Common law, before the enactment of the Crown

Proceedings Act, 1947, which has revolutionised the law in the United Kingdom, also. It has not been claimed before us, that the common law of the United Kingdom, before it was altered by the said Act with effect from 1948, applied to the Rajasthan Union in 1949, or even earlier. It must, therefore, be held that the State of Rajasthan has failed to discharge the burden of establishing the case raised in Issue No. 9, set out above.

"Viewing the case from the point of view of first principles, there should be no difficulty in holding that the State should be as much liable for tort in respect of tortious acts committed by its servant within the scope of his employment and functioning as such, as any other employer. The immunity of the Crown in the United Kingdom was based on the old feudalistic notions of justice, namely, that the King was incapable of doing a wrong, and, therefore, of authorising or instigating one, and that he could not be sued in his own courts. In India, ever since the time of the East India Company, the sovereign has been held liable to "be sued in tort or in contract, and the Common law immunity never operated in India. Now that we have, by our Constitution, established a Republican form of Government, and one of the objectives is to establish a Socialistic State with its varied industrial and other activities, employing a large army of servants, there is no justification, in principle, or in public interest, that the State should not be held liable vicariously for tortious acts of its servant. This Court has deliberately departed from the Common Law rule that a civil servant cannot maintain a suit against the Crown. In the case of *State of Bihar Vs. Abdul Majid*, (1954) SCR 786: (AIR 1954 SC 245), this Court has recognised the right of a Government servant to sue the Government for recovery of arrears of salary. When the rule of immunity in favour of the Crown, based on Common Law in the United Kingdom, has disappeared from the land of its birth, there is no legal warrant for holding that it has any validity in this country, particularly after the Constitution. As the cause in this case arose after the coming into effect of the Constitution, in our opinion, it would be only recognising the old established rule, going back to more than 100 years at least, if we uphold the vicarious liability of the State. Article 300 of the Constitution itself has saved the right of Parliament or the Legislature of a State to enact such law as it may think fit and proper in this behalf. But, so long as the Legislature has not expressed its intention to the contrary, it must be held that the law is what it has been, ever since the days of the East India Company. "

4.4 Kasturi Lal case

However, a different note was struck by the Supreme Court itself in *Kasturi Lal Vs. State of UP*, AIR 1965 SC 1039. In that case, the plaintiff had been arrested by the police officers on a suspicion of possessing stolen property. On a search of his person, a large quantity of gold was found and was seized under the provisions of the Code of Criminal Procedure. Ultimately, he was released, but the gold was not returned, as the Head Constable in charge of the malkhana (wherein the said gold was stored) had absconded with the gold. The plaintiff thereupon brought a suit against the State of UP for the return of the gold (or in the alternative) for damages for the loss caused to him. It was found by the courts below, that the concerned police officers had failed to take the requisite care of the gold seized from the plaintiff, as provided by the UP Police Regulations. The trial court decreed the suit, but the decree was reversed on appeal by the High Court. When the matter was taken to the Supreme Court, the court found, on an appreciation of the relevant evidence, that the police officers were negligent in dealing with the plaintiff's property and also, that they had also not complied with the provisions of the UP Police Regulations in that behalf. In spite of the said holding, the Supreme Court rejected the plaintiff's claim, on the ground that "the act of negligence was committed by the police officers while dealing with the property of Ralia Ram, which they had seized in exercise of their statutory powers. The power to arrest a person, to search him and to seize property found with him, are powers conferred on the specified officers by statute and in the last analysis, they are powers which can be

properly categorized as sovereign powers; and so, there is no difficulty in holding that the act which gave rise to the present claim for damages has been committed by the employee of the respondent during the course of its employment; but the employment in question being of the category which can claim the special characteristic of sovereign power, the claim cannot be sustained."

4.5 Suggestion in Kasturi Lal's case

Having thus rejected the claim, the Supreme Court made the following pertinent observations in *Kasturi Lal Vs. State of UP* (AIR 1965 SC 1039, *supra*):

> "Before we part with this appeal, however, we ought to add that it is time that the Legislatures in India seriously consider whether they should not pass legislative enactments to regulate and control their claim from immunity in cases like this, on the same lines as has been done in England by the Crown Proceedings Act, 1947. It will be recalled that this doctrine of immunity is based on the common law principle that the King commits no wrong and that he cannot be guilty of personal negligence or misconduct, and, as such, cannot be responsible for the negligence or misconduct of his servants. Another "aspect of this doctrine was that it was an attribute of sovereignty that a State cannot be sued in its own courts without its consent. This legal position has been substantially altered by the Crown Proceedings Act, 1947 (10 and 11 Geo. 6 c. 44). As Halsbury points out, "Claims against the Crown which might, before 1st January, 1948, have been enforced, subject to the grant of the royal fiat, by petition of right may be enforced, as of right and without a fiat, by legal proceedings taken against the Crown. That is the effect of S. 1 of the said Act. Section 2 provides for the liability of the Crown in tort in six classes of cases covered by its clauses (1) to (6). Clause (3), for instance, provides that where any functions are conferred or imposed upon an officer of the Crown as such either by any rule of the common law or by statute, and that officer commits a tort while performing or purporting to perform those functions, the liabilities of the Crown in respect of the tort shall be such as they would have been, if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Crown. Section 11 provides for saving in respect of acts done under prerogative and statutory powers. It is unnecessary to refer to the other provisions of this Act. Our only point in mentioning this Act is to indicate that the doctrine of immunity which has been borrowed in India in dealing with the question of the immunity of the State, in regard to claims made against it for tortious acts committed by its servants, was really based on the common law principle which prevailed in England; and that principle has now been substantially modified by the Crown Proceedings Act. In dealing with the present appeal, we have ourselves been disturbed by the thought that a citizen whose property was seized by process of law, has to be told, when he seeks a remedy in a court of law on the ground that his property has not been returned to him, that he can make no claim against the State. That, we think, is not a very satisfactory position in law. The remedy to cure this position, however, lies in the hands of the Legislature."

4.6 Basis of the judgment in Kasturi Lal

Reverting to the basis of the judgment in Kasturi Lal (supra), we find that the basis was two-fold:-

(a) The act was done in the purported exercise of a statutory power.
(b) The act was done in the exercise of a sovereign function.

4.7 Sham Sunder and other cases

The question of tort liability of the State has arisen in other cases also – including Shyam Sunder's case[1]. But we do not think it necessary to encumber this Chapter with a discussion thereof. The two judgments of the Supreme Court which have been dealt with above – namely, *Vidyawati* and *Kasturi Lal*, – should suffice, to illustrate the competing approaches.

4.8 Nagendra Rao case

In 1994, an important judgment[2], directly relating to the subject under consideration, was pronounced by the Supreme Court. We propose to deal with it in the next Chapter, as it raises a number of theoretical and practical issues, which deserve a Chapter unto themselves.

4.9 Seizure under the Customs Act

There are post – *Kasturilal* rulings which have reached a result different from *Kasturilal*. Certain goods were seized under the Sea Customs Act. They were not properly kept and were disposed of, by an order of the Magistrate. On the owner suing the State for value of the goods, it was held that as the seizure was illegal because –

(i) a bailment arose;
(ii) a statutory obligation to return the goods arose; and hence
(iii) a suit was maintainable against the State

State of Gujarat Vs. Memon Mohamed, AIR 1967 SC 1885; (1968) 1 SC J 273.

4.10 Articles seized by police

Articles seized by the police were produced before a Magistrate, who directed the Sub-Inspector to keep them in his safe custody and to get them verified and valued by a goldsmith. The articles were lost, while they were kept in the police guard room. In a proceeding for the restoration of the goods, it was held that when there was no prima facie defence made out, that due care had been taken by officers of the State to protect the property, the court can order the State to pay the value of the property to the owner. *Basava Kom Dyamgonde Patil Vs. State of Mysore*, AIR 1977 SC 1749; (1977) 2 SCJ 289.

CHAPTER 5

SOVEREIGN AND NON-SOVEREIGN FUNCTIONS

5.1 Distinction between sovereign and non sovereign functions – Nagendra Rao case

This distinction between sovereign and non-sovereign functions was considered at some length in *N. Nagendra Rao Vs. State of AP* (AIR 1994 SC 2663); (1994) 6 SCC 205. All the earlier Indian decisions on the subject were referred to. The court enunciated the following legal principles, in its judgment:

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[1] *Sham Sunder Vs. State of Rajasthan*, AIR 1974 SC 590: (1974) 3 SCR 849.
[2] *N. Nagendra Rao Vs. State of A.P.*, AIR 1994 SC 2663.

"In the modern sense, the distinction between sovereign or non-sovereign power thus does not exist. It all depends on the nature of the power and manner of its exercise. Legislative supremacy under the Constitution arises out of constitutional provisions. The legislature is free to legislate on topics and subjects carved out for it. Similarly, the executive is free to implement and administer the law. A law made by a legislature may be bad or may be *ultra vires*, but, since it is an exercise of legislative power, a person affected by it may challenge its validity but he cannot approach a court of law for negligence in making the law. Nor can the Government, in exercise of its executive action, be sued for its decision on political or policy matters. It is in (the) public interest that for acts performed by the State, either in its legislative or executive capacity, it should not be answerable in torts. That would be illogical and impracticable. It would be in conflict with even modern notions of sovereignty".

The court in the above case suggested the following tests –

"One of the tests to determine if the legislative or executive function is sovereign in nature is, whether the State is answerable for such actions in courts of law. For instance, acts such as defence of the country, raising (the) armed forces and maintaining it, making peace or war, foreign affairs, power to acquire and retain territory, are functions which are indicative of external sovereignty and are political in nature. Therefore, they are not amenable to jurisdiction of ordinary civil court. No suit under Civil Procedure Code would lie in respect of it. The State is immune from being sued, as the jurisdiction of the courts in such matters is impliedly barred."

The court proceeded further, as under:

"But there the immunity ends. No civilized system can permit an executive to play with the people of its county and claim that it is entitled to act in any manner, as it is sovereign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above (the law) as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy. From sincerity, efficiency and dignity of (the) State as a juristic person, propounded in nineteenth century as sound sociological basis for State immunity, the circle has gone round and the emphasis now is more on liberty, equality and the rule of law. The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State or the Government on a par with any other juristic legal entity. Any watertight compartmentalization of the functions of the State as "sovereign and non-sovereign" or "governmental and non-governmental" is not sound. It is contrary to modern jurisprudential thinking. The need of the State to have extraordinary powers cannot be doubted. But with the conceptual change of statutory power being statutory duty for (the) sake of society and the people, the claim of a common man or ordinary citizen cannot be thrown out, merely because it was done by an officer of the State; duty of its officials and right of the citizens are required to be reconciled, so that the rule of law in a Welfare State is not shaken".

The court emphasised the element of Welfare State in these words:

> "In (a) Welfare State, functions of the State are not only defence of the country or administration of justice or maintaining law and order, but it extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. The demarcating line between sovereign and non-sovereign powers, for which no rational basis survives, has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc. which are among the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity."

The Court linked together the State and the officers:

> "The determination of vicarious liability of the State being linked with (the) negligence of its officers, if they can be sued personally for which there is no dearth of authority and the law of misfeasance in discharge of public duty having marched ahead, there is no rationale for the proposition that even if the officer is liable, the State cannot be sued."

The court also distinguished the judgment in Kasturi Lal[3], in these words:

> "Ratio of Kasturi Lal is available to those rare and limited cases where the statutory authority acts as a delegate of such functions for which it cannot be sued in court of law. In Kasturi Lal case, the property for damages of which the suit was filed was seized by the police officers while exercising the power of arrest under section 54(1) (iv) of the Criminal Procedure Code. The power to search and apprehend a suspect under Criminal Procedure Code is one of the inalienable powers of State. It was probably for this reason that the principle of sovereign immunity in the conservative sense was extended by the Court. But the same principle would not be available in large number of other activities carried on by the State by enacting a law in its legislative competence."

In this context, the court (in *Nagendra Rao*) offered the following distinction. "A law may be made to carry out the primary or inalienable functions of the State. Criminal Procedure Code is one such law. A search or seizure effected under such law could be taken to be an exercise of power which may be in domain of inalienable function. Whether the authority to whom this power is delegated is liable for negligence in discharge of duties while performing such functions, is a different matter. But, when similar powers are conferred under the other statute as incidental or ancillary power to carry out the purpose and objective of the Act, then, it being an exercise of such State "function which is not primary or inalienable, an officer acting negligently is liable personally and the State vicariously. Maintenance of law and order or repression of crime may be inalienable functions, for (the) proper exercise of which, the State may enact a law and may delegate its functions, the violation of which may not be sueable in torts, unless it trenches into and encroaches on the fundamental rights of life and liberty guaranteed by the Constitution. But that principle would not be attracted where similar powers are conferred on officers who exercise statutory powers which are otherwise than sovereign powers as understood in the modern sense. The Act (Essential Commodities Act) deals with persons indulging in hoarding and black

[3] *Kasturi Lal Vs. State of U.P.*, AIR 1995 SC 1039.

marketing. Any power for regulating and controlling the essential commodities and the delegation of power to authorized officers to inspect, search and seize the property for carrying out the object of the statute cannot be a power, for (the) negligent exercise of which the State can claim immunity. No constitutional system can, either on State necessity or public policy, condone negligent functioning of the State or its officers."

5.2 Analysis of judgment in Nagendra Rao Case

We would like to point outs, with respect, that from a reading of the judgment in *Nagendra Rao*[4], one can discern the following strands:

(a) *Non-existence of the distinction.*

"In the modern sense, the distinction between sovereign or non-sovereign functions does not exist".

(b) *Non-liability for political acts*

One of the tests is, whether the State is answerable for such actions in courts of law. Examples of non-liability are-functions which are indicative of external sovereignty and are political in nature, (such as) defence, foreign affairs, etc.

(c) *Immunity ends with political acts*

Immunity ends with political acts, described above. "No legal or political system can place the State above (the law), as it is unjust and unfair for a citizen to be deprived of his property illegally by (the) negligent act of officers of the State without any remedy".

Statutory power is to be viewed as a statutory duty.

(d) *The demarcating line – primary and inalienable functions*

The demarcating line between "sovereign" and "non-sovereign" powers, has largerly disappeared. "Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc. which are among the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity."
[See also (f), infra].

(e) *Misfeasance doctrine*

Vicarious liability of the State is linked with the negligence of its officers. "The law of misfeasance in discharge of public duty having marched ahead, there is no rationale for the proposition that even if the officer is liable, the State cannot be sued."

(f) *Kasturi Lal's case – inalienable functions*

Kasturi Lal case was related to powers of arrest, search etc. "The power to search and apprehend a suspect under the Criminal Procedure Code is one of the inalienable powers of the State."

[As to inalienable functions – see under sub-paragraph (d) above].

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[4] Para 5.1, supra.

5.3 Uncertainty of the law

It would be evident from the Nagendra Rao and other case law on the subject, that definiteness of the precise contours and certainty of principles of universal application are lacking. While holding that the distinction between sovereign powers and non-sovereign powers has become academic in the present day Welfare State, the court in *Nagendra Rao* (with respect) again affirms and accepts the theory of "primary and inalienable functions". One can understand the difficulty faced by the Bench in *Nagendra Rao's* case. It was a Bench of two judges, whereas *Kasturi Lal's* case was decided by a Constitution Bench of five judges. (Of course, Vidyawati was also decided by a Constitution Bench of five judges).

5.4 Obscurity in application

We may add that there is considerable obscurity as to the way in which the distinction between sovereign and non-sovereign functions is applied in practice.

(a) Thus, (for example), it has been held that the following are sovereign functions.

(i) Commandeering goods during war,
Kesoram Vs. Secretary of State, (1928) ILR 54 Cal. 969;

(ii) making or repairing a military road,
Secretary of State Vs. Cockraft, ILR 39 Mad. 351;

(iii) administration of justice,
Mata Prasad Vs. Secretary of State, ILR 5 Luck. 157;

(iv) improper arrest, negligence or trespass by police officers,
Kedar Vs. Secretary of State, ILR 9 Rang. 375;

(v) removal of an agent, by the labour supplying association under an ordinance, ILR 37 Mad. 55;

(vi) negligence of officers of the court of wards, in the administration of estate in their charge,
Secretary of State Vs. Sreegovinda, (1932) 36 Cal. WN 606;

(vii) removal of a child by the authorities of a hospital, maintained out of the revenues of the state,
Etti Vs. Secretary of State, AIR 1939 Mad. 663;

(viii) negligence of the chief Constable, in seizing hay under a statutory power – ILR 28 Bom. 314;

(b) On the other hand, in the following cases the State has been held liable, on the ground that the tortious act was committed in the exercise of non-sovereign functions of the State.

(i) *Kailash Vs. Secretary of State*, (1912) ILR 40 Cal. 452;
(ii) *Wasappa Vs. Secretary of State*, (1915) ILR 40 Bom. 200;
(iii) *Jehangir Vs. Secretary of State*, (1904) 6 Bom. LR 131. (Concept of act of State, discussed).

(iv) *Roop Ram Vs. State of Punjab*, AIR 1961 Punj. 336.

(v) Negligence in the seizure of goods under a statutory, power. *Shivabhajan Durga Prasad Vs. Secretary of State*, ILR 28 Bom 314; 6 Bom LR 65.

(vi) Torts committed by the police, while making a lathi charge on a procession, are not actionable against the State, as the police are performing functions concerning law and order, delegated to them under section 30, Police Act, *State of MP Vs. Chirojilal*, AIR 1981 MP 65.

(vii) State is not liable, where the police assault a member of a mob, for dispersing, it when there was apprehension of attack on the office of the S.D.O., *State of Orissa Vs. Padmalochani*, AIR 1975 Orissa 41. [*Contrast State of Punjab Vs. Lal Chand Sabharval* – case at (b)(v) infra].

However, the State may agree to grant compensation to the victims of such acts, AIR 1987 SC 355.

Moreover, the position may be different, where a person's constitutional right to trade is involved and he seeks relief through writ, *P. Gangadharan Pillai Vs. State of Kerala*, AIR 1996 Ker 71.

(b) On the other hand, in the following cases, the function was held to be non-sovereign.

(i) Accident caused by a driver of the Public Works Department, while carrying materials for building a road bridge, is a non-sovereign function, *Rup Ram Vs. Punjab State*, AIR 1961 Punj 336. [*Contrast Secretary of State Vs. Cockraft*, AIR 1915 Mad 993].

(ii) Doctor in a Government hospital. performing sterilisation operation of a lady patient, left a mop inside her abdomen. She developed peritonitis as a consequence and died. Government was held liable, *A. H. Khodwa Vs. State of Maharashtra*, (1996) ACJ 505 (SC). (It is a non-sovereign function).

(iii) Taking ailing children to a primary health centre is not a sovereign function, *Indian Insurance Co. Association Vs. Radhabai*, AIR 1978 MP 164.

(iv) Famine relief is not a sovereign function, *Shyam Sunder Vs, State of Rajasthan*, AIR 1964 SC 890.

(v) Carrying away detenues, in order to prevent them from indulging in a riot, is not a sovereign function, *State of Punjab Vs. Lal Chand Sabharwal*, AIR 1975 P&H 294; [Contrast *State of Orissa Vs. Padmalochani*, AIR 1975 Orissa 41 – case a (vii) above].

(vi) Maintaining a treasury, where excise duties are to be deposited, is not a sovereign function. Maintaining a treasury is an ordinary banking business *State of UP Vs. Hindustan Lever Ltd.*, AIR 1972 All 456, 442.

(vii) Where vehicles are seized by a Government officer under statutory powers, Government is a bailee and is liable for negligence in

looking after them, *State of Gujarat Vs. Memon Mohamed*, AIR 1967 SC 1885; [Compare *Basava Vs. State of Mysore*, AIR 1977 SC 1749].

CHAPTER 6

NEED FOR LEGISLATION

6.1 The present state of the law

From the brief discussion of the present state of the law relating to liability of the State in tort in India, it is apparent that the law is neither just in its substance, nor satisfactory in its form. It denies relief to citizens injured by a wrongful act of the State, on the basis of the exercise of sovereign functions – a concept which itself carries a flavour of autocracy and high-handedness. One would have thought, that if the State exists for the people, this ought not to be the position in law. A political organisation which is set up to protect its citizens and to promote their welfare, should, as a rule, accept legal liability for its wrongful acts, rather them denounce such liability. Exceptions can be made for exceptional cases – but the exceptions should be confined to genuinely extraordinary situations.

6.2 Article 300, a weak foundation

Keeping aside the injustice, in point of substance, of the existing law, there are several other serious defects in the present position. The foundation of the present law is article 300 of the Constitution. Its language necessarily takes one, through successive steps of (what may be called) tracing back of the genealogy of the law, to a moment of time residing in the 19th Century – that too, to a moment when the country was governed or dominated by alien rulers. The law is, in effect, based upon archaic provisions. In this sense, article 300 has turned out to be a weak foundation, on which to build up an edifice of the law on the subject.

6.3 The test of corresponding state or province

In another respect also, a test resting on article 300 has become unworkable. In so far as the article incorporates the test of the law of "corresponding Province" or "corresponding Indian State", the test has become practically unworkable, for the following reasons.

(a) The political map of India, as drawn in 1950, has been re-drawn again and again in the post – 1950 period. The process began in 1953. It assumed greater importance in 1956, as a result of the enactment of the States Reorganisation Act. It was continued when the (erstwhile) State of Bombay was bifurcated. It is needless to mention subsequent developments, whereby the boundaries of the units of the Indian Union have been re-drawn from time to time. And the process of re-drawing the boundaries has not yet ended. A time will come, when only an assiduous historical researcher will be able to locate the "corresponding Province" or Indian State. The power of the President under article 366(7) of the Constitution (to determine the corresponding State) will itself be difficult to exercise.

7.3 Origin and evolution

Subsequent to 1977, several cases of unlawful detention and custodial death reached the Supreme Court by way of writ petitions under article 32 of the Constitution, or in appeal against the decisions of the High Courts under article 226. Wherever the arrest was found unlawful or wherever it was found that the custodial death had occurred on account of ill-treatment by, or gross negligence on the part of, the police officers, compensation was awarded to the injured person (or to his legal representatives).

When a question arose as to the legality of such awards, it was clarified by the Supreme Court in *Nilabati Behera Vs. State of Orissa*, (1993) 2 SCC 746, that it is always open to the Supreme Court (under article 32 of the Constitution) and to the High Court (under article 226 of the Constitution), to award compensation in the exercise of its constitutional power. It was clarified that such an award did not finally specify, or put an end to, the claim for damages and that such an award is only a provisional award, which shall be taken into account by the civil court, while awarding the damages according to law. In this case, however, the distinction between sovereign and non-sovereign functions and liability of the State for the tortious acts of its servants was not gone into.

7.4 Andhra Case, and its approval by the Supreme Court

In the judgment of the High Court of Andhra Pradesh in *Challa Ramkonda Reddy Vs. State of AP*, AIR 1989 AP 235, it was held that the plea of sovereign immunity was not available, where there was a violation of the fundamental rights of the citizens. It was a case where a person arrested by the police was lodged in a cell in the jail. He expressed his apprehension to the authority in charge of the jail, that his enemies were likely to attack and kill him in the jail. This apprehension was not given any consideration by the authorities. During the particular night, there were only two persons guarding the jail, instead of the usual six. The enemies of the arrested person entered the jail during the night and shot him dead. The legal representatives of the deceased filed a suit for damages. The trial court found that the authorities were negligent in guarding the jail and that the death of the deceased was attributable to such negligence. However, the suit was dismissed on the ground that the arrest and detention of the deceased in jail was in exercise of sovereign functions of the State. During the hearing of the plaintiff's appeal, the State relied upon the decision of the Supreme Court in *Kasturi Lal*. The High Court, however, held, applying the principle of a decision of the Privy Council in *Maharaj Vs. AG for Trinidad and Tobago*, (1978) 2 All ER 670, that where the fundamental rights of the citizens are violated, the plea of sovereign immunity, which is (assumed to be) continued by article 300 of the Constitution, cannot be put forward.

The view taken by the High Court of Andhra Pradesh in *Challa Ramkonda Reddy Vs. State of AP*, AIR 1989 AP 235 (supra), has been approved by the Supreme Court in AIR 2000 SC 2083. [State of A.P. v. Chella Ramakrishna Reddy].

7.5 Violation of article 19(1)(g)

In a Kerala case, the petitioner's hotel was ransacked in a mob attack, causing damage to the property of the writ petitioner. Police had sufficient warning of the likelihood of an attack by the rioters. The State was held liable for failure to protect the petitioner's hotel, which failure had resulted in infringement of the petitioner's right to carry on business and trade, as contained in article 19(1)(g) of the Constitution. *(P. Gangadharan Pillai Vs. State of Kerala*, AIR 1996 Ker. 71.

Cf. C. Ramkonda Reddy Vs. State of AP, AIR 1989 A.P. 235 - 247 (Negligence in guarding the jail, resulting in the death of a prisoner. The negligence violated article 21 of the Constitution).

CHAPTER 8

EXERCISE OF STATUTORY FUNCTIONS

8.1 Acts done in exercise of statutory functions

According to some rulings, where an act is done in the purported exercise of statutory powers, and the act is alleged to be wrongful, then the aggrieved person has no remedy against the State, as such. The rationale underlying this approach is that the State does not, in such cases, act as an employer. The public servant concerned acts under the statute; and his action is not subject to the control of the State. Hence, the principle of vicarious liability of the master (for the wrongs committed by the servant in the course of his employment) does not apply.

In fact, this was one of the rationales briefly mentioned in the well known case *Kasturi Lal Ratan Ram Jain Vs. State of UP*, AIR 1965 SC 1039, although the judgment is also based on the reasoning, that the function exercised by the public servant in the particular case was a sovereign one, for which the Sate could not be held liable.

8.2 An Allahabad cases

Illustrative of the above approach, is the Allahabad case of *Ram Ghulam Vs. Government of UP,* AIR 1950 All 206. The police had recovered some stolen property and deposited it in the Malkhana. The property was again stolen from the Malkhana. The plaintiff (owner of the property) sued for damages, the suit being against the State of UP. It was held that the Government was not liable, as its servant was performing his duty in the discharge of obligations imposed on him by law.

Another case is also from Allahabad. *Mohammed Murad Vs. Government of UP*, AIR 1956 All 75. Under an order of the District Judge, certain jewellery belonging to a minor was entrusted to the Nazir, for safe custody. The duty of the Nazir, [as laid down in para 2 of rule 9 of Chapter XII of the General Rules (Civil) of 1926, Volume 1] was to place the jewellery in a box and this box was to be sent every evening to the treasury (or to the Imperial Bank) for safe custody and was to be brought back, every morning, from there. One evening, the Nazir failed to perform his statutory duty of sending the cash box to the treasury. As a result, the jewellery was stolen. On attaining majority, the minor filed a suit against the Uttar Pradesh Government for the return of the ornaments, or (in the alternative) for their value. The Government was held to be not liable. It was observed that "where the servant acts in performance of the duties imposed upon him by law, the master has no right to control him, nor (the right) to give him any instruction. He is obeying the law and not the master and naturally the master should not be held liable for anything which the servant does while carrying out the – aforesaid duties"

The assumption here is that, in such cases the State is not the master, as it cannot control the performance of the function in question, which is imposed by statute.

8.3 Other illustrative cases

Similar approach is to be found in a few other rulings:

(i) *V. M. Vaid Vs. Vijayawadi Muncipality*, AIR 1963 AP 435.
(ii) *S. P. Shubhajan Durga Prasad Vs. Secretary of State of India*, ILR 28 Bom. 213; 6 Bom LR 65.
(iii) *Secretary of State Vs. Ram*, (1932) 37 CW N 957.
(iv) *State of MP Vs. Singhai Kapoorchand*, AIR 1961 MP 316.
(v) *District Board of Bhagaph Vs. Province of Bihar*, AIR 1954 Pat. 529.

8.4 Our approach

We do not share the above approach and do not consider it necessary to provide that the State shall not be liable in such cases.[6] It must be remembered that the entity sought to be made liable is not the government but the State. So far as the government is concerned, it may well say that the statutory authority is not accountable to or subordinate to it and hence the government cannot be visited with the consequences flowing from a wrong order made by a statutory authority. This the government may be able to say even where it happens to be the appellate/ revisional authority over such statutory authority since the power to rectify the order in appeal/revision does not make such appellate/revisional authority an administrative superior. But so far as the State is concerned, it cannot put forward any such plea inasmuch as the statute is enacted by it (by its Legislature) and the appointment of the authority is also done either by the Statute itself or by such authority as may be authorised by the Statute. The act of the statutory authority in such a case is an act done for and on behalf of the State. Hence the liability of the State. As the High Court of Andhra Pradesh has observed in C. Rama Konda Reddy v. State (1989 A.P. 245 at 251) "the officials of the government act in the name of .....does the Sate become liable for compensation."

But it is necessary to clarify at the same time that State's liability for the acts or omissions of statutory authorities arises only in cases where (a) the statutory authority acts outside his legal authority while purporting to act pursuant to the legal authority conferred upon him and (b) the act or omission, which causes or results in damage to a person, is not within the ambit of the statutory protection, if any, contained in such enactments. This rule is evolved for the obvious reason that an act done under a statute and in accordance with the statute can never amount to a tort as was said by the Supreme Court in Martin Burn Ltd. Vs. Calcutta Corporation (AIR 1966 SC 529 at 535). The Court said "A result flowing from a statutory provision is never an evil".

There is, however, a class of cases which have to be dealt with separately. A quasi-judicial act or order pertains to the judicial function of the State. The fact that such power is not exercised by a Judge/Magistrate but by an administrative authority should make no difference inasmuch as what is material is the nature of the function and not the person who performs that function. We do not wish to disturb the position obtaining under the Judges (Protection) Act, 1985, which not only defines the expression "Judge" to take in 'every person who is empowered by law to give in any legal proceeding a definite judgment..... or who is one of a body of persons which body of persons is empowered by law to give such a judgment:....." but also contains an immunity clause. There is also the Judicial Officers Protection Act, 1850.

We must also clarify at this stage that the liability of the State in cases of deprivation of life and liberty in violation of the guarantee in Article 21 by an official of a

[6] Para 10.2 *infra*.

State, even while purporting to act in exercise of judicial functions/powers, may have to be examined in greater depth.

CHAPTER 9

ANALYSIS OF THE PRESENT POSITION

9.1 Scope of the Chapter

We propose, in this Chapter, to attempt a very brief analysis of the present position on the subject of liability of the State in tort, on the basis of the selective material that has been presented in the preceding Chapters of this Report.

9.2 Basis of the various propositions

In the next paragraph, we propose to present an analytical statement of the present position in the form of certain propositions. The basis of these propositions may be briefly explained.

(a) The distinction between sovereign and non-sovereign functions, in the context of vicarious liability of the State in tort, originated as a result of the reading (by various courts) of the judgment (of the erstwhile Supreme Court at Calcutta) in the P & O case. This distinction came to occupy a central place in this area.

(b) No doubt, in course of time, the scope of the expression "sovereign functions" came to be considerably narrowed down and there was greater readiness, on the part of various courts, to regard many Governmental acts as "non sovereign".

This has considerably reduced the practical importance of this distinction, which, however, still continues to survive, in theory.

(c) The defence of sovereign functions yet subsists. For example, defence of the state, maintenance of law and order and public order, security of the state, judicial functions, etc.

(d) Where the fundamental right of a citizen guaranteed by Article 21 is violated, it is evident, the defence of sovereign immunity shall not be available.

(e) Where, however, the tortuous is committed by an official of the state purporting to act in discharge of statutory functions, the liability for damages arises only in cases where (a) the statutory authority acts outside its legal authority while purporting to act pursuant to the legal authority conferred upon him and (b) the act or omission which causes or results in damages to a person is not within the purview of the statutory protection, if any, contained in such enactment (vide para 8.4).

(f) We must, of course, note that there is no liability of the State, for "acts of State", as properly understood.

(g) Finally, notice has also to be taken of the fact that statutes in India often contain "protection clauses", granting immunity to various actions of the State and its officers, for acts done or "intended to be done" (in good faith) in pursuance of a particular enactment. Of course, such protection clauses must be constitutionally valid.

With these observations, we shall proceed, in the next chapter, to set out, in the form of propositions, an analysis of the present position on the subject under consideration.

CHAPTER 10

"Existing rules and principles can give us our present location, our bearings, our latitude and longitude. The inn that shelters for the night is not the journey's end. The law, like the traveller, must be ready for the morrow. It must have a principle of growth." *(Benjamin Cardozo: The Growth of Law (1924) Pages 19-20).*

RECOMMENDATIONS

10.1 The case for enactment of legislation

It is now time for us, to make our concrete recommendations on the subject of liability of the State in tort. In an earlier Chapter[7], we have already stressed the need for the enactment of legislation on the subject. We now proceed to make our suggestions in that regard.

10. 2 Statutory and non-statutory functions

So far as the statutory functions are concerned, it is necessary to point out that if any act is done by a statutory authority in accordance with a statute, or where a statutory function is discharged according to and consistent with the statute, such acts can never amount to or give rise to a tort. Situations may however arise where an authority purporting to act in discharge of his statutory functions, actually acts outside his statutory authority and causes injury resulting in loss or damage. In such cases, the state is liable unless the protective clause provides an immunity. If the immunity is available to the official, the state cannot also be made liable in damages.

10.3 As stated in the preceding Chapter, violation of the fundamental right guaranteed by article 21 stands on a different footing.

10.4 The law Commission Report and connected Bill

At this stage, we would like to mention that the Law Commission of India, in its very First Report (Liability of the State in tort), forwarded to Government in April 1956, took the trouble of presenting certain general outlines of the proposals for legislation (though

[7] Chapter 6, supra.

not an actual draft Bill). A Bill which was intended to implement that Report was introduced in the Lok Sabha in 1967, and was even referred to a Joint Committee. However, with the dissolution of the Lok Sabha in 1971, the Bill lapsed. It does not seem to have been revived thereafter.

10. 5 The concrete recommendaton

We do not intend to propose any draft legislation as such, in this Report. But we think that the draftsman may like to consider the general principles as given in the First Report of the Law Commission in para 66 of that Report[8], subject to what we state in the next few paragraphs.

10.6 Exceptions to liability, as suggested by Law Commision

With reference to the proposals made in the Law Commission Report (to which we have made a reference above[9]), we would like to record our views as to some of the "Exceptions" proposed in that Report[10]. Those exceptions (as proposed in that Report) are placed under the following heads:

(i) Acts of State;
(ii) Judicial functions and execution of judicial functions;
(iii) Acts done in the exercise of political functions of the State (Ten examples are given);
(iv) Acts done in relation to Defence Forces (Three types of acts are enumerated. It is not clear, if the enumeration is intended to be illustrative or exhaustive);
(v) Miscellaneous.

Four types of acts are enumerated under the head of "Miscellaneous", as under:

(a) any claim arising out of defamation, malicious prosecution and malicious arrest;
(b) any claim arising out of the operation of quarantine law;
(c) existing immunity under the Indian Telegraph Act, 1885 and Indian Post Office Act, 1898;
(d) foreign torts (the English provision may be adopted).

10. 7 Comments as to Acts of State

We would like to offer a few comments on the exceptions to liability, proposed by the Law Commission in its First Report[11]. The first such exception relates to acts of State and is expressed in that Report in these words:

"(i) Acts of State"

The defence of "Act of State should be made available to the State for "any act neglect or default of its servant or agents". "Act of state means an act of the sovereign power,

[8] See Appendix to this Report
[9] Para 10. 5 supra.
[10] Law Commission of India, First Report, pages 40-42, para V.
[11] Para 10.6, supra.

directed against another sovereign power or the subjects of another sovereign power, not owing temporary allegiance, in pursuance of sovereign rights".

We would like to comment, that the act of State should not have been committed on the Indian soil. The reason is, that for an illegal act committed in India towards a foreigner, there should not be an exemption from liability. It may be mentioned that articles 14, 19 and 300A of the Constitution, use the wide word "person" and not the narrow word "citizen". [The words "not owing temporary allegiance" may not suffice for the purpose].

The above is a point of substance. Some verbal improvements in the Law Commission's formulation can also be thought of. In particular, the word "subjects" should be replaced by the word "citizens".

10. 8 Judicial Acts

The second exception, proposed by the Law Commission in the First Report[12] reads as under:

"The State shall not be liable for acts done by judicial officers and person executing warrants and orders of judicial officers, in all cases where protection is given to such officers and persons by section 1 of the Judicial Officers Protection Act, 1850".

We agree with this, in substance. But we may mention that the Act of 1850 has been replaced by another Act on the subject of protection of judicial officers. [The judges (Protection) Act, 1985]

This exception is equally applicable in case of quasi-judicial acts as well, as indicated hereinbefore.

10. 9 Political functions

The third exception proposed by the Law Commission in its Report[13] relates to certain acts done in the exercise of certain political functions of the State. The examples given in the Report mainly comprise the following:

(a) certain acts relatable to the conduct of foreign affairs;
(b) war and peace;
(c) certain acts in the nature of the exercise of specified constitutional functions, performed by the President etc.

[The grouping is ours].

As regards category (a) above, we are of the view that in principle, it is wrong to create an exception for an act, merely because it relates to foreign affairs. For example, if a passport is wrongly refused to an Indian citizen, there is no reason why he should be denied legal redress, on the ground that the act relates to foreign affairs. If an Indian citizen, with valid travel documents, is not allowed to go out of India for a legitimate purpose, he must have legal redress (assuming that there is no court order imposing a restriction).

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[12] Para 10.6, supra.
[13] Para 10. 6 supra.

As to category (b) above – "war and peace" – it is a very wide topic. If, for example, a Defence of India Act is passed and Rules thereunder are notified, and action is taken which is not, in strictness, justified by the Act or the rules, there is no reason why the aggrieved citizen should not have a remedy in tort. It may be mentioned, that even during the British rule, when the Defence of India Act, 1939 and Rules made thereunder were in operation, citizens aggrieved by Government action which was alleged to have gone beyond the rules, or taken under invalid rules, were allowed to seek appropriate legal redress. Law Reports of the years 1940 – 1947 provide ample testimony of this.

As to category (c) above; which relates to certain constitutional orders and proclamations, we do not think that an exception is really needed. In the vast majority of cases, such orders will not cross the limits of the law, as they are very carefully scrutinised. But if they unfortunately cross legal limits, redress in tort should not be barred.

10. 10 Acts done in relation to the Defence forces

The next exception suggested by the Law Commission in the First Report is concerned with "Acts done in relation to the Defence Forces[14]". The enumeration given under this item (in the Law Commission Report) can be adopted, in substance. But a general and wide exception, worded as "Acts done in relation to the Defence forces", would, we think, be too wide". The exception should be confined to the three activities specifically mentioned by the Law Commission.

10. 11 Miscellaneous Exceptions

Finally, under the head of "Miscellaneous"[15], the Law Commission, in its 1st Report[16], has proposed exceptions for four categories of situations, namely:

(a) claims arising out of defamation, malicious prosecution and malicious arrest;
(b) any claim arising out of the operation of quarantine;
(c) existing immunity under the Indian Telegraph Act 1885 and Indian Post Office Act, 1898;
(d) foreign torts.

Now, as regards category (a) above, we have not been able to discover any rationale, explaining why an exception should be made for defamation etc. Harm to reputation may often cause more agony, than mere physical assault or mere personal injury caused by an accident. If a Government servant, e.g., a Doordarshan News Announcer, purporting to act in his official capacity, commits the tort of defamation, we see no reason why the State should not be liable.

Regarding category (b) above, again, there is no discernible rationale to justify such an exception.

As regards category (c) above – connected with enactments relating to posts and telegraphs – we think that provisions creating an exception for such specific situations will operate, of their own force. In any case, it would be better not to mention individual Acts.

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[14] Para 10. 6, supra.
[15] Para 10. 6 supra.
[16] Para 10.6 supra.

We now come to category (d), for which an exception has been proposed in the Law Commission Report. This relates to foreign torts. We do not consider it proper to create such an exception. Liability for tort, or immunity from liability, should not depend on the geographical location of the conduct potentially giving rise to such liability. For example, if a Government officer, acting as a delegate to an international conference held in Tokyo, Kathmandu, Singapore or Kuala Lumpur, commits a wrongful act while purporting to discharge official functions, we see no reason why liability of the Government (if it arises on an application of the proposed legislation) should be excluded, merely because the *locus* of the tort is not within India. [We are confining ourselves to the aspect of substantive law and are not discussing here the aspect of jurisdiction of Indian courts]. In sum, we do not consider it desirable to exclude liability for foreign torts.

CHAPTER 11

PROTECTION CLAUSES

11.1 Scope of the Chapter

In this Chapter, we propose to deal with what can be called "protection clauses" – that is to say, statutory provisions which, in substance, provide that a suit etc. shall not lie against the Government for anything which is done or intended to be done under a particular enactment. There are several verbal variations (we shall deal with them, later)[17]. But the substance is as stated above.

11.2 Relevance of protection clause to the present Report

(a) In order to deal with the relevance of such protection clauses to the subject matter of the present Report, we would, like to quote a sample. This is how section 84 of the Information Technology Act, 2000 (21 of 2000), reads:

> *"84. Protection of action taken in good faith*
> No suit, prosecution or legal proceeding shall lie against the Central Government, the Controller or any person acting on behalf of him, the presiding officer, adjudicating officers and staff o the Cyber Appellate Tribunal, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or regulation or order made thereunder".

It may be mentioned that under section 28(2) of the Information Technology Act, 2000, the Controller has the same powers as are conferred on Income Tax authorities, under Chapter 13 (sections 131-136) of the Income Tax Act, 1961. Section 132 of the Income Tax Act 1961, confers very wide powers of search and seizure on the officers concerned.

(b) Another model – a simpler one – is supplied by section 37 of the Drugs and Cosmetics Act, 1940, in these terms:

[17] Para 11.2 and 11.3, infra.

"37. *Protection of taken in good faith*
No suit, prosecution or other legal proceeding shall lie against any person for anything which is on good faith done or intended done under this Act".

(c) We shall cite a few other models later[18]. What we would like to state here is that such protection clauses are directly relevant to the subject matter of the present Report. Under a protection clause, a suit etc. is barred, for anything which is:

"Intended to be done" (under the enactment concerned). Hence action which does not fall strictly within the enactment concerned, but which is (in good faith) regarded by the wrongdoer concerned as taken "under the enactment" in question, would also receive protection (In fact, that is the legislative intention also). Thus, an illegal act, including a tort, would also come to enjoy protection. Such a position is inconsistent with what we have recommended.[19]

This is the manner in which protection clauses become relevant, for the present purpose.

11.3 Various models of protection clauses

Before proceeding to make our own recommendations in this regard, we would like to extract here a few models of protection clauses which one finds, on a random survey of the Indian statute book[20].

(a) Thus, section 88 of the Chit Funds Act, 1982, provides as under:

"88. *Protection of action taken under the Act*
No suit, prosecution or other legal proceeding shall lie against the State Government, the Registrar or other officers of the State Government or the Reserve Bank or any of its officers exercising any powers or discharging any functions under this Act in respect of anything which is in good faith done or intended to be done in pursuance of this Act or the rules made thereunder".

(b) Section 28, Consumer Protection Act, 1986, provides as under:

"28. *Protection of action taken in good faith*
No suit, prosecution or other legal proceeding shall lie against the members of the District Forum, or the State Commission or the National Commission or any officer or person acting under the direction of the District Forum, the State Commission or the National Commission or executing any order made by it or in respect of anything which is in good faith done or intended to be done by such member, officer or person under this Act or under any rule or order made thereunder".

(c) Section 22 of the Insurance (Regulation and Development) Act, 1999 (41 of 1999), provides as under:

See para 11.3, infra.
Chapter 10, supra.
See also para 11.2 (a) and (b) supra.

"22. *Protection of action taken in good faith*
No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Central Government or any member, officer or other employee of the Authority for anything which is in good faith done or intended to be done under this Act or rules or regulations made thereunder.

Provided that nothing in this Act shall exempt any person from any suit or other proceeding which might, apart from this Act, be brought against him".

(d) Section 68 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), provides as under:

"69. *Protection of action taken in good faith*
No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer of the Central Government or of the State Government or any person exercing any powers or discharging any functions or performing any duties under this Act, for anything in good faith done or intended to be done under this Act or any rule or order made thereunder."

(e) Section 16 of the National Security Act, 1980, (65 of 1980) provides as under:

"16. *Protection for action taken in good faith*
No suit or other legal proceeding shall lie against the Central Government or a State Government and no suit, prosecution or other legal proceeding shall lie against any person, for anything in good faith done or intended to be done in pursuance of this Act".

(f) Section 38 of Protection of Human Right Act, 1993 (10 of 1993) provides as under:

"38. *Protection of action taken in good faith*
No suit or other legal proceedings shall lie against the Central Government, State Government, Commission[21], State Commission or any member thereof or any person acting under the direction either of the Central Government, State Government, Commission or the State Commission, in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or any order made thereunder or in respect of the publication, by or under the authority of the Central Government, State Government, the Commission or the State Commission, of any report, paper or proceedings".

11.4 Criticism of protection clauses

Though the models of protection clauses, collected in the preceding paragraph, differ in minor matters of detail, it appears that almost all of them protect (*inter alia*) action

[21] The single word "Commission", as defined, means the National Human Rights Commission.

"intended to be taken under the enactment in question" (or in some cases, under rules or orders issued thereunder). These clauses have stood the test of time. Any tampering with the principle underlying them may not only unsettle the existing position but would also expose the authorities under the Act to unnecessary litigation and may dampen their initiative.

11.5 Law Commission's proposal

We find that a somewhat similar (though milder) approach was recommended by the Law Commission in its First Report[22]. The Commission recommend as under:

> "Appendix V shows some of the Acts which contain protection clauses. But, under the General Clauses Act, a thing is deemed to be done in good faith, even if it is done negligently. Therefore, by suitable legislation, the protection should be made not to extend to negligent acts, however honestly done and, for this purpose, the relevant clauses in such enactments should be examined."

We have taken due note of this recommendation of the Law Commission. We are of the view that the formulation is quite reasonable and eminently fair. It may be acted upon.

Law Commission of India, 1st Report, page 89, Para II, (IV), Note under "N. B.".

QUESTIONNAIRE
ON
LIABILITY OF THE STATE IN TORT

1. Do you support the suggestion that a tortious act committed by the State/its officials in purported exercise of their administrative powers/functions, be treated on par with a tortious act by a private person/individual?
   Have you any alternative suggestion on this issue?

2. (a) Do you support the suggestion that a tortious act committed by the State/its officials in purported exercise of their statutory powers/functions, be also treated on par with a tortious act by a private person/individual, subject, of course, to protective clauses, if any contained in the concerned enactment?
   Have you any alternative suggestion on this issue?

   (b) Are you in favour of exempting acts done in exercise of judicial and quasi-judicial functions from this rule? If yes, is it because of the inherent nature of the function or because of the Judges (Protection) Act, 1985?

3. Are you in favour of limiting the scope and sweep of the protective clauses, normally found in enactments? If yes, in what manner?

4. (a) Are you in support of providing that the State shall not be liable for any tortious act committed by it/its officials in purported exercise of their sovereign functions and that such a plea should be an exception to the rule stated in Questions 1 and 2?

   (b) In your opinion, is it possible to specify exhaustively which are the sovereign functions of the State?

   (c) Can you suggest a principle following which 'sovereign functions' of the State can be distinguished from other functions of the State?

   (d) Is it possible for you to specify exhaustively the 'sovereign functions' of the State? If so, please specify them.

5. (a) Are you in favour of the suggestion that where the fundamental rights of a citizen/person are violated by the State, it shall not be open to the State to plead the defence of sovereign functions or to plead the protection of protective clauses?

   (b) Do you support the practice of the Supreme Court and the High Courts awarding damages (subject to a final determination of the quantum of damages by a civil court later) for violation of fundamental rights in exercise of their power under Article 32 and Article 226 of the Constitution respectively?

6. Can you suggest any method by which prompt relief can be provided to citizens, without much expense, against the tortious acts committed by the officials of the State in their administrative capacity?

7. Are you in favour of amending Article 300 of the Constitution in such a manner as to specifically lay down in respect of which tortious acts, the State shall be liable or to specify the tortious acts for which it shall not be liable?

8. Have you any other suggestions on any of the issues dealt with in the Consultation Paper? If so, please state them.



NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

SUPERIOR JUDICIARY

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating a public debate and eliciting public response.

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Advisory Panel

on

Strengthening of the institutions of Parliamentary Democracy;
(Working of the Legislature, Executive and Judiciary;
their accountability; problems of Administrative,
Social and Economic Cost of Political
Instability; Exploring the possibilities
of stability within the discipline
of Parliamentary Democracy)

Member-in-charge

Justice Shri B.P. Jeevan Reddy

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CONTENTS

			Pages
Part – I	**Procedure for appointment of Judges of the Supreme Court and the High Courts**		**711**
	1.	Introduction	711
	2.	Background	712
	3.	Appointment of Judges to the Supreme Court	713
	4.	Appointment of Judges to the High Courts	715
	5.	The significance of consultation provided by articles 124 and 217	716
	6.	Appointment to the Subordinate Judiciary	718
	7.	The controversy	718
	8.	Past proposals – since 1945	719
	9.	The concept of National Judicial Commission	728
	10.	Position in certain other countries	730
Part – II	**Age of Retirement**		**731**
	1. Age of Retirement		731
	2. Post-retirement assignments		732
Part – III	**Transfer of Judges of the High Courts**		**733**
Part – IV	**Procedure for dealing with deviant behaviour and for removal**		**734**
	Questionnaire		**743**

Part I: Procedure of appointment of Judges of the Supreme Court and the High Courts

1. INTRODUCTION

1.1 This Consultation Paper deals with appointment, age of retirement, transfer, removal for "misbehaviour" and deviant behaviour not amounting to "misbehaviour" of the judges of the Supreme Court and the High Courts. The object behind this paper is to strengthen the superior judiciary and not to criticise it; wherever we have criticised it, it is with a concern for its image and independence.

1.2 The superior judiciary in India has performed exceedingly well over the last five decades and has contributed significantly to the advancement of public good and good governance. It has succeeded in preserving, protecting and promoting the Fundamental Rights of the citizens and vulnerable groups of citizens against the "innovations of exerted democracy" and for that purpose it has drawn substantially upon the Directive Principles of State Policy enshrined in Part IV. It has upheld the balance between the Union and the States, effectively enforced the rule of law and has advanced the cause of human rights. This has proved possible because of many a strong, independent and learned judges, of whom any nation can be justly proud of. Courts have not been infallible. They have made mistakes. They have at times "run counter to the deliberate and better judgments of the community". But, over all, the final judgment of the community will unquestionably be that the judiciary has performed well and that they have furnished the highest example of adequate results of any branch of Government. Over the last decade or two, however, certain weaknesses in the system have come to light, regarding which every Indian feels concerned. Indeed judiciary itself has been grappling with these problems which has ultimately led to the judiciary practically taking over the function of appointing and transferring the members of judiciary in as much as a proper selection of judges lies at the heart of all the problems facing the judiciary. The question of removal for 'proved misbehaviour and of measures to check deviant behaviour not amounting to 'misbehaviour' of judges of the High Courts and the Supreme Court is equally an important aspect.

1.3 Independence of judiciary is the cornerstone of our Constitution. It has been held to be a basic feature of our Constitution. For ensuring judicial independence, our Constitution has made a deliberate and conscious departure from other constitutions of the world – indeed, even from the Government of India Act, 1935. The appointment, transfer, discipline and all other service conditions of the subordinate judiciary was placed entirely in the hands of the judiciary; the executive was expected to make or issue formal orders only. So far as superior judiciary is concerned, the power of appointment was vested in the President but it was conditioned by the requirement of consultation with judiciary. A convention was developed according to which the recommendation always and invariably emanated from the Chief Justice of the High Court (in the case of appointment to High Court) and from the Chief Justice of India (in the case of the Supreme Court of India). While preparing this Consultation paper, we have kept in mind the necessity of preserving and promoting the concept of judicial independence and the all-pervading fact that independence of judiciary is a basic feature of our Constitution. We have also dealt with the oft-debated concept of a National Judicial Commission and the parameters within which such a commission, if one is thought advisable, should be constituted and composed.

1.4 Our concern has been that while in the matter of appointment, one can countenance a role for the executive, no such role can be countenanced in the matter of removal, transfer or in case of remedies for deviant behaviour not amounting to "misbehaviour". In all such matters it is the judgment of the peers that is given due recognition.

1.5 Our concern has been to effectively deal with and rectify instances of deviant behaviour among members of the superior judiciary to safeguard the fair name of judiciary, its

independence and its image. A few unworthy elements here and there are sullying the image of the judiciary. It has to be checked. For judiciary, its image and its reputation is all important; if that is tarnished, nothing remains. It is equally necessary to create mechanisms which serve to enhance the image and effectiveness of Superior Judiciary.

1.6 This Consultation Paper is intended to promote a debate within the aforesaid parameters and to introduce measures to enhance the public confidence in the Judicial Administration, so essential for promoting public good.

2. Background

2.1 Constitutional provisions relating to the Judiciary:

Judiciary is one of the three wings of the State. Though under the Constitution the polity is dual the judiciary is integrated which can interpret and adjudicate upon both the Central and State laws. The structure of the judiciary in the country is pyramidical in nature. At the apex, is the Supreme Court. Most of the States have a High Court of their own. Some States have a common High Court.

The appointment of Judges of the Supreme Court and their removal are governed by Article 124 of the Constitution of India. Articles 125 to 129 provide for certain incidental matters. The appointment and removal of the Judges of the High Courts are governed by Article 217. Articles 218 to 221 and 223 to 224A provide for certain matters incidental thereto. Article 222 provides for transfer of Judges from one High Court to another.

So far as the subordinate judiciary is concerned, the constitutional provisions relating thereto are contained in Articles 233 to 237. These provisions are, of course, supplemented by the rules made by the respective Governors of the States under the proviso to Article 309 of the Constitution.

2.2 **Jurisdiction of the Supreme Court:** The jurisdiction of the Supreme Court and the High Courts is truly extensive. The Supreme Court is clothed with the power to issue writs for enforcement of Fundamental Rights mentioned in Part III of the Constitution (Article 32). It also acts as the appellate court in civil, revenue, taxation and many other matters over the High Courts and other Tribunals. The powers of the Supreme Court are set out in Articles 131 to 140. The law declared by the Supreme Court is binding on all courts within the territory of India (Article 141) and it is the duty of every person and authority in the country to act in aid of and render necessary assistance for the enforcement of the orders of the Supreme Court (Article 144). The President has the power to seek the opinion of the Supreme Court on such questions of public importance as he thinks necessary (Article 143).

2.3 **Jurisdiction of High Courts:** The jurisdiction of the High Courts is equally extensive, if not more. Under Article 226, the High Court is invested with power to issue writs throughout the territory over which it exercises jurisdiction for the enforcement of the Fundamental Rights mentioned in Part III or for any other purpose. Every High Court exercises power of superintendence and control over all the Tribunals and Courts within its jurisdiction. It exercises appellate, revisional and reference powers over the decisions of the Courts, Tribunals and other authorities within its jurisdiction.

2.4 **Vesting of Governmental power in the judiciary:** The conferment of the power to issue writs to any authority in the country/state and the steady expansion of that power at the hands of our Supreme Court has come to vest governmental power in the judiciary. Administrative and quasi-judicial functions performed by the Government or any other authority are subject to judicial review by High Court and Supreme Court. The liberal interpretation placed on Articles 21 and 14 has brought every aspect of governance within the scrutiny of the courts. Indeed, it is no longer true to say – as was said by Alexander Hamilton more than two hundred years ago – that "the judiciary is beyond comparison the weakest of the three departments". It may have become as strong as the other two wings of the State, if not stronger.

2.5 **Subordinate Judiciary:** The civil and criminal courts below the High Court which may be referred to as subordinate judiciary are empowered to entertain and adjudicate upon all civil disputes and all kinds of criminal cases (except those which have been excluded from their jurisdiction). The higher-level officers, namely, district judges, exercise appellate power in both civil and criminal matters over the orders of Munsiffs and Magistrates. The structure of subordinate judiciary varies from State to State since it is within the power of the State to organize the subordinate judiciary in an appropriate manner. Broadly speaking, however, at the base of the pyramid, on the civil side, is the munsiff (or by what other name he is called). His jurisdiction is limited not only by territory but also by monetary limit. His orders are amenable to appeal. In between munsiff and district judge, there is a layer which may broadly be called subordinate judge. He exercises original civil jurisdiction on all matters and very often appeal against his order lies to the High Court. On the criminal side, the First Class Magistrate is at the base of the pyramid. He can try offences punishable with three years or less. Against his order an appeal lies to the sessions judge (who is called district judge on the civil side). In between these two officers, there is the Assistant Sessions Judge. He tries session cases punishable up to ten years. Generally speaking, an appeal against his order lies to the High Court.

2.6 **Independence of the Judiciary:** Having regard to the importance and significance attached to the function performed by the judiciary, the Constitution has consciously provided for separation of judiciary from the executive. Not only this, the Constitution discloses a distinct bias in favour of the independence of the judiciary. It is in furtherance of this objective that several provisions relating to the appointment and removal of judges, at whatever level they may be, have been enacted. A brief reference to the said provisions would now be in order.

3. Appointment of Judges to the Supreme Court

3.1 **Article 124(2):** Clause (2) of Article 124 *inter alia* says that:

> "every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:
>
> Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted."

3.2 Under our constitutional scheme, the President is the constitutional head. In exercise of the powers vested in him by the Constitution, he acts upon the aid and advice of Union Council of Ministers. So far as the executive power of the Union is concerned, it is exercised by the Union Council of Ministers in the name of the President.

3.3 Clause (2) of Article 124 speaks of 'consultation', whether it be with the Chief Justice of India, Judges of the Supreme Court or with the Judges of the High Court. The expression is not "concurrence". The Constituent Assembly debates show that when it was suggested by some of the members that the expression should be 'concurrence' and not 'consultation', it was not agreed to.[Ψ] Similarly, the suggestion to provide for approval of Parliament or its upper House - probably inspired by the U.S. Constitution – was also not agreed to by Dr. Ambedkar (see his speech in Constituent Assembly debates Vol.8 p.258).

3.4 **Practice followed till 1981:** A practice had developed over the last several decades according to which the Chief Justice of India initiated the proposal, very often in consultation with his senior colleagues and his recommendation was considered by the President (in the

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[Ψ] See in this connection the Memorandum of the Judges of the Federal Court and the Chief Justices of the High Courts with respect to the provisions of the draft Constitution concerning the judiciary, wherein "concurrence" of the Chief Justice of India was suggested. (B. Shiva Rao: The Framing of India's Constitution Vol. 4 at 193).

sense explained hereinabove) and, if agreed to, the appointment was made. By and large, this was the position till 1981.

3.5 **Collegium of judges:** In a decision rendered by a seven-judge Constitution Bench in *S.P. Gupta vs. Union of India* (AIR 1982 SC 149), the majority held that 'consultation' does not mean 'concurrence' and ruled further that the concept of primacy of the Chief Justice of India is not really to be found in the Constitution. It was held that proposal for appointment to High Court can emanate from any of the four constitutional functionaries mentioned in Article 217 – and not necessarily from the Chief Justice of the High Court. This decision had the effect of unsettling the balance till then obtaining between the executive and judiciary in the matter of appointment. The balance tilted in favour of the executive. Not only the office of the Chief Justice of India got diminished in importance, the role of judiciary as a whole in the matter of appointments became less and less. After this judgment, certain appointments were made by the Executive over-ruling the advice of the Chief Justice of India. Naturally, this state of affairs developed its own backlash. In 1993, a nine-Judge Constitution Bench of the Supreme Court in *Supreme Court Advocates-on-Record Association Vs. Union of India* (1993 (4) SCC. 441) over-ruled the decision in S.P.Gupta. The nine-Judge Bench (with majority of seven) not only overruled S.P. Gupta's case but also devised a specific procedure for appointment of Judges of the Supreme Court in the interest of "protecting the integrity and guarding the independence of the judiciary." For the same reason, the primacy of the Chief Justice of India was held to be essential. It held that the recommendation in that behalf should be made by the Chief Justice of India in consultation with his two senior-most colleagues and that such recommendation should normally be given effect to by the executive. Elaborate reasons were are recorded in support of the proposition that selection of judges must be in the hands of the judiciary in this country and how the systems prevailing in other countries are alien to our constitutional system. One of the judges relied upon Article 50 of the Constitution which speaks of separation of judiciary and executive and excluded any executive say in the matter of appointment to safeguard the "cherished concept of independence." It held at the same time that it was open to the executive to ask the Chief Justice of India and his two colleagues to reconsider the matter, if they have any objection to the name recommended but if, on such reconsideration, the Chief Justice of India and his two colleagues reiterated the recommendation, the executive was bound to make the appointment. Reaction to this judicial assertion of power have not been uniform*.

3.6 In short, the power of appointment passed into the hands of judiciary and the role of the executive became merely formal. The 1993 decision was reaffirmed in 1998 [1998 (7) SCC 739] in a unanimous opinion rendered by a nine-Judge Bench of the Supreme Court on a reference being made by the President under Article 143 of the Constitution. All the basic conclusions of the majority in the 1993 decision were reaffirmed. There was, however, some

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* Lord Templeman, a member of the Jud. Committee of the House of Lords has this to say with respect to this judgment: " – having regard to the earlier experience in India of attempts by the Executive to influence the personalities and attitudes of members of the judiciary, and having regard to the successful attempts made in Pakistan to control the judiciary and having regard to the unfortunate results of the appointment of Supreme Court Judges of the United States by the President subject to approval by Congress, the majority decision of the Supreme Court of India in the Advocates-on-Record case marks a welcome assertion of independence of Judiciary and is the best method of obtaining appointments of integrity and quality, a precedent method which the British could follow with advantage". (See the article 'The Supreme Court and the Constitution' by Lord Templeman – published in 'Supreme but not infallible' on the occasion of the Golden Jubilee Celebrations of the Supreme Court.) There is, of course, the other view voiced by Sir Robin Cooke, former Chief Justice of New Zealand, who has in his two articles "Making the Angels weep" (Law and Justice Vol. I page 109) and "Where Angels far to tread" (published in "Supreme but not infallible" page 97, Edition 2000) criticized the said two judgments. In the first article he said refereeing to the reasoning of the judgment that "when forgoing reasons are placed alongwith ordinary meaning of Consultation, many lawyers and many ordinary readers would probably not see them as adequate to change the meaning of that word to 'Concurrence'." He, however, concluded : "However vulnerable in detail it will surely be always seen as a dramatic event in the international history of jurisprudence." In the second article, he opined : "Rather than underling the primacy of the Chief Justice, the opinion (the third judges' case) thus appears to have shifted power, to a significant extent, to a small number of Supreme Court Judges other than the Chief Justice. This may be a far cry from anything envisaged by the framers of the Constitution of 1949 ..... All in all, the opinion of the Supreme Court in the third Judges' case must be one of the most remarkable rulings ever issued by a Supreme National Appellate Court in the Common law world." 714

variation. It was held that the recommendation should be made by the Chief Justice of India and his four senior-most colleagues (instead of the Chief Justice of India and his two senior-most colleagues) and further that Judges of the Supreme Court hailing from the High Court to which the proposed name comes from must also be consulted. In fact, the Chief Justice of India and his four senior-most colleagues are now generally referred to as the 'Collegium' for the purpose of appointment of Judges to the Supreme Court.

3.7 **Seniority to be followed in appointment of Chief Justice of India:** So far as the appointment of the Chief Justice of the Supreme Court of India is concerned, both the 1993 decision and the 1998 opinion lay down that the senior-most judge should always be appointed as the Chief Justice of India.

4. Appointment of Judges to High Courts

4.1 **Procedure for appointment of Judges of High Courts:** The procedure for appointment of Judges of the High Courts is slightly different from the one concerning the appointment of Judges of the Supreme Court. Clause (1) of Article 217 says that "every judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court and shall hold office, in the case of an additional or acting judge, as provided in Article 224, and in any other case, until he attains the age of sixty-two years". A reading of this clause shows that while the appointment is made by the President, it has to be made after consultation with three authorities, namely, the Chief Justice of India, the Governor of the State and the Chief Justice of the High Court. (Of course, in the matter of appointment of Chief Justice, the consultation with the Chief Justice is not required). Just as the President is the constitutional head, so are the Governors. However, according to the practice, which had developed over the last several decades and which was in vogue till the aforementioned 1981 decision of the Supreme Court (S.P.Gupta), the Chief Justice of the High Court used to make the recommendation which was considered by the Governor of the State (Council of Ministers headed by the Chief Minister) who offered his comments for or against the recommendation. The matter then went to the Central Government. At that stage, the opinion of the Chief Justice was sought and based upon such advice, the appointment was either made or declined, as the case may be. It may be noted that even clause (1) of Article 217 uses the expression 'consultation' and not 'concurrence'. The decision of the Supreme Court in S.P. Gupta on the meaning of 'consultation' applied equally to this Article. After the decision in S.P. Gupta, the executive made quite a few appointments to the High Courts which gave rise to a good amount of dissatisfaction among the relevant sections including the Bar leading to the nine-Judge Constitution Bench decision of the Supreme Court in 1993 aforementioned. The decision laid down that the recommendation for appointment to the High Court shall be made by the Chief Justice of the concerned High Court in consultation with his two senior-most colleagues. The opinion of the Chief Justice of India was given primacy in the matter and was to prevail over that of the Governor of the State or even that of the High Court, if inconsistent with his view. The President was of course to make the formal appointment just as in the case of a Judge of the Supreme Court. This position was affirmed in the Third Judges case (1998 (7) SCC 139).

1207 LJ&CA/2002—47A.

5. The significance of "consultation" provided by Articles 124 and 217

5.1 **'Consultation' and the concept of independence of judiciary:** None of the Constitutions[β] of the Commonwealth countries, nor the Constitution of U.S.A. (not even the Swiss and Japanese Constitutions), provides for "consultation" with the head of the judiciary or any other member of the judiciary in the matter of appointment of Judges. Only our Constitution does – and it could not have been without a purpose. Many of the leading members of the Constituent Assembly were lawyers of great repute. They knew the conditions in India – not only in the world of law but also public life. They held eminent positions in public life. Apart from Dr. Ambedkar, Alladi Krishnaswami Ayyar and K.M. Munshi, the great political leaders like Jawaharlal Nehru and Sardar Patel were also lawyers. The question arises why did they depart from other countries and provided this innovative procedure, when even the Government of India Act, 1935 [S.220 (2) concerning the appointment of Judges of High Courts] did not provide for such consultation? There can be no explanation for this innovation except that they were anxious to and concerned seriously with the concept of independence of judiciary. This provision is attributable to their conviction that at our stage of development and having regard to the propensities of the Executive (to control every organ of State and every institution of governance) they cannot be vested with the sole power of appointment to judiciary, a co-equal wing of government. True it is that the draft prepared by Sir B.N. Rao sought to import the U.S. model – as explained later in this paper – but there was practically no support for this model. The requirement of consultation with not only the Chief Justice of India but with certain other Judges at the Supreme Court and High Court level in Article 124 is an added indication of the concern the founding fathers had with the independence of the judiciary. They had before them the U.K., Australian, Canadian, Irish and other Constitutions which did not provide for any such consultation with the head of Judiciary either at federal or provincial level – much less with other judges, but yet chose this particular formulation. Evidently, they did not trust the Executive in India to make proper appointments and hence 'entrenched' the requirement of 'consultation' in the Constitution itself expressly. It is, therefore, perfectly consistent with the Constitution, for the Supreme Court to say, in its 1993 and 1998 decisions referred to hereinbefore, that the Chief Justice of India occupies a pre-eminent position and that the "consultation" contemplated by the said Articles should be a real and full consultation and further that since the Judges would be in a better position to judge the competence and character of the prospective candidates, their opinion should prevail in the matter of appointment. Indeed, as pointed out hereinafter, this is also the policy adopted by the Constitution with respect to the appointment of members of the subordinate judiciary. They are selected by the High Court; only the formal orders of appointment are issued by the Governor/ Government.

5.2 There is indeed another way of looking at the problem: The Constitution confers upon the President several powers – as distinguished from the executive power of the Union which is carried on in the name of the President. Article 74 says that "in exercise of his functions" (the President) shall "act in accordance with such advice" i.e. advice tendered to him by the Council of Ministers with the Prime Minister at its head. Even after its amendment by the Constitution (Forty-second Amendment) Act, 1976, the said requirement (to "act in accordance with" the

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[β] In U.K., judges of High Court and the Appeal Court (Supreme Court) are appointed by the Crown, on the advice of the Lord Chancellor. The Lord Chancellor occupies a position peculiar to that country, he is the head of the Judiciary, a member of the Cabinet and the Speaker of the House of Lords. In Australia, S.72 of the Constitution of Commonwealth of Australia provides merely that justices of the High Court (the Highest Court) shall be appointed by the Governor-General in Council in consultation with the Attorney-General (as provided by S.6 of the High Court of Australia Act, 1979) while judges of the State Supreme Courts are appointed by the Governors on the advice of the government wherein the Attorney-General of the States play an important role. In Canada, judges are appointed by the Cabinet (either federal or provincial) with a major role played by the Minister of Justice/the Attorney-General. In Ireland, judges are appointed by the President on the advice of the government. In Japan, by Emperor as designated by the Cabinet, in Switzerland, judges are elected by the Federal Legislature. In USA, as is well known, the President appoints them subject to confirmation by Senate. There is no uniformity in the procedures followed in different countries. The procedure in each country appears to have evolved over the years having regard to the peculiar constitutional development of each country.

advice) is not all pervading. There are certain areas where the President can act without, or even contrary to, such advice. For example, when the President has to choose a Prime Minister after a general election (or whenever such an occasion arises), the President has to act in his own discretion; the advice of the Union Council of Ministers with the Prime Minister at its head has, and can have, no application to such a situation; indeed he cannot act in this matter on the advice of the outgoing Council of Ministers. Similarly, where a Prime Minister suffers a no-confidence motion and thereupon advises the President to dissolve the House, the President is not bound by such advice. If the President finds that a viable alternative government can be formed, he is entitled to reject the advice of the Prime Minister, refuse to dissolve the House and swear in the alternative Prime Minister/Council of Ministers. It is thus clear that the requirement of acting on the advice of the Council of Ministers with the Prime Minister at its head cannot be said to admit no exceptions. It is the general rule but there can be exceptions. Articles 124 and 217, it is submitted, constitute yet another exception to the 'requirement' in Article 74 both because of the express language employed therein and also because of the concept of judicial independence which must necessarily be implied therein. It is well established that the over-arching concept of judicial independence calls for an interpretation of the Constitution consistent with the said concept. See the decision of the Supreme Court in *Chief Justice of A.P. Vs. L.V.Deekshitulu* (A.I.R 1979 SC 193)[Ψ]. Let us take Article 124 first. It says that "every judge of the Supreme Court shall be appointed by the President....after consultation with such of the judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose.....". The Chief Justice of India has necessarily to be consulted in case of appointment of a judge. (Article 217 is similar, with the difference that the consultation is with the Chief Justice of India, the Governor of the State and the Chief Justice of the High Court. If it is a case of appointment of the Chief Justice of the High Court, the consultation with the Chief Justice of the High Court is not necessary). If one reads Article 124/217 in the light of the principle of independence of judiciary (which is a basic feature of the Constitution and the concern with which is more than evident from the several provisions of the Constitution), giving full effect to the language used therein, it would follow that Article 74 has no application to Articles 124 and 217 and that under these articles, the President has to act in consultation with the authorities named in those articles alone. If the independence of judiciary (which means independence from the executive as well) is a basic feature of the Constitution, as held in several decisions of the Supreme Court including SCAORA, it follows by necessary implication that Articles 124 and 217 must be read consistent with the said concept i.e. so as to exclude executive influence therefrom. Articles 124 and 217 must be read as exhaustive on the subject. In other words, in the matter of appointment of judges of the Supreme Court and High Courts, the President has to act in consultation with only the authorities named in the said articles. The context excludes application of Article 74. It may also be a case of special (Articles 124 and 217) excluding the

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[Ψ] The facts and the ratio of these case are highly relevant and instructive. The President of India had constituted an Administrative Tribunal for Andhra Pradesh to adjudicate upon the service disputes of employees of the State. The Tribunal was vested with exclusive jurisdiction with respect to appointment, promotion and all other service conditions of persons holding "posts in the Civil Services of the State" among others. The question was whether employees of High Court are not persons holding "posts in the Civil Services of the State". The Court held that though in its ordinary connotation, the employees of the High Court and members of subordinate judiciary can be said to hold "posts in the Civil Services of the State", the other provisions of the Constitution concerning judiciary and the underlying concept of judicial independence must lead us to construe those words narrowly so as to exclude the employees of the High Court, members of the subordinate judiciary and employees in various courts under the control of the High Court. The Constitution Bench speaking through Sarkaria J. referred to Articles 229 to 235 and to the provisions in Chapters V and VI of the Constitution and held that the expression "Civil Services of the State" in Article 371 – D should be construed and understood in the light of the said Articles and the underlying scheme of the said Chapters. In this connection, the Constitution Bench quoted an earlier judgment of the Court saying that "while interpreting words in a solemn document like the Constitution, one must look at them not in a school-masterly fashion, not with the cold eye of the lexicographer but with the realization that they occur in 'a single, complex instrument in which one part may throw light on the other' so that the Constitution must hold a balance between all its parts". The court concluded by saying "In sum, the entire scheme of Chapters V and VI in Part VI epitomized in Articles 229 and 235 has been assiduously designed by the Founding fathers to ensure independence of the High Court and the subordinate judiciary". (Para 42).

general (Article 74). L.V.Deekshitulu's case is an authority for the proposition that literal interpretation has to be discarded if such interpretation has the effect of eroding the concept of judicial independence. The ill-effects of political domination in the appointment of judges has been amply and poignantly illustrated by the recent decisions of the U.S. Supreme Court and the Florida Supreme Court in the disputes relating to counting of votes and other alleged irregularities in the conduct of elections to the office of the President of U.S.A (2000-2001). Let us avoid political influence altogether in the matter of appointment of judges of Supreme Court and High Courts.

5.3 This aspect has to be borne in mind in any discussion concerning the appointment of Judges of the High Courts and the Supreme Court.

6. Appointment to the Subordinate Judiciary

6.1 **Subordinate Judiciary:** The appointment to subordinate judiciary is governed by Articles 233 to 237 of the Constitution and the rules made under the proviso to Article 309. The district judges, who are at the highest rung of the subordinate judiciary, are appointed both by direct recruitment and by promotion. The selection of direct recruit district judges is made by the High Court. On the basis of the recommendation of the High Court, the Governor appoints them. So far as promotion to the post of district judge is concerned, it is also made by the High Court alone, formal orders being issued by the Governor. So far as the appointment of munsiffs and magistrates (the lowest rung in the subordinate judiciary) is concerned, their selection is made by the Public Service Commission and the High Court. The practice in many States is that a Judge of the High Court nominated by the Chief Justice of that Court sits with the Public Service Commission for the purpose of selection. In some States, the power of selection is vested exclusively in the High Court. Here again the appointment is made by the Governor on the basis of the recommendation made by the designated judge and the Public Service Commission or by the High Court, as the case may be. So far as promotion from munsiff/magistrate to the intermediate higher level of subordinate judge /assistant sessions judge is concerned, it is made by the High Court itself. In short, in the matter of selection for appointment, promotion and postings of subordinate judiciary, the High Court is the real authority and the role of the State Government is formal in character. Indeed, with respect to subordinate judiciary, the disciplinary jurisdiction also vests in the High Court, on whose recommendation, formal orders are issued by the Governor. In all other service conditions, High Court is the competent authority, subject, of course, to the rules, if any, made under the proviso to article 309 of the Constitution.

7. The Controversy

7.1 While the method of selection (appointment by Government being a mere formality) to subordinate judiciary has not evoked any controversy, the method of appointment to and more particularly the actual manner in which appointments were made to the High Courts and the Supreme Court has been a subject matter of good amount of controversy, whether before the decision in S.P. Gupta or thereafter and even after the 1993 decision of the Supreme Court in Supreme Court Advocates-on-Record Association. While the decision in the S.P. Gupta was criticized for upsetting the existing situation by vesting the power of appointment in the executive and by diminishing the importance of the Chief Justice of India and the judiciary, the 1993 decision in SCAORA is criticized for precisely the opposite reasons. It is said by the critics of the 1993 decision that in a democracy, accountability is an important consideration and the authority or authorities making such appointments should be accountable to the people. A distinction is made between appointment and functioning. While in the matter of functioning, the executive can have no say, it is said, the executive must be necessarily involved in the process of appointment. The argument is that someone must be responsible for the appointment made and since Chief Justice of India or his colleagues are not accountable to the people, the concentration of power of appointment in them is undemocratic. The argument further is that the executive is accountable to the Legislature, which in truth represents the will of the people – the consumers of justice - and that involvement of Executive is the only way of infusing the element of democracy and accountability in the process relating

to the appointment of judges of the High Courts and Supreme Court. The contrary argument in support of the existing method (ordained by the decisions of the Supreme Court in 1993 and 1998 aforementioned) is that in Indian conditions and culture, entrusting this power to, or involvement of the Executive in the appointment process is bound to prove detrimental to the independence and integrity of the judiciary, as the experience during the years 1973 to 1977 and again during the period 1982 to 1993 (period during which S.P. Gupta held the field) shows. The supersessions, arbitrary and motivated transfer of Judges of High Court, the manner in which additional Judges in High Courts were dealt with (either by extensions for short periods or by not confirming them), the several attempts at muzzling the judiciary during the period 1973 to 1977 (including the supersession of senor-most judges of the Supreme Court in the matter of appointment of Chief Justice of India) and the manner in which several appointments were made during 1981 to 1993 are all said to furnish proof of the fact that in our present stage of development, the domination or involvement of the executive in this process is not desirable. It is said that democratic culture has not yet taken root in our country and that feudal tendencies are very much part of our thought and action. The attempt to control every institution, personalized rule, refusal to see the merit of diffusion of power of governance (a basic feature of democracy) are propensities which are not conducive to an independent and efficient judiciary. If the vesting of the power of selection of subordinate judiciary in the High Courts exclusively is not bad, how does the selection of Judges of High Courts and the Supreme Court become bad – goes the argument. It is further pointed out by the proponents of this point of view that today executive is the biggest litigant and the power vested in the Supreme Court and the High Courts by Articles 32 and 226 respectively is intended to act as a check upon the executive and that today the major portion of the work in every High Court and the Supreme Court is under these provisions; if so vesting the power of appointment, whether wholly or partially, in the executive is bound to prove prejudicial to this constitutional perspective. The U.K. example, it is said, is not relevant to this country at the present stage of development and in so far as U.S.A. is concerned, it cannot and ought not to be emulated in this country, more particularly after the recent episode (the un-edifying manner in which the judiciary in that country acted in the Bush-Gore election controversy). Incidentally, the American experience reinforces the inadvisability of executive's role in the matter of appointment.

8. Past proposals – since 1945

8.1 **Introduction:** For a proper appreciation of the problem dealt with herein, it is relevant to notice the several suggestions put forward and attempts at reform tried in last several years in this behalf. This paper being only a Consultation Paper, we do not wish to make it very voluminous. They are, briefly, as follows:

8.2 **Recommendations of Sapru Committee:** In the year 1945, the Sapru Committee (constituted to look into this aspect in view of the impending independence of the country) recommended that "Justices of the Supreme Court and the High Courts should be appointed by the head of State in consultation with the Chief Justice of Supreme Court, and, in the case of High Court Judges, in consultation additionally with the High Court Chief Justice and the head of the unit concerned."

8.3 **Recommendations of the High Powered Committee appointed by the Constituent Assembly:** The Constituent Assembly appointed a high-powered ad hoc committee consisting of outstanding jurists of the country for recommending the best method of selecting Judges for the Supreme Court. The committee submitted a unanimous report opining that it would not be desirable to leave the power of appointing Judges of the Supreme Court with the President alone. It recommended two alternative methods in that behalf, namely, (i) the President should, in consultation with the Chief Justice of the Supreme Court (so far as appointment of puisne Judge is concerned), nominate a person whom he considers fit to be appointed as Judge of the Supreme Court and the nomination should be confirmed by a majority of at least seven out of a panel of eleven (composed of some of the Chief Justices of the High Courts, some members of both the Houses of Central legislature and some of the law officers of the Union); (ii) the said panel of eleven should recommend three names out of which the President, in consultation with the Chief Justice, may select a Judge for appointment. The same procedure should be

followed for the appointment of Chief Justice of the Supreme Court except of course that in his case there should be no consultation with the Chief Justice. [B. Shiva Rao : The Framing of India's Constitution. Vol.2 at p. 590].

8.4 **Suggestion of Shri B.N. Rao:** In his Memorandum on the Union Constitution, Shri B.N. Rao, the Constitutional Advisor suggested that appointment of judges should be made by the President with the approval of at least two-thirds of the Members of the Council of States, which was proposed to be constituted to advise the President in exercise of his discretionary functions and of which the Chief Justice of the Supreme Court was to be an ex-officio member.

8.5 **Recommendations of Federal Court:** The draft Constitution was forwarded to the Federal Court for its views. In March, 1948 a conference of Judges of the Federal Court (including its Chief Justice) and Chief Justices of the High Courts was held to consider the proposals in the draft Constitution conceming the judiciary. The Memorandum submitted by the conference recommended that the appointment of the Judges of the High Court should be made by the President on the recommendation of the Chief Justice of the High Court after consultation with the Governor of the State and with the concurrence of the Chief Justice of India.

8.6 **Basis adopted in articles 124 and 217:** Perhaps, the several proposals mentioned above (except the one by Shri B.N. Rao) constitute the basis for the method of appointment devised by Articles 124 and 217. At the same time, the Constituent Assembly chose to employ the expression "consultation" in preference to the expression "concurrence".

8.7 **Fourteenth Report of the Law Commission of India:** In its Fourteenth Report (1958), the First Law Commission of India, headed by very distinguished jurist and first Attorney General of India, Shri M.C. Setalvad, and composed of some very distinguished personalities of the time, examined this issue at length. In its concluding observations it observed: "the almost universal chorus of comment is that the selections are unsatisfactory and that they have been induced by executive influence. It has been said that these selections appear to have proceeded on no recognizable principle and seem to have been made out of considerations of political expediency or regional or communal sentiments.....". After noticing that the appointments made have not always been on merit, the Report observed: "It is widely felt that communal and regional considerations have prevailed in making the selection of judges.....What perhaps is still more to be regretted is the general impression that now and again executive influence exerted from the highest quarters has been responsible for some appointments to the Bench.....". The report recommended that every appointment to the High Court and the Supreme Court should be made with the concurrence of the Chief Justice of India. In effect, this report sought to revive the idea of 'concurrence', which was not accepted by the Constituent Assembly. Of course, this recommendation was not implemented.

8.8 **Administrative Reforms Commission:** The Study Team on Centre-State Relations of the Administrative Reforms Commission also went into the question relating to appointment of Judges. It agreed with and affirmed the recommendation made by the Law Commission in its Fourteenth Report.

8.9 **Recommendations of High Court Arrears Committee:** In 1970s, the High Court Arrears Committee also went into this question though it did not deal with the format of the mechanism for appointment. It suggested that the exercise for filling the vacancy must start well in advance so that the selection can be finalized by the time the vacancy occurs. It recommended that if the recommendation made by the Chief Justice of the High Court is not dealt with within one month from the date of its receipt, the State Government must be deemed to have accepted the recommendation and action must be taken by the Central Government for expeditious disposal of the proposal. This recommendation pertains to appointment to the High Courts only.

8.10 **Appointment mechanism suggested by the Convention of the Bar:** Following the controversy arising from the supersession of three senior-most Judges of the Supreme Court in the matter of appointment to the office of the Chief Justice of India in 1973, a Convention of

the Bar of the whole country was held on 11-12 August, 1973. It unanimously adopted a resolution on the criteria, machinery, and procedure for appointment of Chief Justice and Judges. The resolution recommended, *inter alia*, that the appointment of the High Court Judges should be made on the recommendation of a Committee of three senior-most Judges of the High Court (including the Chief Justice) and two senior advocates nominated for the purpose by the Association of the High Court Bar. Initiative in making a recommendation should also be with this Committee and not with any executive authority. In fact, this is the first occasion when the Bar was sought to be brought into the appointment mechanism.

8.11 **Observations of the Supreme Court in Shamsher Singh's Case:** In its judgment in *Shamsher Singh v. State of Punjab* (AIR 1974 S.C. 2192), the Constitution Bench of the Supreme Court dealt with the appointment of Judges. The Bench observed: "In all conceivable cases, consultation with highest dignitary of Indian justice will and should be accepted by the Government of India and the court will have an opportunity to examine if any other extraneous circumstances have entered into the verdict of the Minister, if he departs from the counsel given by the Chief Justice of India. In practice, the last word in such sensitive subject must belong to the Chief Justice of India, the rejection of his advice being ordinarily regarded as prompted by oblique considerations vitiating the order." A most emphatic statement regarding the role of Chief Justice of India in all such matters.

8.12 **80th Report of the Law Commission of India:** In the year1977, at the instance of the then Prime Minister of India, the Ministry of Law, Justice and Company Affairs requested the Law Commission to examine the question of appointment of Judges of High Court and Supreme Court and to submit a report. The Law Commission headed by Shri H. R. Khanna J. went into the matter at length and recommended (by the time of submission of the Report Shri H.R.Khanna J. resigned and hence it was sent by a Member of the Commission) that while making a recommendation for appointment of a Judge of a High Court, the Chief Justice of the High Court should consult his two senior-most colleagues and while forwarding the recommendation should incorporate therein the fact of such consultation and indicate the views of the two colleagues. The unanimous recommendation of this body, it was recommended, should normally be accepted by the executive [80th Report on Method of Appointment of Judges, (1979)]. Interestingly, the Commission had proposed in its questionnaire, constitution of a high level panel (a consultative panel, called "Judges Appointment Commission") consisting of persons known for their integrity, independence and judicial background to ensure dispassionate scrutiny and to eliminate extraneous considerations in the matter of these appointments (the panel was to consist of Chief Justice of India, Minister for Law and Justice and three persons each of whom has been the Chief Justice or a Judge of the Supreme Court) but it dropped the proposal in view of the opposition by most of the High Courts. The Law Commission also recorded its views on transfer of High Court Judges, appointment of senior-most puisne Judge as Chief Justice and so on – all of which need not be set out herein.

8.13 **79th Report of the Law Commission of India:** In the Seventy-ninth Report of the Law Commission of India (on Delay and Arrears in High Courts and other Appellate Courts [1979]), it was recommended that in the matter of appointment of Judges of the Supreme Court, the Chief Justice of India should consult his three senior most colleagues and should, in the communication incorporating his recommendation, specify the result of such consultation and reproduce the views of each of his colleagues so consulted. It appears that this procedure was followed between 1977 and 1979 but given up thereafter. Though the said recommendation applies equally in the matter of appointment to the High Courts, there is no material before us to show whether the said recommendation was ever followed and if so, for what period.

8.14 **Bar Council's 1979 Opinion:** Reference may also be made to an opinion expressed by the Bar Council of India in 1979 that of all the segments of the society, the members of the Bar are preeminently suited to judge persons who should be appointed as Judges of the High Court and Supreme Court and, therefore, any reform or modification in the model for selection and appointment of Judges of the High Court and Supreme Court must provide for adequate representation of the organized bar in the mechanism.

8.15 **Majority view in S.P. Gupta's case:** In S.P. Gupta's case (1981) Justice Bhagwati

(who was in the majority) did not accept the concept of the primacy of the Chief Justice of India. He opined that proposal for appointment can emanate either from Chief Justice of India or from any of the other three constitutional functionaries (in the case of appointment to High Court) and that it was open to the Central Government to override the opinion of Chief Justice of India or the other two constitutional functionaries. He said that opinion of all the three functionaries to be consulted (Article 217) stands on equal footing. He added, quite significantly, that if the opinion of Chief Justice of India and Chief Justice of the High Court is unanimous, the Government should ordinarily accept it. In the course of his opinion, the learned Judge also referred to the desirability of a collegium to make recommendation to the President in regard to appointment of Supreme Court and High Court Judges. He thought that such a collegium should be broad-based and should make the recommendation in consultation with wider interests. He referred to the fact that in countries like Australia and New Zealand the idea of a Judicial Commission has been gaining ground.

8.16 **Recommendations of Bar Council of India for Collegium**: The Bar Council of India organized a national seminar of lawyers at Ahmedabad on 17th October, 1981. It opined that the role of executive in the matter of appointment to High Court and Supreme Court should only be formal and minimal. The initiative in the matter of selection and appointment of Judges should invariably rest with the Chief Justice of India. For appointment to the Supreme Court, it recommended a collegium consisting of (1) the Chief Justice of India, (2) five senior Judges of the Supreme Court, and (3) two representatives of the Bar representing the Bar Council of India and the Supreme Court Bar Association. The recommendation of such collegium should be binding on the President though it would be open him to ask for reconsideration of specific cases on stated grounds. In the matter of appointment to the High Court, it was recommended, the collegium should consist of the Chief Justice of the High Court and his two senior-most colleagues and two leading advocates to be nominated by the Bar Association of the High Court as its representatives.

8.17 **121st Report of Law Commission of India for Constitution of a National Judicial Service Commission**: The Law Commission again went into this matter at great length in the year 1987. Its recommendations are contained in the One Hundred Twenty-first Report on a New Forum for Judicial Appointments submitted in July, 1987. After noticing the several recommendations made earlier and the developing trends in other countries, the Law Commission recommended the constitution of a National Judicial Service Commission. It opined "a broad based National Judicial Service Commission representing various interests with pre-eminent position in favour of the judiciary is the demand of the times." The Report recommended that the Judicial Service Commission should be composed of eleven persons, namely, the Chief Justice of India and three senior most Judges of the Supreme Court, the immediate predecessor in office of the Chief Justice of India, three senior most Chief Justices of the High Courts, Minister for Law and Justice, the Attorney General of India and an outstanding law academic. The report further opined that it must be left to such Commission to devise its own procedure for initiation of proposal for recommending individuals for appointment and that no hard and fast rule can be laid down in that behalf. It was observed that recommendation of such a Commission should be binding upon the President but it shall be open to the President to refer the recommendation back to the Commission in any given case along with information in his possession regarding the suitability of the candidate. If, however, after reconsideration, the Commission reiterates its recommendation, the President shall be bound to make the appointment. It was also recommended that the Chief Justice of the High Court, to which appointment is proposed to be made, should be co-opted as a member of the Commission. Besides the Chief Justice of the High Court, the Chief Minister of the State (wherein the High Court is situated) was also recommended to be co-opted. (This was on the premise that Governor is only a constitutional head who has to act upon the advice of the Chief Minister). It is evident that the Law Commission had in mind the appointment to High Courts only. It does not appear to have dealt with appointment to Supreme Court in this Report.

8.18 **Proposals for Constitution of a National Judicial Commission contained in the lapsed Constitution (67th Amendment) Bill, 1990**: In the year 1990, Shri Dinesh Goswami, the then Minister for Law and Justice introduced in Lok Sabha (on 18th May, 1990) a Bill [The Constitution (Sixty-seventh Amendment) Bill, 1990] providing for the constitution of a National

Judicial Commission and making appointments to the Supreme Court and the High Court on the basis of its recommendation. The object and reasons appended to the Bill stated the object of the said amendment was to obviate the criticisms of arbitrariness on the part of executive in such appointments and transfers and also to make such a appointments without any delay. The Bill proposed introduction of Part XIIIA (apart from amending Articles 124, 217, 222 and 231) in the Constitution containing Article 307. The proposed Article read thus:

"PART XIIIA
NATIONAL JUDICIAL COMMISSION

Constitution of National Judicial Commission and its functions.

307. (1) The President shall by order constitute a Commission, referred to in this Constitution as the National Judicial Commission.

(2) The National Judicial Commission shall make recommendations to the President as to the appointment of a Judge of the Supreme Court (other than the Chief Justice of India), a Judge of a High Court and as to the transfer of a Judge from one High Court to any other High Court.

(3) The National Judicial Commission shall, -

(a) for making recommendation as to the appointment of a Judge of the Supreme Court (other than the Chief Justice of India), a Chief Justice of a High Court and as to the transfer of a Judge from one High Court to any other High Court, consist of -

1. the Chief Justice of India, who shall be the Chairperson of the Commission; and

2. two other Judges of the Supreme Court next to the Chief Justice of India in seniority;

(b) for making recommendation as to the appointment of a Judge of any High Court, consist of –

(i) the Chief Justice of India, who shall be the Chairperson of the Commission;

(ii) the Chief Minister of the concerned State or if a Proclamation under article 356 is in operation in that State the Governor of that State;

(iii) one other Judge of the Supreme Court next to the Chief Justice of India in seniority;

(iv) the Chief Justice of the High Court, and

(v) one other Judge of the High Court next to the Chief Justice of that High Court in seniority.

(4) Subject to the provisions of any law made by Parliament, the procedure to be followed by the National Judicial Commission in the transaction of its business shall be such as the President may, in consultation with the Chief Justice of India, by rule determine.

(5) The National Judicial Commission shall have a separate secretarial staff and their conditions of service shall be such as the President may, in consultation with the Chief Justice of India, by rule determine.".

8.19 Articles 124, 217, 222 and 231 were proposed to be amended accordingly. One such amendment to Article 124(2) is addition of a proviso to the said clause. It read : "provided that where the recommendations of the National Judicial Commission is not accepted, the reasons therefore shall be recorded in writing." The Explanation appended to the said clause provided further that no person shall be appointed thereunder unless recommended by the National Judicial Commission. A reading of the several provisions of the Bill show an attempt to shift the power of selection of judges of Supreme Court and High Courts to Judiciary in the main. However, the Bill lapsed with the dissolution of that Lok Sabha.

8.19.1 **Arrears Committee:** In the year 1989, the Government of India appointed, on the basis of the recommendation made by the Chief Justices Conference, a Committee of three Chief Justices of the High Courts to go into the question of large arrears in the High Courts and to suggest measures to reduce them. In that connection, the Committee (Justice V.S. Malimath, C.J. Kerala, Justice P.D. Desai, C.J. Calcutta and Dr.A.S. Anand, C.J. Madras) constituted by the Government of India on the recommendation of the Chief Justices Conference, went into and examined the method of appointment of Judges (Chapter VI, Volume II). In Chapter VII of the said Volume, the Committee also considered the merits and demerits of the Constitution (Sixty-seventh Amendment) Bill, 1990 proposing constitution of the National Judicial Commission. Having regard to the high level of the Committee and the elaborate study they made of the subject, it would be appropriate to notice their views.

8.19.2 **Views of Arrears Committee:** In Chapter VI of Volume II, the Committee noticed the method of appointment of High Court Judges under the Government of India Act, 1919, Government of India Act, 1935, Expert Committee Report of 1947, recommendations of the Judges Conference 1948, the Constituent Assembly debates, the purport of Article 217 of the Constitution, the principles contained in S.P. Gupta's case and the non-observance of the Memorandum of Procedure and observed as follows in paras 6.10 and 6.11:

> "6.10 The fact situation aforesaid has led to a loss of credibility and a serious threat to the independence of the judiciary. Alarmed by this development, the Law Commission, jurists, academicians, lawyers, etc. bestowed serious thought upon the matter. An almost unanimous voice came to be echoed to minimize the executive's say and to vest the last word in the matter of appointment of judges in the Chief Justice of India.
>
> 6.11 The present system of appointment of Judges to the High Courts has been in vogue for about four decades. It functioned satisfactorily as long as the well-established conventions were honoured and followed. The gradual, but systematic violation and virtual annihilation of the conventions over the past two decades or so is essentially responsible for the present unfortunate situation. Has the system, therefore, failed or have the concerned failed the system is an all important question. It is apparent that the system has not failed, but all those concerned with operating the system have failed it by allowing it to be perverted."

8.19.3 **Recommendations of the Arrears Committee:** The Committee then noticed the 80th Report of the Law Commission (which affirmed the correctness of the existing procedure) submitted in 1979 as well as the 121st Report of the Law Commission (which suggested the constitution of the National Judicial Service Commission). The Committee also referred to Bhagwati J's opinion in S.P. Gupta, views expressed at the seminar organized by Bar Council of India Trust at Ahmedabad in October 1980 and to the views expressed by Justice Y.V. Chandrachud, then Chief Justice of India in 1983 regarding the constitution of a collegium. After examining the aforesaid material in extenso the Committee made the following recommendation:

> "6.19 One common thread which passes through the various suggestions is that the role of the executive in the matter of appointment of Judges

should be diluted and that the cause for most of the ills in the functioning of the present system could be traced back to the veto power of the executive. This, indeed, is capable of being remedied by making certain amendments to Article 217 providing for concurrence of the Chief Justice of India, instead of consultation with him, in the matter of appointment of Judges of the High courts. The Committee is conscious of the fact that the recommendation of the joint Conference of the Judges of the Federal Court and Chief Justice of the High Courts, convened by the Chief Justice of the Federal Court, and also a specific amendment moved to Draft Article 193 (corresponding to Article 217 of the Constitution), providing for concurrence of the Chief Justice of India came to be rejected, when the articles concerning the judiciary came up for debate, in the Constituent Assembly. However, it cannot be overlooked that Dr. Ambedkar had expressed the view that the provision regarding consultation with the President of India and the Chief Justice of India was "sufficient for the moment". The experience of the working of Article 217 for the last about two decades has belied the hope and belief expressed by Dr. Ambedkar. A time has come to revive the proposal with regard to the concurrence of the Chief Justice being made a pre-requisite to the appointment of Judges. The Satish Chandra Committee had also expressed a similar view. The misgivings and apprehensions which weighed in rejecting the proposed amendment during the debate in the Constituent Assembly can be allayed by providing that the Chief Justice of India should consult such of the senior Judges of the Supreme Court as he deems necessary, besides the Chief Justice of the High Court concerned before giving his concurrence.

6.20 In the light of the foregoing discussion, the Committee proposes that the main portion of clause (1) of Article 217 be substituted as follows:

"217. (1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Governor of the State, and, in the case of appointment of a Judge, other than the Chief Justice, the Chief Justice of the High Court and with the concurrence of the Chief Justice of India, and shall hold office until he attains the age of sixty-two years:

Provided that the Chief Justice of India shall give concurrence after consultation with such of the Judges of the Supreme Court as he deems necessary and the Chief Justice of the High Court concerned."

The Committee further recommends that in the existing proviso to clause (1) of article 217, the word "further" be added in between the words "provided" and "that". In view of the recommendation of the Committee regarding deletion of Article 224, the expression "in the case of an additional or acting judge, as provided in Article 224, and in any other case" has not been incorporated in the amendment proposed above."

(The Committee also examined the issue of transfer of High Court Judges and after an elaborate discussion, recommended amendment of Article 222 making the consent of the concerned Judge a condition for his transfer).

8.19.4 **Views of Arrears Committee against Constitution of a National Judicial Commission:** In Chapter VII of their Report, the Arrears Committee examined the Constitution (Sixty-seventh Amendment) Bill, 1990. The Committee first noticed the unanimous resolution of the Chief Justices Conference held on October 10-11, 1988 opposing the concept of a National Judicial Service Commission as recommended in the 121st Report of the Law Commission. The Resolution said that such a Commission was "neither necessary nor expedient". It then added: "The strain to which the system has been put in the recent past on

account of erosion of the primacy of the judiciary in the matter of appointment to the higher judiciary is capable of being rectified by drawing suitable ways and means within the existing constitutional framework and appropriate measures in that direction being taken expeditiously."

8.19.5 The Committee then noticed the proposed Article 307 (in Part XIIIA) and strongly opposed the inclusion of the Chief Minister in the Commission for appointment of High Court Judges. It observed:

> "Instead of removing the vice of executive interference, which has vitiated the working of the present system, the presence of the Chief Minister on the recommendatory body actually elevates him from the status of a mere consultee to the position of an equal participant in the selection process of the recommendatory body. By making the Chief Minister as an equal party, when he is not equipped to offer any view in regard to the merit, ability, competency, integrity and suitability of the candidates for appointment, the scope of executive interference is enhanced." In para 7.11, the Committee recommended a different composition of the Commission. It suggested that besides the Chief Justice of India and two senior-most Judges, two more members be appointed by the President on the recommendation of the Chief Justice of India from out of the sitting Judges of the Supreme Court. In para 7.13, the Committee set out the procedure to be followed under Article 307 (4)(proposed). Having regard to its relevance it bears reproduction of the said para here. It reads:
>
> "7.13 Article 307(4) provides that the procedure to be followed in the transaction of business by the Commission shall be regulated by the law made by the Parliament and until then, in accordance with the rules made by the President, in consultation with the Chief Justice of India. The procedure to be followed in the matter of initiating recommendation for appointment of Judges and about their consideration by the Commission are matters of vital importance. A wrong and imperfect procedure without necessary safeguards may virtually nullify the object of the Constitutional provision. It is an unsatisfactory situation that till the procedure is regulated by any law made by the Parliament, the same can be prescribed by the President in consultation with the Chief Justice of India. The President would act on the advice of his Council of Ministers. He is only required to consult the Chief Justice of India and consultation is not the same as concurrence. There is, thus, scope for the executive to prescribe by rules a procedure which may not be conducive to the attainment of the object of the proposed amendment. In the opinion of the Committee, the procedure should be prescribed along with the enactment of Article 307 and the amendment of other articles and it should be annexed as a Schedule to the Constitution. That would almost ensure that the prescribed procedure then cannot be amended by a simple majority and the possibility of tinkering with it is minimized. Such procedure should *inter alia* provide for full and formal record of the deliberations of the Commission being maintained which alone would constitute the official record of the transaction of the business of the Commission."

8.19.6 The Committee then analysed the proposed article 124(2) and noticed that according to it, the recommendation of the Commission is not binding upon the President and then referred to the several situations that may arise in that behalf. Accordingly, the Committee made the following recommendations in para 7.18:

> "7.18 In the light of the foregoing discussion, the Committee recommends:
>
> (1) That the reasons recorded for not accepting the recommendation

of the Commission regarding appointment of a Judge of the Supreme Court shall be communicated to the Commission to enable it to reconsider the matter in the light of such recorded reasons.

(2) That in case the Commission on reconsideration affirms its earlier recommendation, it shall be made obligatory on the President to make the appointment in accordance with such recommendation.

(3) That the reasons should also be required to be recorded in case the appointment is proposed to be made by varying the order in which the names are recommended by the Commission; such reasons should be communicated to the Commission to enable it to reconsider the matter and in case the Commission, after reconsideration, reaffirms the order in which the recommendations had been made, the appointments shall be made in that order.

(4) A reasonable time limit shall be fixed within which the President to take a decision on the recommendation of the Commission."

8.19.6.1 With respect to the appointment of Chief Justice of India dealt with by Article 124(2), the Committee made the following recommendation in para 7.20:

> "7.20 The Committee, therefore, recommends that the second proviso to Article 124(2) be deleted and an appropriate proviso be substituted to the effect that the seniormost Judge of the Supreme Court shall ordinarily be appointed as the Chief Justice of India. However, in case he is not proposed to be appointed as Chief Justice of India, reasons therefor shall be recorded in writing and the appointment shall then to be made in consultation with the seven Judges next in order of seniority to the seniormost Judge, after communicating to them the recorded reasons."

8.19.6.2 With respect to Article 217 (appointment of High Court Judges); the recommendations of the Committee, in para 7.22, are similar to those relating to appointment of Supreme Court Judges.

(The Committee also examined Article 222 as proposed to be amended by the said Amendment Act and recorded its recommendations in that behalf).

8.20 **Purpose of 67th Amendment Bill served by the judgement in SCAORA:** We have set out hereinabove the several methods of appointment (to Supreme Court and High Courts) suggested by the various bodies, committees and organizations. We have also set out the method and procedure of appointment devised by the 1993 decision of the Supreme Court in SCAORA and in the 1998 opinion rendered under Article 143. It would be evident therefrom that the 1993 decision gives effect to the substance of the Constitution (Sixty-seventh Amendment) Bill, without of course calling it a 'National Judicial Commission', and without the necessity of amending the Constitution as suggested by the said Amendment Bill. Indeed, it carries forward the object underlying the Amendment Bill by making the recommendations of the Chief Justice of India and his colleagues binding on the President. The 1998 opinion indeed enlarges the 'collegium'. In this sense, the purpose of the said Amendment Bill evidenced by the proviso to Article 124(2) and the Explanation appended thereto, is served, speaking broadly. The method of appointment evolved by these decisions has indeed been hailed by several jurists and is held out as a precedent worthy of emulation by U.K. and others. (See the opinion of Lord Templeman, a member of the House of Lords, cited hereinabove.) The said decisions lay down the proposition that the "consultation" contemplated by Articles 124 and 217 should be a real and effective consultation and that having regard to the concept of Judicial independence, which is a basic feature of the Constitution, the opinion rendered by the Chief Justice of India (after consulting his colleagues) shall be binding upon the Executive. In this view of the matter, much of the expectations from a National Judicial Commission

(N.J.C) have been met. The said Constitution Amendment Bill was, it would appear, prepared after a wide and elaborate consultation with all the political parties and other stakeholders. However, the aspect disciplinary jurisdiction remains unanswered. We may however discuss the concept of an N.J.C. which may cover both appointments and matters of discipline.

9. The Concept of National Judicial Commission

9.1 **The Constitution (67th Amendment) Bill, regarding National Judicial Commission:** The concept of National Judicial Commission has been widely debated in our country. The Constitution (67th Amendment) Bill, 1990 (since lapsed) spoke of a National Judicial Commission. Many other Organizations too have put forward their own versions.

9.2 **Significance of the Composition of National Judicial Commission:** When we talk of a National Judicial Commission, what is fundamentally important is its composition. Its composition should not be such as to affect directly or indirectly the independence of the judiciary and the power of judicial review, both of which have been held to be the basic features of our Constitution.

9.3 Our Constitutional system comprises the written Constitution, the conventions which have been developed and are being followed and the interpretation of the Constitution by the Supreme Court. Though Articles 124 and 217 speak of a Judge of the Supreme Court and of the High Court being appointed by the President in consultation with the Chief Justice of India and certain other specified authorities, a convention has evolved over the last 50 years where under the proposal for appointment is initiated by and emanates only from the Chief Justice of the High Court (in the case of appointment to the High Court) and the Chief Justice of India (in the case of appointment to the Supreme Court). The exceptions to this rule have been very few, may be not more than a handful over the last fifty one years. Even where the executive thought of some persons for appointment, the suggestion was put to the concerned Chief Justice and if the latter agreed with it, he sent up the proposal. It can, therefore, be said that a convention that every proposal should emanate and originate from the Chief Justice is firmly established in this country.

9.4 The meaning and ambit of the 'consultation' contemplated under Articles 124 and 217 has been thoroughly debated and pronounced upon by the Supreme Court. Even though a particular interpretation was placed thereon in S.P. Gupta (1981), which was indeed at variance with the aforesaid convention, it was over-ruled promptly by a larger Bench in SCAORA (1993). (The ratio of the said two decisions has already been referred to hereinabove) Indeed even during the period 1981 to 1993, the aforesaid convention was followed, may be with three or four aberrations. What is further significant is that when the question relating to the meaning of 'consultation' contemplated by the said Articles arose for consideration again in the Presidential reference (1998), the Government of India was asked to clarify its stand with respect to the decision in SCAORA. The learned Attorney General stated, on instructions, - a statement which is recorded in the judgment of the court that the Government of India was not seeking a review or reconsideration of the majority decision in SCAORA and further that the Union of India would accept and treat as binding the answers of the Supreme Court on the nine questions referred to it. The opinion rendered on the Presidential reference has reaffirmed the interpretation of the said expression placed in SCAORA with a slight improvement i.e., the collegium in the Supreme Court was to comprise the Chief Justice of India and four senior judges instead of the Chief Justice of India and two seniormost judges as provided by SCAORA.

9.5 It must, therefore, follow that under our constitutional system, the proposal for appointment of a judge to the Supreme Court or to the High Court should emanate and originate from the Chief Justice of India (and his colleagues, as clarified in SCAORA) or the Chief Justice of High Court (and his colleagues), as the case may be, and from no other quarter. Even if the executive has someone in mind, they must suggest it to the Chief Justice and it is for the latter to decide whether to propose that name or not. Secondly, the consultation contemplated by the said Articles should be a full and effective consultation and

the opinion of the Chief Justice of India is entitled to primacy, whether the appointment is to the Supreme Court or to a High Court. The collegium and the procedure indicated in the said two decisions of the Supreme Court must be read into Articles 124 and 217 – or rather the said Articles must be understood as interpreted in the said two decisions. Both these aspects are but facets of the independence of judiciary – nay, its essential components.

9.6 **Independence of Judiciary constitutes a basic feature:** Independence of judiciary has been repeatedly held by the Supreme Court to be a basic feature of the Constitution (See SCAORA – para 331 at page 647, para 421 at page 680 (of 1993 (4) SCC 441), *Shri Kumar Padma Prasad V. Union of India* 1992 (2) SCC 428 at 456 and *High Court of Bombay V. Sri Kumar* 1997 (b) SCC 339 para 13 at page 355). Similarly the power of judicial review vesting in the Supreme Court and High Courts has also been held to be a basic feature (See *L. Chandra Kumar V. U.O.I* (AIR 1997 SC 1125).

9.7 **Composition of the National Judicial Commission to be consistent with the concept of independence of judiciary:** Since the independence of judiciary constitutes a basic feature it cannot be taken away or curtailed in any manner by an amendment to the Constitution, it can neither be done directly nor can it be done indirectly. In other words, the independence of the judiciary cannot be affected or curtailed by so changing the method of appointment of judges of the Supreme Court and High Court as to impinge upon their independence. For example, if Article 124 and 217 are amended to take away the consultation with the Chief Justice of India, it would vitally affect the independence of the judiciary. In such a case the appointment would in fact be made by the executive acting alone in the case of Supreme Court and in the case of the High Court the element of executive would predominate and the concept of primacy of Chief Justice of India would disappear. The convention that the proposal should emanate from the Chief Justice of India (in the case of Supreme Court) would also come to naught. Similarly, if tomorrow a National Judicial Commission is created and it is so constituted that the executive dominates it, it would equally be violative of the basic structure of independence of the judiciary of our Constitution. It is equally essential that the Commission be presided over by the Chief Justice of Indian and by none else. The composition of the Commission should not also be such that the predominance of judiciary is diluted. Any such measure would be violative of the principle of independence of judiciary which has been accepted and affirmed as a basic feature of the Constitution. Rightly, therefore, the Constitution 67th Amendment Bill provided for a National Judicial Commission, which in the case of appointment to the Supreme Court, consisted exclusively of the Judges (Chief Justice of India and two seniormost judges of the Supreme Court) and in the case of appointment to the High Court, the Chief Justice of India, the next seniormost judge of the Supreme Court, Chief Justice of the High Court and the Chief Minister of the concerned State. It must also be remembered that the inclusion of the Chief Minister in the National Judicial Commission in so far as the appointment to the High Court was criticized by the Arrears Committee constituted by the Government of India on the recommendation of the Chief Justices' Conference. By introducing a proviso and an Explanation in Article 124(2), pointed out hereinabove, the role of the executive in the matter of appointment was substantially diluted. Not only was the President precluded from appointing any person not recommended by NJC, the President (Council of Ministers) has to record reasons in writing for not accepting a recommendation made by the NJC.

9.8 **Position in the United Kingdom:** In this connection, it would be relevant to notice the following facts : In U.K., the Justice sub-committee on Judiciary under the Chairmanship of Peter Welster Q.C. submitted a proposal, in 1972, that while the Lord Chancellor should make the final proposal to the Queen, he should be assisted by an Advisory Appointments Committee comprising lawyers, Judges and lay members. The proposal was later dropped. Some years later, a proposal to create a Judicial Commission was mooted and debated but this too was dropped. In his reply to a question, the Lord Chancellor Irvine of Lairg stated in the House of Commons, on 15th October, 1997:

> "I earlier announced (official report, 23rd June, 1997 Col. W.A. 145) that I proposed to consult on the merits of establishing a Judicial Appointments Commission. However, in the light of the reasons that I have listed

above ..... I have decided not to proceed with further work on a possible Commission".

9.8.1 The reasons given by the Lord Chancellor for dropping the said proposals are the following :

> "It is essential in public interest that the judiciary at every level is of the highest possible quality. Appointments will continue to be made strictly on merit, after the independent views of the judiciary and the Legal profession have been taken into consideration by the Lord Chancellor."

9.8.2 Indeed, the proposal for the constitution of a judicial commission was also criticized severely in England [for example see London Time, 27th May, 1997 and an article on the subject in the Australian Law Journal, Vol.71, Page 582 (1997)].

9.9 **Position in Australia:** In Australia, where the appointments are made by the Executive on the advice of the Attorney General, there have been complaints of political considerations (see Attacks on Judges, CIJL yearbook 1996-97 pages 30-31 and an article by Michal Kirby in the book "Judicial Independence, contemporary debate, 1986", edited by Shimon Shetrut).

9.10 **Position in Canada:** In Canada too, there is widespread dissatisfaction with the method of appointment there (by the Cabinet on the advice of Law Minister and Attorney General). Reference may be had to the Report of the Canadian Bar Association dated August 20, 1985 on the Appointments of Judges of Canada. The Report speaks of political patronage in the matter of these appointments.

9.11 **National Judicial Commission, if constituted, should be on the lines suggested in the Constitution (67th Amendment) Bill:** We must, therefore, emphasise the importance of the composition of the National Judicial Commission if one is thought of. The proper course may be to constitute a National Judicial Commission on the lines of the 67th Amendment Bill and if any departure is to be made therefrom; it should be within the parameters indicated above in the sense that the judicial element should preponderate and the proposal for appointment should originate either from the Chief Justice of India or the Chief Justice of the concerned High Court, as the case may be.

10. The position in certain other countries

10.1 **Position in Japan, American States, Israel and the United Kingdom:** In this connection it would be relevant to mention the following facts which emphasize and illustrate the position obtaining in different countries, evidently the result of a historical process peculiar to each of those countries:

(i) In Japan although the appointment of the Chief Judge of the Supreme Court is made by the Emperor as designated by the Cabinet, and other judges are appointed by the Cabinet, every appointment is made only in consultation with the Chief Judge of Japan. (See page 109 of the article "Independence of the Judiciary in Japan : Theory and Practice" by Japan Federation of Bar Association, in the CIJL Year Book 1992, published by CIJL (Centre for the independence of Judges and Lawyers).

(ii) The American States which are trying to escape from the ills and excesses of the system of 'election' of judges; are contemplating what is called 'Missouri Plan' which means a judicial commission pre-eminently composed of judges and lawyers.

(iii) In Israel, judges are selected by the Judicial Selection Committee. On the basis of their recommendation, the judges are appointed by the President. The Appointment Committee comprises nine members including three judges of the

Supreme Court, two lawyers elected by the Bar Association, two members of the Knesset and two Ministers of the Government, one of them being the Minister of Justice, who chairs the Committee. (See pages 174 and 651 of the book "Judicial Independence : Contemporary Debate" by Simon Shetreet and J Deschanes).

(iv) Even in UK, where the appointment is made by the Lord Chancellor - who is invariably a leading lawyer of England and of course a member of the Cabinet - the selection of judges is made in consultation with the head of the division to which the appointment is proposed to be made. In other words, if the vacancy occurs in the Queens Bench Division (QBD), the appointment is made in consultation with the learned Chief Justice. In the case of Family Division, the President of the Family Division and in the case of Chancery Division, the Vice Chancellor, is consulted. If the vacancy occurs in the Court of Appeal, the appointment is made in consultation with the Master of Rolls.

10.2 **Observations of Sir Henry Gibbs:** Having noticed the method of selection in several countries, we may conclude this aspect with the words of Sir Henry Gibbs, Chief Justice of Australia, who observed, in an article in (1987) Australian Law Journal pages 7 and 11, that: "Judicial Commissions, advisory Committees and procedures for consultation will all be useless unless there exists, among the politicians of all parties, a realization that the interest of the community requires that neither political nor personal patronage nor a desire to placate any section of a society, should play any part in making judicial appointments."

10.3 **Executive should have no role in transfer or disciplinary aspect of judges:** So far as the transfer or disciplinary aspect is concerned there is a unanimity of opinion among the jurists that the executive should have no say in the matter; may be Parliament, but certainly not the executive. Once a person is appointed as a judge and takes the prescribed oath, his independence or his conduct cannot be questioned by the executive which is very often the main litigant before the Courts.

10.4 Keeping the above discussion in mind, we suggest two alternative compositions of the National Judicial Commission, if one is thought necessary:-

A

(a) The Chief Justice of India.
(b) Four senior-most Judges of the Supreme Court next to the Chief Justice.
(c) The Union Minister for Law and Justice.

B

(a) The Chief Justice of India.
(b) Four senior-most Judges of the Supreme Court, next to the Chief Justice.
(c) The Union Minister for Law and Justice, and
(d) Two eminent persons (such as former Presidents, Vice-Presidents, former Chief Justices/Judges of the Supreme Court or eminent jurists, etc.) to be nominated by the President of India, in consultation with the Prime Minister of India and the Chief Justice of India.

Part II : Age of Retirement

1. Age of retirement

11. By virtue of the Fifteenth Amendment to the Constitution effected in 1963, the age of retirement for the judges of the High Courts is 62 whereas it is 65 for the judges of the Supreme

1207 LJ&CA/2002—48A.

Court. A number of members of the judicial family are of the opinion that the age of retirement for the Supreme Court and High Court judges should be the same. The reason given in support of this view is that some judges/chief justices of High Courts, who are about to retire, seek to be elevated to the Supreme Court lured by the attraction of three more years in office; that they hardly have sufficient time to make a contribution. If, however, the reasoning proceeds, the age of retirement is made the same for both the High Courts and the Supreme Court, only those judges, who really wish to work with devotion, would like to come to Supreme Court. It is also pointed out that in U .K., the age of retirement for the judges of the High Court and the Court of Appeal is the same, namely, 75. In India, the uniform age of superannuation can be 65.

11.1 There is of course the contrary opinion that in India, the age of retirement for High Courts and Supreme Court has always been different. Before the Fifteenth Amendment, it was 60 and 62 and now it is 62 and 65. There are no good reasons, according to this viewpoint, to do away with this distinction. It is pointed out that even with this different ages of superannuation, the Supreme Court has produced some very excellent judges.

11.2 Of the two viewpoints mentioned above, the first viewpoint (in favour of identical age of superannuation for the judges of the High Courts as well as the Supreme Court) appears to be more reasonable and acceptable. Be that as it may, we are only putting forward these ideas to generate a debate and to elicit the opinion of concerned and enlightened members of the judicial family and public.

2. Post-retirement assignments

12 A number of enactments passed by Parliament and the State Legislatures have created a number of tribunals, commissions and other similar bodies to which the persons who have been the judges/chief justices of the High Courts and the judges/chief justices of Supreme Court of India, are made eligible. Indeed, there are certain non-statutory commissions like Law Commission of India, to which also retired judges/chief justices of the Supreme Court and retired judges/chief justices of the High Courts are appointed. While in the case of certain appointments like chairperson and the members of the National Human Right Commission and the Chairperson of the Press Council of India, the statute itself provides for the selection being made by a panel of very high officials, in most other cases the selection and appointment lies within the choice of the Central Government or State Government, as the case may be.

12.1 The question raised herein is whether the Central Government or State Government is bound to consult the Chief Justice of India or the Chief Justice of concerned High Court where the retired judge of that court is sought to be appointed to a tribunal, commission or other similar body. Of course, this question arises only where the concerned statute does not provide a particular mode of selection/appointment or does not provide for consultation with the chief justices as a matter of law.

12.2 The apprehension expressed in several quarters is that where the selection/appointment of a retired High Court judge to a commission, tribunal or other such body lies within the exclusive discretion of the Central Government or the State Government and if consultation with the chief justice of the Supreme Court or High Court is not insisted upon, there is a likelihood of the government playing the game of favourites which would indirectly affect the independence and integrity of the judiciary. We have come across instances where such appointments have been made on considerations other than merit and quite often on political considerations. To eliminate room for any such irrelevant considerations, it would be appropriate to provide as a matter of law that where a retired judge is sought to be

appointed to a tribunal, commission or other similar body, such appointment should be made in consultation with the concerned Chief Justice -which means that in the case of the retired judge/chief justice of the Supreme Court, the Chief Justice of India will be the consulted and in the case of appointment of a judge/chief justice of the High Court, the chief justice of that Court should be consulted. Such a course would help eliminate irrelevant considerations and would also facilitate appointment of appropriate persons to these bodies.

12.3 In this context, it would not be out of place to refer to a judgment of the Supreme Court in State of A.P. v. K. Mohanlal (1998 (5) SCC). The decision was rendered in an appeal against a judgment and order of the Andhra Pradesh High Court. The matter related to the appointment of judicial and revenue members to the Special Court constituted under section 7 of the A.P. Land-grabbing (Prohibition) Act, 1982. The State enactment provided that the chairman of the Special Court shall be appointed "after consultation with the chief justice of the High Court concerned" (in case of a retired judge of the High Court) and "after nomination by the chief justice of the High Court concerned, after the concurrence of the Chief Justice of India" (in case of the sitting judge of the High Court). However, no such consultation was provided in the matter of appointment of the judicial members and revenue members. Even if a retired district judge was to be appointed as a member of the special court, no such consultation was required. A contention was urged before the court that appointment of members of the tribunal without consulting the chief justice of the High Court concerned, renders the Act unconstitutional. The Supreme Court rejected the contention. Reversing the view taken by the A.P. High Court, the Supreme Court held that absence of consultation with the Chief Justice of the High Court in the matter of appointment of judicial and revenue members does not affect the validity of the Act. They held further that even where a retired district judge is sought to be appointed as a member of the tribunal, no such consultation is necessary. They, no doubt, clarified that a sitting district judge can be appointed as a member of the Tribunal only with the concurrence of the High Court as provided in Article 235. The decision, it must be remembered, was concerned only with the constitutional validity of enactment and not with the desirability of such consultation, whereas here we are concerned with the desirability of such a course. In the interest of independence of judiciary, the desirability whereof was emphasized even in the aforesaid decision, we are of the provisional opinion that such consultation should be made mandatory even where retired judges or judicial officers are sought to be appointed to tribunals, commissions and similar bodies.

Part III: Transfer of Judges of the High Courts

13. **Policy of transfer of Judges of the High Courts**: The transfer of Judges of High Court from one High Court to another otherwise than by way of disciplinary action has been a knotty issue. A Full Bench of the Gujarat High Court held in S.H. Seth V. Union of India (1976 (17) Guj. L. R. 1017) that no judge can be transferred without his consent. It was, however, reversed by the Supreme Court in Union of India v. S.H.Seth (1977 S.C. 2328). This issue was prominently discussed and the principles governing the issue laid down in the 1993 decision of the Supreme Court in SCAORA, and supplemented in Ashok Reddy v. Union of India (1994 (2) S.C.C. 303, making a departure from the principles enunciated in S.P. Gupta, on this issue. These decisions have, of course, to be understood in the light of the Transfer Policy devised by the Government of India in 1980-81. Mercifully, this policy has now been given up except in the case of Chief Justices of High Courts. In this view of the matter, it is not necessary to refer to the ratio of S.H. Seth or S.P. Gupta in this behalf. The law laid down in 1993 decision of the Supreme Court in SCAORA supplemented as it is by Ashok Reddy is adequate to meet the situation. So far as the transfer of the Chief Justices is concerned, it is an altogether different matter and governed by different considerations. Even so, a few observations on the issue of transfer may not be out of place.

13.1 **Merits and demerits of the policy of transfer**: While on the question of transfer, it is time now to evaluate the merits and demerits of the policy of transfer. In its 14th Report on Reform of Judicial Administration, the Law Commission of India had opposed the transfer of High Court Judges as a matter of policy. It said that Judges are recruited mainly from Bar and that the argument of local connections and prejudices "has not much force". It opined that it

would be "unjust to treat members of the Bar or the service appointed to the High Court judiciary as suspects who need to be moved from place to place to keep them to correct standards". While referring to the idea of a "unified cadre of High Court Judges with free transfers all over the country", the Law Commission opined that such a system would lead to difficulties in the way of leading members of the Bar accepting the office.

13.2 **Inconsistent policy of transfer of judges:** In spite of the said opinion of the Law Commission, the Government of India evolved a general policy of transfer of High Court Judges contained in the Press Note issued on January 28, 1983. Several transfers were effected thereafter which have been criticized by the Satish Chandra Committee as not in keeping with the principles enunciated in the said Press Note. Furthermore, experience shows that barring some exceptions, the transferred Judges, even the efficient among them, have lost interest in judicial work. Many of them felt that they have been unjustly and arbitrarily picked out for transfer. They point out that the transfers have not been effected with an even hand. Self discipline has indeed suffered on account of these transfers. As a matter of fact, no consistent policy was followed in this matter. Judges appointed during a particular period were, as a rule, transferred, while Judges appointed later were not. In short, the transfer policy as a whole has produced its own defects and anomalies.

13.3 **Adverse effects of appointing outsider as Chief Justice of a High Court:** In the recent Conference of Chief Justices, it is reported, a decision has been taken to discontinue the policy of transfer of Judges of the High Courts. However, the policy regarding having an outsider as Chief Justice in every High Court has been left untouched. The experience shows that in the matter of appointments of judges to the High Court the outside Chief Justices suffer, as they do, by lack of knowledge as to ability, character and performance of the members of the Bar and therefore do, and do have to, rely upon the advice of some of the local judges who may not necessarily be the senior-most. In the matter of recommending members of the Bar for appointment to High Court, he goes by the opinion of such judges. It is indeed not possible for any outside Chief Justice to know of all the leading members of the Bar, practicing in various jurisdictions, within a few months, more particularly in the bigger High Courts. Moreover, it is seen that some of the transferred Chief Justices did not evince sufficient interest and commitment to the court to take requisite interest in the administration of the State judiciary as a whole and are also not inclined to undertake effective and sometimes unpleasant decisions to maintain discipline and promote efficiency at all levels. May be it is necessary now to reconsider this policy too.

13.4 It may perhaps be necessary to clarify that none of the statements made herein affect the scope or relevance of Article 222 of the Constitution. We were concerned with transfer as a matter of policy. The power under Article 222 and its exercise in appropriate cases shall remain untouched.

Part IV: Procedure for checking deviant behaviour and removal of the judges of the High Court and the Supreme Court

14. **Procedure relating to removal of judges:** Clause (4) of Article 124 provides that a Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting, has been presented to the President in the same session, for such removal on the ground of proved misbehaviour or incapacity. By virtue of Article 218, the said clause in Article 124 applies equally to the Judges of the High Courts. It is true that in other democratic Constitutions too, this appears to be the procedure. For example, under the U.S. Constitution, Judges of the Supreme Court are removable only by a process of impeachment. In England, Judges are removable by the Crown only on a joint address moved by both Houses of Parliament. This is also the procedure provided by the U.K. Supreme Court Act, 1981. The provisions of Canadian and Australian Constitutions are identical. So is the Irish Constitution.

14.1 But this fact should not deter us from exploring new methods appropriate to our conditions. Just as in the matter of appointment of Judges of High Court and Supreme Court we have not followed the model provided by the aforesaid Constitutions, we need not adhere to their model in the matter of removal. It is also to be noted that apart from providing for removal of Judges of Supreme Court and High Courts in the aforesaid manner, the Constitution does not provide for deviant behaviour not amounting to proved misbehaviour. Firstly, the expression "proved misbehaviour" is not defined. It is left to the Parliament to decide from case to case. Experience of United States of America: Under the U.S. Constitution, Judges (Federal) are to serve for life during "good behaviour" (Article I). Judges in USA, it is not disputed, are removable by impeachment but impeachment can only be for "treason, bribery or other high crimes and misdemeanours" [Article II (4)]. Since these expressions are also not defined, a controversy has arisen there whether any bad behaviour not amounting to "high crimes and misdemeanour" can furnish a ground for disciplining the Judges otherwise than by removal through impeachment process. This problem has been met in two ways : (a) in 1973, the judiciary passed the Code of Conduct for U.S. Judges and (b) in 1980, the Congress passed the Judicial Councils Reform and Judicial conduct and Disability Act. The said Act gives to the federal judiciary a charter to devise its own self disciplinary framework. The Act provides for any person filing a complaint that a federal judge "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts or ..... is unable to discharge all the duties of office by reason of mental or physical disability." Since 1990, the chief judge may also act without a formal complaint upon information that suggests that action is appropriate. After considering the complaint, the chief judge may dismiss it by a written order stating reasons, if it does not comply with the Act's requirements or if it is directly related to the merits or substantive decision in a case or if it is founded to be frivolous. If, however, the chief judge does not dismiss the complaint, he will appoint a special committee to investigate the complaint and file a written report with the circuit judicial council (created by the Congress in 1939). The Council may itself conduct additional investigation. On conclusion of such investigation, the council may report that a judge retire, impose a freeze on assignment of cases to the judge, or issue a private or public reprimand. The Act of course does not empower the council to remove a judge from office; in such an event, it has to refer the matter to the Judicial Conference which may, if it agrees with the findings of the Council, refer the matter to the House of Representative for impeachment. Removal can be effected only by impeachment. It would be appropriate now to quote the relevant portions of section 372 of the aforesaid Act.

"Sec.372. Retirement for disability; substitute judge on failure to retire; judicial discipline:

(a) Omitted.

(b) Omitted.

(c) (1) Any person alleging that a circuit, district, or bankruptcy judge, or a magistrate, has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a judge or magistrate is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct. In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint.

(2) Upon receipt of a complaint filed under paragraph (1) of this subsection, the clerk shall promptly transmit such

complaint to the chief judge of the circuit, or, if the conduct complained of is that of the chief judge, to that circuit judge in regular active service next senior in date of commission (hereafter, for purposes of this subsection only, included in the term "chief judge"). The clerk shall simultaneously transmit a copy of the complaint to the judge or magistrate whose conduct is the subject of the complaint.

(3) After expeditiously reviewing a complaint, the chief judge, by written order stating his reasons, may-

(A) dismiss the complaint, if he finds it to be (i) not in conformity with paragraph (1) of this subsection, (ii) directly related to the merits of a decision or procedural ruling, or (iii) frivolous; or

(B) conclude the proceeding if he finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events. The chief judge shall transmit copies of his written order to the complainant and to the judge or magistrate whose conduct is the subject of the complaint.

(4) If the chief judge does not enter an order under paragraph (3) of this subsection, such judge shall promptly –

(A) appoint himself and equal numbers of circuit and district judges of the circuit to a special committee to investigate the facts and allegations contained in the complaint;

(B) certify the complaint and any other documents pertaining thereto to each member of such committee; and

(C) provide written notice to the complainant and the judge or magistrate whose conduct is the subject of the complaint of the action taken under this paragraph. A judge appointed to a special committee under this paragraph may continue to serve on that committee after becoming a senior judge or, in the case of the chief judge of the circuit, after his or her term as chief judge terminates under subsection (a)(3) or (c) of section 45 of this title. If a judge appointed to a committee under this paragraph dies, or retires from office under section 371 (a) I of this title, while serving on the committee, the chief judge of the circuit may appoint another circuit or district judge, as the case may be, to the committee.

(5) Each committee appointed under paragraph (4) of this subsection shall conduct an investigation as extensive as it considers necessary, and shall expeditiously file a comprehensive written report thereon with the judicial council of the circuit. Such report shall present both the findings of

the investigation and the committee's recommendations for necessary and appropriate action by the judicial council of the circuit.

(6) Upon receipt of a report filed under paragraph (5) of this subsection, the judicial council –

(A) may conduct any additional investigation which it considers to be necessary;

(B) shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit, including, but not limited to, any of the following actions:

(i) directing the chief judge of the district of the magistrate whose conduct is the subject of the complaint to take such action as the judicial council considers appropriate;

(ii) certifying disability of a judge appointed to hold office during good behaviour whose conduct is the subject of the complaint, pursuant to the procedures and standards provided under subsection (b) of this section;

(iii) requesting that any such judge appointed to hold office during good behaviour voluntarily retire, with the provision that the length of service requirements under section 371 of this title shall not apply;

(iv) ordering that, on a temporary basis for a time certain, no further cases be assigned to any judge or magistrate whose conduct is the subject of a complaint;

(v) censuring or reprimanding such judge or magistrate by means of private communication;

(vi) censuring or reprimanding such judge or magistrate by means of public announcement; or

(vii) ordering such other action as it considers appropriate under the circumstances, except that (I) in no circumstances may the council order removal from office of any judge appointed to hold office during good behaviour, and (II) any removal of a magistrate shall be in accordance with section 631 of this title and any removal of a bankruptcy judge shall be in accordance with section 152 of this title;

(C) may dismiss the complaint; and

(D) shall immediately provide written notice to the complainant and to such judge or magistrate of the action taken under this paragraph.

(7) (A) In addition to the authority granted under paragraph (6) of this subsection, the judicial council may, in its discretion, refer any

complaint under this subsection, together with the record of any associated proceedings and its recommendations for appropriate action, to the Judicial Conference of the United States.

(B) In any case in which the judicial council determines, on the basis a complaint and an investigation under this subsection, or on the basis of information otherwise available to the council, that judge appointed to hold office during good behavior may have engaged in conduct –

(i) which might constitute one or more grounds for impeachment under article II of the Constitution; or

(ii) which, in the interest of justice, is not amenable to resolution by the judicial council, the judicial council shall promptly certify such determination, together with any complaint and a record of any associated proceedings, to the Judicial Conference of the United States.

(C) A judicial council acting under authority of this paragraph shall, unless contrary to the interests of justice, immediately submit written notice to the complainant and to the judge or magistrate whose conduct is the subject of the action taken under this paragraph.

(8) (A) Upon referral or certification of any matter under paragraph (7) of this subsection, the Judicial Conference, after consideration of the prior proceedings and such additional investigation as it considers appropriate, shall by majority vote take such action, as described in paragraph (6)(B) of this subsection, as it considers appropriate. If the Judicial Conference concurs in the determination of the council, or makes its own determination, that consideration or impeachment may be warranted, it shall so certify and transmit the determination and the record of proceedings to the House of Representatives for whatever action the House of Representatives considers to be necessary. Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination.

(B) If a judge or magistrate has been convicted of a felony and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the Judicial Conference may, by majority vote and without referral or certification under paragraph (7), transmit to the House of Representatives a determination that consideration of impeachment may be warranted, together with appropriate court records, for whatever action the House of Representatives considers to be necessary.

14.2 A reading of the above provisions makes it evident that the system evolved in the US is a fairly elaborate one, involving several layers/stages in the process viz., (a) Chief Judge of the Circuit, (b) a Special Committee comprising the Chief Judge of the Circuit and equal number of Judges from Circuit and District Judges (c) Judicial Council of the Circuit and (d) the Judicial Conference. The Judicial Council can order several measures (short of removal), as may be found appropriate. If, however, the facts and circumstances call for removal, the Judicial Council has to refer the matter to the Judicial Conference, which will examine the matter again and if it concurs with the findings of the Judicial Council, send the matter to the House of Representatives for initiating impeachment proceedings. At each stage, the matter is

considered afresh. This procedure thus is full of safeguards and ensures that there is no failure of Justice. Of course, it is obvious that the solution evolved in U.S.A. is peculiar to their judicial system but it certainly helps us in evolving a solution consistent with our constitutional system and the ground realities. The above procedure, it is evident, is not applicable to the Judges of the Supreme Court but only to Circuit and District Judges and Magistrates in the federal judiciary.

14.3 Performance of higher judiciary in India:

Coming to the higher judiciary in India, its performance over the last 50 years and more has been extremely gratifying and admirable. It has evoked the admiration and appreciation of the world community in general and of judicial institutions in particular. It has succeeded in protecting and promoting the public good by effectuating and expanding the horizon of the fundamental rights and by enhancing the sanctity and relevance of the Directive Principles of State Policy. It has produced some very brilliant and extraordinary judges – known for their learning, integrity and devotion to law as a means of enhancing public good –whom any nation can be justly proud . But there have been some exceptions too and in the recent years more such exceptions are coming to light. There has been, of late, public concern over judges note observing working hours, being away from court-work even without seeking leave, unduly delaying judgments and otherwise conducting themselves in an un-judge like manner. It is these few persons whose conduct calls for disciplinary system so as to preserve the fair name of the judiciary. Such a system will protect those unjustly accused. That apart, the very existence of the system will be a deterrent and will obviate the need to use it.

14.4 **Uncertainty as to the of meaning of "proved misbehaviour"**: In India, a question may arise, what is "proved misbehaviour" contemplated by Article 124(4) and whether there is any remedy against undesirable behaviour not amounting to "proved misbehaviour". Indeed, this is not an easy question. Since the expression is not defined by the Constitution or by any law made by Parliament and it is left to the Parliament alone to apply its interpretation as to what it means in a given case, we are left in a very uncertain situation. For example, whether not observing the court hours and holding the court at one's own pleasure or not delivering judgments for years together amounts to "misbehaviour" within the meaning of Article 124(4)? Similarly, whether reserving judgments for years together and leaving them un-disposed of till their retirement or transfer, as the case may be, amounts to misbehaviour? It is difficult to answer these questions. But one thing can be stated with certainty : bribery, misappropriation, commission of serious crimes or crimes involving moral turpitude while in office and acts of treason do certainly constitute "misbehaviour" within the meaning of Article 124(4). In the light of this uncertainty and also because the impeachment process has practically become unrealistic, we have to evolve standards to determine "proved misbehaviour" in Article 124(4) so as to enable us to appreciate what is undesirable behaviour not amounting to "proved misbehaviour".

14.5 **Need to evolve effective measures to deal with bad behaviour or deviant behaviour not amounting to "misbehaviour"**: Subject to taking a final view at a later stage i.e. after considering the responses received, we may say, for the purposes of this Consultation Paper that "proved misbehaviour" in Article 124(4) means (a) committing an act which could be an offence set out in the Prevention of Corruption Act, 1988 (b) committing an act which amount to an offence involving moral turpitude (c) committing an act which may amount to any of the offences under Sections 121 to 124-A, 153-A and 153-B of Indian Penal Code. For these acts, removal shall be the normal punishment. Other undesirable acts and conduct inconsistent with the dignity of the office of a Judge of High Court shall be treated as 'conduct unbecoming of a judge' but not amounting to "misbehaviour". The next question is what is sanction against conduct unbecoming of a judge not amounting to "misbehaviour" as defined hereinabove. It cannot be denied that it has become necessary to prescribe some procedure for this kind of bad behaviour or deviant behaviour. None exists as at present. For example, going by reports emanating from respectable quarters, a few Judges of the High Court do not come to Court at the appointed hour and do not sit till the hour they are supposed to sit. They

come at their own sweet will and rise also at their will. Judgments are not delivered promptly. Cause-lists are manipulated in the sense that heavy matters are directed to be placed at the bottom of the list and light matters taken up. Lawyers refer to a practice of some Judges directing the listing of particular cases before them without reference to the Chief Justice – and the Chief Justices (who are invariably from another High Court) are quietly acquiescing in the practice because they do not wish to offend any Judge and invite or provoke controversy. A few Judges, with an eye on populism showing injudicious liberalism in admitting almost all cases and liberally granting interim relief. This not only contributes enormously to the work load in the High Courts but also causes grave prejudice to public interest and administration of justice. In such a situation, it will be unreasonable to be astonished if affected parties, be they private litigants or public bodies raising eye brows and even voicing muted suspicion on judicial motives. There are some complaints that some judges even Chief Justice are not seen to keep a distance from centres of political powers which would be conducive to the image of the neutrality. It is well to remember that judiciary ceases to be an effective instrument if its image and reputation for integrity and independence suffers. There cannot be a greater disaster to our polity than this. A few among the Judges have conveniently forgot the qualities required of a Judge. When Justice Frankfurter retired from the U.S. Supreme Court, New York Times wrote an editorial, saying *inter-alia*: "History will find greatness in Felix Frankfurter as a Justice, not because of the result he reached but because of his attitude towards the process of decision. His guiding lights were detachment, rigorous integrity in dealing with the facts of a case, refusal to resort to unworthy means, no matter how noble the end, and dedication to Court as an institution." The result of not adhering to the standards is that in spite of increasing the Judge strength, the arrears are rising in several High Courts. We do not intend to create an impression that everyone or all the Judges in the High Courts, are doing this. A few may be doing it but that is affecting the work culture of the Court and is tarnishing the image of the High Courts. Lack of self-discipline and commitment to work among some of the Judges is leading to their disinterest in judicial work. Judges are supposed to work not for salary but to take the office as an honour and as a call of national duty, unconcerned with any other considerations. Though there are not many cases of deviant behaviour, few that are fouling the atmosphere. The Supreme Court did hold that Judges can be prosecuted under the Prevention of Corruption Act subject to the rider that in the case of a sitting Judge, permission of the Chief Justice shall be obtained before taking proceedings against him under the Act. Vide *Veeraswami vs Union of India* (1991 (3) S.C.C. 655]. The exercise of the power to punish for contempt of court increasingly been seen as a means of suppressing all criticism. Justice Frankfurter had said about such criticism – no doubt in the context of the First Amendment to the U.S. Constitution: "Judges as person or courts as institution are entitled to no greater immunity from criticism than other persons or institutions. Just because the holders of judicial office are identified with the interests of justice, they may forget their common human frailness and fallibilities. There have sometimes been martinets upon the Bench as there have also been pompous wielders of authority who have used the paraphernalia of power in support of what they call their dignity. Therefore, judges must be kept mindful of their limitations and of their ultimate responsibility by a vigorous stream of criticism expressed with candor however blunt". (*Bridges v. California* (314 U.S. 252 at 289-1941). Judges were expected to be "a body of men who were to be the depositories of law, who by their disciplined training and character and by withdrawal from the usual temptations of private interest may reasonably be expected to be as free, impartial and independent as the lot of humanity will admit. So strongly were the framers of the Constitution bent on securing a reign of law that they endowed the judicial office with extraordinary safeguards and prestige. .....That is what courts are for". (*U.S. v. United Mine Workers of America* 330 U.S. 258 at 308-9).

14.6 **Need for effective measures to deal with misbehaviour of judges:** It has become imperative to check undesirable and unhealthy tendencies in the judiciary. The present procedure of impeachment is totally inadequate and for various reasons is impractical. According to some legislators/Parliamentarians and other holders of high executive offices, a "nice" Judge is one who can be approached by them in matters of their interest.

14.6.1 After a great deal of cogitation and with anguish in our hearts, we suggest that some effective measures ought be evolved to rectify the above mentioned situation. One measure suggested is the following:

14.7 **How complaints of deviant behaviour should be dealt with:** A committee comprising the Chief Justice of India and four senior-most Judges of the Supreme Court should examine complaints of deviant behaviour of all kinds and complaints of misbehaviour and incapacity[9]. Their scrutiny at this stage would be confined to ascertain whether (a) there is no substance in the complaint or (b) there is a prima facie case calling for a fuller investigation and enquiry or (c) whether it would be sufficient to issue a warning to the erring Judge or give other directions to the concerned Chief Justice regarding allotment of work to such Judge or to transfer him to some other court. If, however, they find that the matter is serious and that it calls for a fuller investigation or enquiry, they will refer the matter for a full enquiry to the committee (constituted under the Judges' Inquiry Act, 1968). The committee shall be a permanent committee and not one constituted for a particular case or from case to case, as is the present position under Section 3(2) of the Act. The committee shall be constituted by the President on the advice of the Chief Justice of India. Their term and other conditions of service shall be such as may be specified in the notification constituting the committee. The committee shall enquire into the allegation against the Judge in accordance with the procedure prescribed by the said Act, i.e. in accordance with sub-sections (3) to (8) of Section 3 and sub-section (1) of Section 4 of the said Act and submit their report to the Chief Justice of India.

14.8 The question then arises as to who should take appropriate action on the basis of the report submitted by the enquiry committee. The two suggestions for consideration are:

(i) The present method of removal by Parliament, in accordance with the existing relevant provisions of the Constitution; or

(ii) The report should be considered by the full court of the Supreme Court. The full court shall take a decision whether (a) the Judge concerned ought to be exonerated of the charge or the charges levelled against him or (b) whether any charge or charges are established against him and if so, whether the charges held proved are so serious as to call for his removal (misbehaviour) or whether it should be sufficient to administer a warning to him and/or make other directions with respect to allotment of work to him by the concerned Chief Justice or to transfer him to some other court (deviant behaviour not amounting to misbehaviour). If the decision of the full court of the Supreme Court is to remove the Judge, the recommendation to that effect shall be made by the Supreme Court to the President of India who shall pass orders accordingly. The decision of the Full Court of the Supreme Court means the decision arrived at by two-thirds of the Judges of the Supreme Court present and voting and a simple majority of the total effective strength (and not sanctioned strength) of the Supreme Court. This procedure shall equally apply in case of Judges of the Supreme Court as well with this qualification that the judge against whom complaint is received or enquiry is ordered, shall not participate in any proceeding affecting him.

14.9 One would be inclined to think that ordinarily speaking, a Judge with any decency in him, and any one with self-respect, would resign, once the Judges' Committee records a finding against him on any charge/allegation and that ordinarily speaking again, there would be no occasion for imposing any corrective measures or for recommending his removal.

14.10 **Pros and cons of the methodology suggested herein:** Of course, it is equally possible that some people may think that the present mechanism for removal of a Judge of a High Court or Supreme Court is adequate and that it does not require any change. They may believe that the procedure proposed herein seriously undermines the independence and status of the Judges of the High Court and Supreme Court. They may also say that by this procedure, the Supreme Court would become an administrative superior exercising disciplinary jurisdiction over the High Court Judges which was never contemplated by the Constitution; by conferring the appellate jurisdiction on Supreme Court, it does not become an administrative superior to High Courts and so on. Of course, the contrary argument would be that by conferring such

[9] (Every complaint should be supported by an affidavit and should clearly disclose the name, designation and address of the informant/complainant. Complaints not adhering to the said requirements shall not be entertained).

jurisdiction, the Supreme Court does not become an administrative superior, just as the Parliament is not constituted the administrative superior of the High Courts and the Supreme Court by empowering it to remove the judges by the process of impeachment; indeed, it may be better to vest the power to recommend removal and the power to make other appropriate directions in a judicial body (highest court in the judicial family) rather than vesting it in a political body like Parliament; the procedure evolved in U.S.A similar to the one suggested here has not compromised the independence of the federal judiciary. The present solution – wherein the only and extreme remedy of removal has practically become impractical besides being a purely political process. It is not also in the larger interest of the judiciary.

14.11 We have pondered over all these contending arguments. We are of the provisional opinion that some procedure akin to the one obtaining in the U.S.A. may be necessary to deal with the few deviant elements in the judicial family. Indeed, we wish to be instructed in this behalf by public opinion. Can you find another or a better procedure? In suggesting a change in the mechanism relating to removal of a Judge of a High Court or of Supreme Court and in suggesting other measures in that behalf, the Commission is actuated by a concern for preserving, protecting and promoting the independence of judiciary – the corner stone of our Constitutional system - its reputation, its image and its integrity. It cannot be denied that procedure for removal of a Judge is one of the facets of the independence of judiciary. The Commission is keenly aware of the need to strengthen and enhance such independence. At the same time, the commission cannot but take notice of rising trend of public opinion as to the perceived propensity towards deviant behaviour among a few members of judicial family. Independence of judiciary and the security of tenure is not a licence for deviant or capricious behaviour – a total misunderstanding of the very concept of judicial independence. The aforesaid suggestions are made not with a view to cast stones at the judiciary but out of a concern for preserving and enhancing its independence and reputation. It is because of what experience has taught us that we have suggested that the power to deal with deviant behaviour should rest in the apex court and in apex court alone. We have also suggested retention of the procedure for conducting enquiry into such charges, devised by the Judges' Inquiry Act, 1968, as well as the mechanism created by the said Act; indeed we have tried to make it permanent. The Commission has consciously excluded any role for the executive or any member of the executive in this mechanism – as it ought to be. There may be room for executive say in the matter of appointment but it is totally impermissible in the matter of removal or in disciplinary matters. Once appointed, the judge is supposed to be totally independent which includes independence from executive influence.

14.11.1 The Commission is of the opinion that the mere creation and existence of a mechanism as suggested herein should itself operate as a check against deviant behaviour. Where, however, deviance occurs, it is necessary that it is dealt with appropriately.

14.11.2 It is clear that if any of the above proposals is to be implemented, the relevant provisions of Article 124 may have to be amended appropriately – may be, certain new provisions may also have to be inserted.

QUESTIONNAIRE
on
SUPERIOR JUDICIARY

Part I: Procedure for appointment of Judges of the Supreme Court and the High Court

1. Should the pre-S.P. Gupta situation be revived – which means the primacy of the Chief Justice of India and no obligation to consult other Judges, though, as a matter of fact, such consultation was done in every case?

   Yes ☐ No ☐

2. Should the position adumbrated in S.P. Gupta be restored – which means 'no primacy' of Chief Justice of India – and, of course, no collegium.

   Yes ☐ No ☐

3. (a) Whether the collegium proposed to be created by the Constitution (Sixty-seventh Amendment) Bill, 1990 is the appropriate one?

   Yes ☐ No ☐

   (b) And if yes, what is your opinion regarding the changes suggested in it by the Arrears Committee (1990)?

   Yes ☐ No ☐

4. (a) Whether, in your opinion, the 'collegium' suggested by the 1993 and 1998 opinions of the Supreme Court – (the 'collegium' created by the 1998 opinion is indeed more broad-based than the one suggested in the 1990 Amendment Bill) – is adequate to meet and satisfy the requirements of a competent and independent judiciary or does it require to be modified?

   Yes ☐ No ☐

   Suggestions:

   (Not more than 200 words)

   (b) If the existing mechanism is to be modified, what should be the alternate mechanism?

   (Not more than 200 words)

5. (a) Should a National Judicial Commission (NJC) be constituted?

   Yes ☐ No ☐

   (b) If your answer to the above is YES, then suggest the composition of NJC:

(c) Should the composition of NJC be the same as contemplated by the Constitution (Sixty-seventh Amendment) Bill, 1990?

Yes ☐ No ☐

(d) If not, whether its composition be changed to include the Union Minister of Law and Justice and/or one or two other members?

Yes ☐ No ☐

Note: (1) Two alternative models of National Judicial Commission (apart from the one suggested in the Sixty-seventh Amendment Bill and the 1993 and 1998 decisions of the Supreme Court) based upon the theory of predominance of judiciary, are set out hereinafter to enable you to indicate your choice. They are:

A

(a) The Chief Justice of India.
(b) Four senior-most Judges of the Supreme Court next to the Chief Justice.
(c) The Union Minister for Law and Justice.

B

(a) The Chief Justice of India.
(b) Four senior-most Judges of the Supreme Court, next to the Chief Justice.
(c) The Union Minister for Law and Justice, and
(d) Two individuals (former Chief Justices/Judges of the Supreme Court, eminent jurists or former Chief Justices of the High Courts) to be nominated by the President of India in consultation with the Prime Minister of India and the Chief Justice of India.

(2) In the matter of appointment to the High Courts, the composition of the National Judicial Commission shall be the same, except that the Chief Justice of the concerned High Court shall be an invitee while considering appointment to that High Court.

6. (a) Whether the proposal for a National Judicial Commission [as indicated in Question Nos. 5 above, i.e. with the involvement of Executive and/or certain nominees] is an improvement over the existing methodology?

Yes ☐ No ☐

(b) Or would it be a retrograde step?

Yes ☐ No ☐

(c) In this connection, it may be remembered that members of the subordinate judiciary are selected by the High Court (appointment orders being issued formally by the Government/ Governor) as pointed out hereinbefore. Under the 1993 and 1998 decisions of the Supreme Court, selection of Judges of Supreme Court and High Courts has also been vested in judiciary alone. Should not this methodology be given some more time before judging its merit?

Yes ☐ No ☐

(d) Are frequent changes in the methodology of appointment process advisable?

Yes ☐ No ☐

7. (a) So far as the initiation of proposals is concerned, should the proposals emanate only from the Chief Justice of India in the case of appointment to Supreme Court?

Yes ☐ No ☐

(b) In the case of High court, should the proposal be initiated only by the Chief Justice of the Court or by the Chief Justice in consultation with the two senior-most Judges of that Court?

Yes ☐ No ☐

Note:: A distinction in the case of the High Court may be called for in as much as in the proposed National Judicial Commission, only the Chief Justice of the High Court would be an invitee and no other Judge. Hence, it would be more appropriate to provide that in the case of High Court, the name should be initiated by the Chief Justice and two senior-most Judges of the High Court. This question is relevant only in case a National Judicial Commission (with whatever composition) is constituted.

(c) Whether every member of the Commission be entitled to initiate proposals?

Yes ☐ No ☐

8. (a) Is it to be provided that the National Judicial Commission will consider the recommendation so made as provided in the note below Question No. 7 and shall render their advice to the President and that the President shall make the appointment accordingly?

Yes ☐ No ☐

(b) Should it be provided that it shall however be open to the President to ask for reconsideration of a particular name along with reasons, if any, in support of his view and that if on such reconsideration, the National Judicial Commission reiterates its recommendation, the President shall be bound to make the appointment?

Yes ☐ No ☐

9. Do you wish to make any other suggestions relating to procedure of appointment of judges? If so, give details hereunder.

(Not more than 200 words)

Part II: Age of Retirement

10. In the United Kingdom, the age of retirement for Judges of the High Court and the Court of Appeal is the same, namely, 75 years. In India, however, the age of retirement of a Judge of the Supreme Court is 65 years whereas the age of retirement of a Judge of the High Courts is 62 years. In order to attract Judges of the High Court who really wish to work with devotion in the Supreme Court, it is felt that it would be reasonable to prescribe a uniform age of retirement, say 65 years, for both the Judges of the Supreme Court and of the High Courts. Do you agree with this suggestion?

Yes ☐ No ☐

11. Now-a-days, retired Judges/Chief Justices of the High Courts/ Supreme Court are appointed to various tribunals and other statutory/non-statutory bodies. In order to eliminate irrelevant considerations and favouritism as also to safeguard the independence and integrity of the judiciary, it is suggested that, while making appointment of retired Judges/Chief Justices of the Supreme Court, the Chief Justice of India should be consulted and in the case of appointment of a retired Judge or Chief Justice of the High Court, the Chief Justice of that High Court should be consulted.

(a) Do you agree with the above suggestion?

Yes ☐ No ☐

(b) In case the answer to part (a) is in the negative, please state the specific reasons for such disagreement.

(Not more than 200 words)

12. Should consultation with the Chief Justice of the High Court/Chief Justice of India be made mandatory where retired judges/judicial officers are sought to be appointed to tribunals/statutory and non-statutory bodies?

Yes ☐ No ☐

13. Do you wish to make any other suggestions relating to the age of retirement of Judges of the Supreme Court and of the High Courts? If so, please give details.

(Not more than 200 words)

14. Do you wish to make any other suggestions relating to the appointment of retired judges/judicial officers who are sought to be appointed to tribunals/statutory and non-statutory bodies, please give details.

(Not more than 200 words)

Part III: Transfer of Judges of the High Courts

15. (a) Whether the policy of transfer of High Court Judges needs to be reviewed?

Yes ☐ No ☐

(b) If not, should the present policy continue?

Yes ☐ No ☐

16. (a) Whether the policy of having a Chief Justice of High Court from outside the State should be continued?

Yes ☐ No ☐

(b) If not, should this policy also be discontinued?

Yes ☐ No ☐

17. Whether the principles enunciated in SCAORA v. Union of India (1993(4)S.C.C. 441), as supplemented by Ashok Reddy v. Union of India (1994 (2) S.C.C. 303) be reviewed?

Yes ☐ No ☐

18. Do you wish to make any other suggestions relating to transfer of judges of the High Courts? If so, please give details.

(Not more than 200 words)

[207LJECA]02-49

Part IV: Procedure for checking deviant behaviour and removal of the Judges of the High Court and the Supreme Court

19. (a) Whether there is need for creating a new mechanism to check deviant behaviour among Judges or whether the present dispensation should continue?

New mechanism needed ☐ Present dispensation should continue ☐

(b) Whether, the only sanction, in case of deviant behaviour or incapacity, should be removal alone or whether other types of measures, not amounting to removal, should be introduced?

Removal alone ☐ Other measures ☐

(c) If new measures are to be evolved, should the power to impose those measures be vested exclusively in the Supreme Court as suggested above?

Yes ☐ No ☐

20. Are you in favour of creating a new mechanism (to remove the Judges of High Court) and vesting it in the Supreme Court, as suggested hereinabove?. (This means exclusion of Parliament altogether from the procedure for removal of Judges)

Yes ☐ No ☐

21. Should the recommendation of the Supreme Court, whether it be for removal, exoneration or any other kind of punishment, be binding upon the President?

Yes ☐ No ☐

22. If you wish to make any other suggestions relating to procedure for checking deviant behaviour and removal of the judges of the High Court and the Supreme Court, give details hereunder.

(Not more than 200 words)



NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

ALL INDIA JUDICIAL SERVICE

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating public debate and eliciting public response.

January 8, 2001
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420Z LJ&GA/2002—50A

Advisory Panel

on

Strengthening of the institutions of Parliamentary Democracy; (Working of the Legislature, Executive and Judiciary; their accountability; problems of Administrative, Social and Economic Cost of Political Instability; Exploring the possibilities of stability within the discipline of Parliamentary Democracy)

Member-In-charge

Justice Shri B.P. Jeevan Reddy

Chairperson

Justice Shri H.R. Khanna

Members

- Shri K. Parasaran
- Dr. Jayaprakash Narayan
- Dr. V. A. Pai Panandikar

Member-Secretary

Dr. Raghbir Singh

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Dr. Raghbir Singh

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The Commission places on record its profound appreciation of and gratitude to Justice Shri B.P. Jeevan Reddy for his contribution.

CONTENTS

		Pages
I.	Basic Constitutional Provisions relating to Subordinate Judiciary	757
II.	All – India Judicial Service	757
III.	Suggestions of the 1st Law Commission	759
IV.	Later Recommendations of the Law Commission	759
V.	Recommendations of the National Judicial Pay Commission	760
VI.	Some relevant considerations	762
	Questionnaire	764

CONTENTS

		Pages
I.	Basic Constitutional Provisions relating to Subordinate Judiciary	757
II.	All – India Judicial Service	757
III.	Suggestions of the 14th Law Commission	759
IV.	Later Recommendations of the Law Commission	759
V.	Recommendations of the National Judicial Pay Commission	760
VI.	Some relevant considerations	762
	Questionnaire	764

I. Basic Constitutional Provisions relating to Subordinate Judiciary

Chapter VI of Part VI of the Constitution of India deals with subordinate courts. Clause (1) of Article 233 says that appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. Clause (2) is not relevant for the purpose. Article 233A is also not relevant since it deals with validation of appointments of, and judgments, etc. delivered by certain district judges whose appointment was declared to be illegal by the Supreme Court. Article 234 says that appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with the rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State. Article 235 vests control over the subordinate courts in the High Court. It reads "The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any posts inferior to the post of district judges shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorizing the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law". Article 236 is an interpretation clause. It defines the expressions "district judge" and "judicial service" respectively. It is sufficient to notice the definition of "district judge". It includes "judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge". It is not necessary to notice article 237 for the present purpose.

II. All – India Judicial Service

2. Article 309 of the Constitution which occurs in chapter I of Part XIV deals with the recruitment and conditions of service of persons serving the Union or a State. It empowers the appropriate Legislature to regulate the recruitment and conditions of service of persons appointed to public services and post in connection with the affairs of the Union or of any State. The proviso however says that until the appropriate Legislature shall make the rules, it shall be open to the President, in the case of services under the Union, and to the Governor, in respect of the services under the State, to make rules for the said purpose. Article 310, which incorporates pleasure clauses, is not relevant for the present purpose. Article 311 contains three clauses. Clause (1) says that no member of a civil service, whether of the Union or the State, shall be dismissed or removed by an authority subordinate to that by which he was appointed. Clauses (2) and (3) go together. Clause (2) provides for a disciplinary inquiry to be held against a member of civil service before a punishment is imposed upon him. The proviso to Clause (2) creates three exceptions to the above rule which again is not necessary to notice for the present purpose. Clause (3) which qualifies the second proviso can equally be omitted from consideration. Article 312 deals with the All-India services. Prior to the Constitution (Forty-second Amendment) Act, 1976, it did not specifically refer to an All-India Judicial Service. It was however brought in along with Clauses (3) and (4) by the Constitution Amendment Act. As it stands today, Article 312 reads as thus:

312. All-India services. (1) Notwithstanding anything in Chapter VI of Part VI or Part XI, if the Council of States has declared by

(b) promotional avenues of the members of the State judiciary would be severely curtailed causing heart burning to those who have already entered the service and manning of the State judicial service would be adversely effected; and

(c) erosion of control of the High Court over subordinate judiciary would impair independence of the judiciary.

10. The Law Commission considered each of the above objections at length and rejected them as unsubstantial. It held that a member of the All-India Judicial Service would be required to learn one more language over and above his mother tongue and once he is allotted to a State keeping in view the said fact, no problems would arise on the ground of language. Reference was made to members of Indian Administrative Service in this behalf. It also referred to the fact that prior to the independence there were provinces, like Bombay and Madras, which comprised more than one linguistic area. For example, the Bombay province comprised Gujarati speaking, Marathi speaking and Kannada speaking areas and Madras province included Tamil speaking, Telugu speaking and Malayalam speaking areas. If no difficulty was found in those provinces at that time, the Commission observed, there is no reason to feel that the language question should pose a problem. With respect to the second objection, the Commission observed that in as much as according to the present rules in force in various States about 50% (if not, more) vacancies in the cadre of District Judges are reserved to be filled by promotion from the lower cadres and because the members of AIJS will be allocated only against the vacancies to be filled by direct recruitment, the promotional prospects of judicial officers (below district judge level) will in no way be affected. Similarly, it was held with respect to the third objection, that the control of the High Court will in no manner be diminished or curtailed because on allotment to a State, the allottees (members of AIJS) would become members of the State Judicial Service for all practical purposes with the difference that "while at present it (High Court) recommends various things such as promotion or disciplinary action to the Governor, it would be recommending the same to the National Judicial Service Commission which, in turn, would make necessary recommendation to the President of India but the President of India will act in the same manner as at present it is done by the Governor having regard to the almost binding character of the recommendation of the High Court." Besides rejecting the third criticism, the Law Commission also emphasized the desirability of such an All-India Judicial Service in the interest of efficiency. It made elaborate recommendations with respect to the method of recruitment, holding of examinations, scales of pay, initial pay, seniority, probation, training and so on. (It also recommended by a separate report creation of a National Judicial Service Commission).

V. Recommendations of the National Judicial Pay Commission

11. This matter has been examined by the first National Judicial Pay Commission headed by Justice K. Jagannatha Shetty, former Judge of the Supreme Court (and comprising two retired Judges of the High Court). Their report was submitted in the year 1999. In the summary of recommendations published by the said Commission it supported and reiterated the recommendations of the Law Commission contained in its Fourteenth Report (referred to herein above) for the creation of an All-India Judicial Service. It fully supported the reasoning given by the Law Commission in support of the said recommendation. It then referred to the observation of the Supreme Court in the All India Judges case (AIR 1992 S.C. 165) to the effect that "the feasibility of the implementation of the recommendations of the Law Commission may be examined

expeditiously and implemented as early as possible. It is in the interest of the health of the judiciary throughout the country that this should be done. The report of the Pay Commission then refers to the fact that the Government of India had elicited the opinions of the State Governments and High Courts in this behalf and that whereas eight State Governments agreed with the proposal and another eight State Governments gave conditional approval to the proposal, seven State Governments have opposed the same. So far as the High Courts are concerned, it is stated that four High Courts have favoured the idea, four have given their conditional approval while three have opposed and five High Courts did not offer any opinion in the light of the judgment Supreme Court. The Pay Commission had also invited the views and comments on the methodology of constituting an All India Judicial Service. After considering them it made the following recommendations:

(i) The AIJS should be constituted only in the cadre of District Judges as per provisions of Article 312 (3) of the Constitution. The District Judges directly recruited and promoted should constitute the AIJS.

(ii) The selection for direct recruitment should be by the National Judicial Commission / UPSC and the promotees by the respective High Courts.

(iii) The qualification for direct recruitment to AIJS should be in conformity with that prescribed under Article 233(2) of the Constitution.

(iv) Service Judges also should be allowed to compete for recruitment of AIJS by appropriately amending Article 233(2) of the Constitution.

(v) Not exceeding 25% of the posts in the cadre of District Judges in every State should be earmarked for direct recruitment.

(vi) The age limit for recruitment to AIJS should be between 35 years to 45 years.

(vii) The procedure for selection shall be by written examination followed by viva voce.

(viii) Appointment : The National Judicial Commission / UPSC, after selecting the candidates for direct recruitment to the cadre of District Judges, must allocate to the States / UTs, the candidates equal to the vacancies that are surrendered by them. The High Court thereupon will recommend those names to the Governor for appointment as per Article 233 of the Constitution.

(ix) Training : The prescribed training is only after the appointment.

(x) Seniority : All India seniority is as per the ranking in the select list.

(xi) Inter-se Seniority in the State/UT : The inter-se seniority between direct recruits and promotees shall be determined according to the date of allotment and date of promotion. Such direct recruits must thus be annexed to the respective State Judicial Service within the three-tier system.

(xii) Court Language: Recording of the deposition should be: (1) Regional Language (to be recorded by the Court Officer); and (2) English (by the Presiding Officer).

VI. Some relevant considerations

12. The National Commission to Review the Working of the Constitution is of the opinion that while examining the idea of All-India Judicial Service the following factors may also have to be kept in view:-

(a) Whether the creation of AIJS would lead to further erosion of the powers of the States whose powers under the present dispensation are not many. By virtue of several entries in the Union List (which provide for the Union taking over certain subjects within the State List in case the Parliament declares it to be expedient in public interest) and as a result of the 42nd Amendment to the Constitution, the powers of the States have already been adversely affected. Is it advisable to diminish them further by taking away the power of selection from the High Courts and by vesting it in a Central body?

(b) The provisions of Article 312 of the Constitution as amended by the Constitution (Forty-second Amendment) Act have really created a problem. According to clause (3) of the said Article, such service shall not include any post inferior to that of a "district judge" as defined in Article 236. Now if the idea is to induct bright and young persons to the service from the age group 24 to 30, such persons have to be posted soon after selection and training as district judges. District judges not only try serious criminal cases like murder and dacoity but also exercise appellate jurisdiction in both criminal and civil matters. They also exercise original jurisdiction in certain civil matters. Would it be advisable to entrust the direct recruits of the said age group with such vast powers and would they be able to take upon such task? However if the idea is (as recommended by the first National Judicial Pay Commission) that the direct recruits are to be drawn from the age group 35 to 45 would there be any improvement over the present position? This is because age group 35 to 45 means that they are all practicing lawyers. If a practicing lawyer does not make good in his profession by the time he reaches the said age group, it means that he is no good. In other words, a practicing lawyer who has made good by the said age in the profession would not like to join the AIJS and face the prospect of being posted to some other State and subject to transfer from time to time. Indeed that is the present difficulty faced by the High Court as well. A lawyer who is reasonably intelligent and competent is bound to establish himself in profession by the time he reaches the age 35-40. Such a lawyer is not generally inclined to leave his practice and join the service as district judge where he is likely to be transferred from time to time even though within the State. That is the reason why many competent people are not coming forward to join the service, and if the service is made an All-India service, with the attending possibility of being allocated to any other State in India, and then again transfers within that State, would they not be all the more reluctant to join such a service?

QUESTIONNAIRE
ON
ALL INDIA JUDICAL SERVICE

1. Do you support the idea of constituting an "All India Judicial Service"?

2. If your answer to Question No. 1 is in the affirmative, what should be the eligibility criteria for the candidates? How do you meet the handicap of not knowing the local language in which the subordinate courts transact most of their work?

3. Do you agree that amendment of Article 312 effected by the Constitution (42nd Amendment) Act, 1976 has created difficulties in the way of constitution of an All India Judicial Service? If yes, do you agree with the proposal to delete clause (3) of Article 312 as suggested at page 18 of the Consultation Paper?

4. What are your views on the idea and queries posed in sub-paragraphs (a) to (c) at pages 14 to 17 of the Consultation Paper?

5. Have you any other suggestions to make on the issues discussed in the Consultation Paper? If so, please state them.

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REVIEW OF THE WORKING OF THE CONSTITUTION

REPORT OF THE NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION



VOLUME—II
Book 2



REPORT

OF

THE NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

VOLUME – II

(BOOK – 2)

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March 2002

1208 LJ&CA/2002—1A

CONSULTATION PAPERS

(Continued from Book – 1)

CONTENTS

VOLUME I

	Page No.
tter from the Chairperson forwarding the Report	(i)
cknowledgements	(iii)
hapters	
Introduction	1
Basic Approach and Perspective	23
Fundamental Rights, Directive Principles and Fundamental Duties	83
Electoral Processes and Political Parties	119
Parliament and State Legislatures	154
Executive and Public Administration	175
The Judiciary	198
Union-State Relations	222
Decentralization and Devolution	259
Pace of Socio-Economic Change	289
Summary of Recommendations	315
tes of Members	371

VOLUME II

BOOK - 1

Gazette Notifications		1
Advisory Panels		13
Consultation Papers		
(i)	Enlargement of Fundamental Rights	23
(ii)	Pace of Socio-Economic Change under the Constitution	55
(iii)	Literacy in the context of the Constitution of India	233
(iv)	Social Security and Employment	285
(v)	Effectuation of Fundamental Duties of Citizens	369
(vi)	Review of the Working of Political Parties specially in relation to Elections and Reform Options	419
(vii)	Review of Election Law, Processes and Reform Options	473
(viii)	Immunity of Legislators: What do the words 'in respect of anything said or any vote given by him' in article 105(2) signify?	539
(ix)	Efficacy of Public Audit System in India: C&AG	559
(x)	Probity in Governance	583
(xi)	Liability of State in Tort	665
(xii)	Superior Judiciary	703
(xiii)	All India Judicial Service	749

BOOK – 2

3. **Consultation Papers (Contd.)**

(xiv)	Financial Autonomy of the Indian Judiciary	765
(xv)	Constitutional Mechanism for the settlement of Inter-State Disputes	831
(xvi)	Treaty-making power under our Constitution	861
(xvii)	The Institution of Governor under the Constitution	889
(xviii)	Article 356 of the Constitution	925
(xix)	Review of the Working of the Constitutional Provisions for Decentralisation (Panchayats)	955
(xx)	Decentralization and Municipalities	1007
(xxi)	Empowering and Strengthening local self-government in Cantonments	1093
(xxii)	Empowerment and Strengthening of Panchayat Raj Institutions/ Autonomous District Councils/Traditional tribal governing institutions in North East India	1135

BOOK – 3

4. **Background Papers**

(i)	Working of Parliament and Need for Reforms	1213
(ii)	Some ideas in Governance	1229
(iii)	Concurrent Power of Legislation under List III of the Indian Constitution	1245
(iv)	Fiscal and Monetary Policies	1259
(v)	Barriers to Inter-State Trade & Commerce – The Case of Road Transport	1273
(vi)	Article 262 and Inter-State Disputes relating to Water	1353
(vii)	Pace of Socio-Economic Change and Development under the Constitution	1385

5. **List of Organisations/Individuals who sent representations to the Commission** 1423

6. **List of Organisations/individuals who responded to the Consultation Papers/Questionnaires issued by the Commission** 1451

7. **List of Organisations/Delegations/Individuals who interacted with the Commission** 1465

8. **List of Seminars sponsored by the Commission** 1469

9. **Minutes of meetings of the Commission** 1473

10 **Report of the Drafting and Editorial Committee** 1581



NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

FINANCIAL AUTONOMY OF THE INDIAN JUDICIARY

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating a public debate and eliciting public response.

September 26, 2001
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Advisory Panel

on

Strengthening of the institutions of Parliamentary Democracy; (Working of the Legislature, Executive and Judiciary; their accountability; problems of Administrative, Social and Economic Cost of Political Instability; Exploring the possibilities of stability within the discipline of Parliamentary Democracy)

Member-in-charge

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CONTENTS

Chapter		Pages
I.	Independence of the Judiciary in India - Basic Structure – scope and width	773
II.	Resolutions of U.N. Sub.Committees and International Jurist Organisation: A Chronological Review of recent events.	774
III.	United States of America	779
IV.	United Kingdom	792
V.	Australia	799
VI.	Canada	804
VII.	Other Countries	806
VIII.	India	809
IX.	Planning for Courts	811
X.	Comparative Review of the Position Abroad & in India	815
XI.	India – Proposals for Constitutional Amendment and/or Legislation	818
	Questionnaire	827

CHAPTER I

INDEPENDENCE OF JUDICIARY IN INDIA BASIC STRUCTURE – SCOPE AND WIDTH

1.1 Today, the Judiciary in India is blamed for the huge backlog of cases. It is time that the public is made aware that during the last 50 years after independence, little attention has been paid by the Government for improvement of the infrastructure of the Judiciary. There is a dearth of Courts and Judges and of buildings both for Courts and Judges and officers and staff. In several cases even minimum facilities have not been given. The reason is that there is no planning and proper budgeting of the Courts' requirements in consultation with the Judiciary as is done in other countries. Nor is there a long range Plan or at least a Five Year Plan. The result is that most courts are over burdened with cases on the civil and criminal side. Delay results in a serious infraction of right to speedy trials, to violation of human rights in various cases. A stage has reached when the parties are thinking of taking the law into their hands.

1.2 In the above scenario, it has become necessary to go into the subject of 'financial independence' or 'financial support' of the Judiciary in India at some length on a comparative basis and also to consider the need for adequate provision for the Judiciary as a 'Plan' subject.

1.3 The Commission shall first refer to certain fundamental concepts. In a number of judgments of the Supreme Court, it has been laid down that the independence of the Judiciary is part of the basic structure of our Constitution. In S.P. Gupta vs. Union of India & Another [1981 Suppl. SCC 87 at p 223], Bhagwati, J. (as he then was) observed that "The concept of independence of the judiciary is a noble concept which inspires the constitutional scheme and constitutes the foundation on which rests the edifice of our democratic polity." In the same case, Fazal Ali, J. stated (p.408) that "it has, however, not been doubted by counsel for any of the parties that independence of judiciary is doubtless a basic structure of the Constitution". Again in Shri Kumar Padma Prasad vs. Union of India & Others [1992(2) SCC 428 at 446 and 456], Kuldip Singh, J observed that the "Independence of the Judiciary is the basic feature of the Constitution".

1.4 The independence of the Judiciary is not confined to the Judges in the Subordinate Judiciary but extends to the staff as well.

1.5 In Union of India & Others vs. Pratibha Bonnerjea & Another [1995 (6) SCC 765] the Supreme Court stated "from the scheme of the Constitution it is obvious that the Constitution-makers were evidently keen to ensure that the judiciary was independent of the Executive. The Constitution has tried to insulate the Judiciary from outside influence both from the Executive and the Legislature. Articles 223 to 237 in Chapter VI in Part VI of the Constitution dealing with the courts below the State High Court also show that the Constitution-makers were equally keen to insulate even the subordinate judiciary. Not only the Judges but even the staff members are insulated from executive influence as is evident from Article 229". It was also so observed in High Court of Judicature at Bombay vs. Shirishkumar Rangrao Patil & Another [1997 (6) SCC 339].

1.6 Independence of the Judiciary deals with the independence of the individual Judges in relation to their appointment, tenure, payment of salaries and also non-removal except by process of impeachment. The independence has also other facets including the 'institutional independence of the Judiciary'. One of the accepted facets of 'institutional independence' is the one concerning the financial resources and financial freedom or autonomy that is to be given to the Judiciary. Today, this concept has been developed and accepted in most of the democracies governed by the rule of law. The doctrine of separation of powers has been suitably modified and adjusted to achieve the above goal of financial freedom of the Judiciary. The principle of judicial independence is almost universally accepted. Initially it is necessary to refer to resolutions of

international bodies under the aegis of the UN and to resolutions passed under the auspices of the International Commission of Jurists.

CHAPTER II

RESOLUTIONS OF U.N. SUB-COMMITTEES AND INTERNATIONAL JURIST ORGANISATIONS: A CHRONOLOGICAL REVIEW OF RECENT EVENTS

2.1 The International Commission of Jurists enjoys consultative status with the United Nations Economic and Social Council (UNESCO) and the Council of Europe. (A historical review is also available in Dr. Shimon Shetreet's "Independence of the Judiciary, The Contemporary Debate", 1988, pp.396 etc.)

2.2 The first International Congress sponsored by the International Commission of Jurists (ICJ) was held in Africa in 1955 and it projected the dynamic concept of the 'Rule of Law'. Then came the International Congress of Jurists held in Delhi in January 1959, in which 185 Jurists from 53 countries participated. This Congress was the culmination of two years of preparation by the ICJ Secretariat, ICJ Nation Sections and Working Groups in many countries. The resolution of this Congress is known as the 'Declaration of Delhi'. The Congress constituted four committees on (i) the Legislature and the Rule of Law; (ii) the Executive and the Rule of Law; (iii) the Judiciary and the Legal Profession under the Rule of Law; (iv) Criminal process and the Rule of Law. The fourth of the Committees stressed in Clause X on the "access to law for both rich and poor". Thereafter, the African Conference on the Rule of Law took place at Lagos in 1961 where 194 Jurists from 23 African and Non-African nations met. This Conference while affirming the Delhi resolution on Rule of Law declared that these principles were of universal application. Clause 7 of the resolution of Committee III reaffirmed Clause X of the former Committee of New Delhi relating to the need for "equal access to law for both rich and poor alike" and provision for legal aid in civil and criminal matters.

2.3 The next Conference of the International Congress of Jurists on the Rule of Law was held in Rio de Janeiro in December, 1962. Then came the Conference of Bangkok, held in February 1965.

2.4 Thereafter, the U.N. Sub Commission, upon a petition by the Centre for Independence of Judges and Lawyers, Geneva, appointed Dr. L.M. Singhvi of India as Special Rapporteur to study the matters relating to the Independence and impartiality of the Judiciary, Jurors, Assessors and of the independence of lawyers and to formulate his recommendations, by its decision 1980/24. In the same year, the 6th U.N. Congress on the Prevention of Crime and Treatment of offenders, in its resolution No. 16, called for priority to be given to "the elaboration of the guidelines relating to the independence, selection, payment training and relation of Judges and prosecutors".

2.5 In his preliminary report, 1980 (see CIJL Bulletin, Geneva November, 1980) Dr. L.M.Singhvi, referred to the entire history of the movement for the Indepedence of the judiciary and said it was necessary to formulate a viable equation between 'independence' and 'accountability'. He said that "the plateau of perils to the impartiality and independence of Judges, Jurists and Assessors and the independence of the legal profession should be mopped up carefully and elaborately to enable us to negotiate the terrain and overcome the hazards by way of constitutional, legal, institutional, cultural, procedural and other appropriate safeguards." Dr. Singhvi submitted his progress reports in 1980, 81 and 82.

2.6 The famous Syracuse Draft Principles on independence of the Judiciary were formulated by a Committee of Jurists and the International Commission of Jurists at Syracuse, Sicily on 25th-29th May, 1981. The participants comprised distinguished Judges and Jurists from Africa, Asia,

America, Eastern and Western Europe. Articles I, 24, 25 and 26 of the said principles are of fundamental significance for all countries. They specially dealt with the need for collaboration with the Judiciary in the preparation of budget for the Judiciary so that reasonable provision is made for infrastructural developments for clearance of backlog of cases and for avoiding undue delay. The above Articles are worth quoting:

"Preamble

Article 1: The Universal Declaration of Human Rights (Article 10) and the International Covenant on Civil and Political Right [Article 14(1)] proclaim that everyone should be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. An independent judiciary is indispensable for the implementation of this right".

Financial Provisions:

Article 24: To ensure its independence the judiciary should be provided with the means and resources necessary for the proper fulfillment of its judicial functions.

Article 25: The budget of the judiciary should be established by the competent authority in collaboration with the judiciary. The amount allotted should be sufficient to enable each court to function without an excessive workload. The judiciary should be able to submit their estimate of their budgetary requirements to the appropriate authority.

[Note: An inadequate provision in the budget may entail an excessive workload by reason of an insufficient number of budgeted posts, or of inadequate assistance, aids and equipment, and consequently by the cause of unreasonable delays in adjudicating cases, thus bringing the judiciary into discredit.]

Article 26: Judges should receive, at regular intervals, remuneration for their services at a rate which is commensurate with their status, and not diminished during their continuance in office. After retirement they should receive a pension enabling them to live independently and in accordance with their status.

[Note: It is essential for the independence of the judiciary, that salary levels should be such that judges are not exposed to the temptation to seek other sources of income.

An exception to the principle of non-reduction of salaries may be made at a time of economic difficulty if there is a general reduction of the public service salaries, and members of the judiciary are treated equally."

2.7 On 17th – 18th July, 1982, the LAWASIA Human Rights Standing Committee met in Tokyo, Japan (see CIJL Bulletin No.11, April 1983 p.49) and discussed about the Independence of the Judiciary in Asian Countries. Among various points in the resolution, it was stated in para 13 that the 'Committee is aware of instances, in the LAWASIA region where facilities which are now provided to Judges and to the Court system are below the minimum acceptable level at which Judges and Courts can carry out that functions properly'. While recognising the economic circumstances in which some countries could be placed, it was resolved:

"a proper system of court and proper performance of the Judicial function are each essential to the maintenance of proper values the rule of law, and the attainment of human rights within a society. The Committee therefore recommends that the priority of such facility be seen as having a priority of the highest order in the ordering of each society".

2.8 The International Bar Association adopted, at its 19th Biennial Conference held in New Delhi, October 1982, the recommendations made by Dr. Shimon Shetreet, Professor of Hebrew University, Jerusalem, Israel, who has done pioneering work in this field and written two great books 'Judges on Trial' and 'Judicial Independence: The Contemporary Debate'. His recommendations concerned the Minimum Standards of Judicial Independence and these are known as the 'Delhi Approved Standards' (Published later in CIJL Bulletin pNo.11, p.53 and CIJL Bulletin, 23, Jan. 1989, p.18). Para 2 thereof refers to the need for autonomy of the Judiciary and states that Judicial administration must be vested jointly in the Judiciary and the Executive and adequate financial resources must be made available. It was said:

> "2. The Judiciary as a whole should enjoy autonomy and collective independence vis-à-vis the Executive.
>
> 9: The Central responsibility for Judicial administration shall preferably be vested in the Judiciary or jointly in the Judiciary and the Executive.
>
> 10. It is the duty of the State to provide adequate financial resources to allow for the due administration of justice.
>
> 13. Court services should be adequately financed by the relevant government.
>
> 14.Judicial salaries and pensions shall be adequate and shall be regularly adjusted to account for price-increases independent of Executive Control.
>
> 15.(a). The position of the Judges, their independence, their security, and their adequate remuneration shall be secured by law.
> (b).Judicial salaries cannot be decreased during the Judges' serves' services except as a coherent point of an overall public economic measure."

2.9 The Universal Declaration on the Independence of Judges as adopted in the World Conference of the Justices, Montreal on 5-10 June, 1983 (CIJL Bulletin Vol.12, October 1983 p.27) dealt with independence of International and National Judges. Para 2.09 states "Judges may take collective action to protect their judicial independence". It is said in para 2.40, dealing with 'Court Administration' that Court budgets must be prepared in consultation with the Judiciary and that the Judiciary shall submit its estimates to the concerned authority. It is said:

> "2.40: The main responsibilty for Court administration shall vest in the Judiciary.
>
> 2.41: It shall be a priority of the highest order for the State to provide adequate resource to allow for the due administration of Justice, including physical facilities appropriate for the maintenance of Judicial independence, dignity and efficiency, judicial and administrative personnel; and operating budgets.
>
> 2.42: The budget of the courts shall be prepared by the Competent Authority in Collaboration with the Judiciary. The Judiciary shall submit their estimate of the budget requirements to the appropriate authority."

2.10 The 7th UN Congress on the Prevention of Crime and the Treatment of Offenders held at Milan in August-September 1985 adopted, among others, in para 7 (CIJL Bulletin, No.16, October 1985 p.53 and CIJL Bulletin No.23, April 1989, p.109) as follows:

> "7. It is the duty of each Member State to provide adequate resources to enable the Judiciary to properly perform its function".

2.11 The Lusaka Seminar on the independence of Judges and Lawyers held in November 1986 (CIJL Bulletin, Vols: 19-20, October, 1987 p.97) said in para 23, 24, 49 stated that the Judiciary must have a greater say in allocation of funds for the Judiciary. It was stated:

"Resources.

23. The executive shall ensure that the Courts are adequately supplied with Judicial officers and supporting staff.

24.: The Courts should, as far as possible, make use of the modern aids to simplify and accelerate court proceedings, and government should be ought to provide, as far as possible, adequate funds for the Judiciary for this purpose."

Administration of the Courts.

49.: The Judiciary, being a separate branch of government, should fall under the sole responsibility of the Chief Justice. Problems may arise when the Judicial branch is considered as a department of a Ministry. Conditions should therefore be created whereby the Judiciary has a greater say in the allocation of funds for the judiciary."

2.12 The International Commission of Jurists held a Conference on the Independence of Judges and Lawyers at Caracus, Venezuela, January 1989 (CIJL Bulletin, No.23, April 1989 and CIJL Bulletin 25-26, Oct.1990 p.22). It recommended certain basic principles and also the following procedure for adoption by the UNESCO (p.121):

"Procedure 5: In implementing principles 7 and 11 of the Basic Principles, States shall pay particular attention to the need for adequate resources for the functioning of the Judicial system, including appointing a sufficient number of Judges, in relation to case-loads, providing the Courts with necessary supporting staff and equipment, and offering Judges appropriate personal security, remuneration and emoluments".

2.13 Dr. L.M. Singhvi, pursuant to the UNESCO's proceedings referred to earlier, submitted his final report at the 38th session of the UN Sub-Commission and referred to his draft declaration on the Independence and Impartiality of the Judiciary etc. On circulation thereof, comments were submitted to the report and at its 45th session, the U.N. Sub Commission (Resolution 1989/32) requested governments to take into account the principles set forth by Dr. Singhvi in his draft declaration. (CIJL Bulletin, 25-26, Oct.1990, pp. 38-39), as approved in 1985. Paras 33 and 34 of the declaration deal with finances and budgets for the Judiciary and reads as follows:

"Para 33: It shall be a priority of the highest order for the State to provide adequate resources to allow for the due administration of Justice, including physical facilities appropriate for the maintenance of Judicial independence, dignity and efficiency; judicial and administrative personnel; and operating budgets.

Para 34: The budget of the Courts shall be prepared by the competent authority in collaboration with the Judiciary having regard to the needs and requirements of Judicial administration.".

2.14 There has been a Conference at Beijing on 19.8.1995 (6th Conference of Chief Justices of Asia and Pacific). This Conference issued the 'Beijing Statement of the Principles of the Independence of the Judiciary in the LAWASIA region'. In its preamble, it refers to the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on

Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. It refers to the 6th U.N. Congress on the Prevention of Crime and treatment of Offenders, the 7th Congress at Milan in Aug-Sept. 1985 where the Basic Principles on the Independence of the Judiciary' were adopted, to the Tokyo Law Asia Conference in July 1982 when the 'Principles of the Independent Judiciary in the LAWASIA region ("The Tokyo Principles" were forwarded, to the 5th Conference of Chief Justices of Asia and Pacific at Colombo, Sri Lanka in Sept. 1993 wherein it was decided to modify the Tokyo Principles, and the modified declaration is now adopted in the Beijing Conference. It says (Article 2) that an independent Judiciary is indispensable for the implementation of the human rights referred to in the UN Declaration of Human Rights (Article 10 and the International Covenant on Civil and Political Rights (Article 14(11), Article 4 says:

> "The maintenance of the independence of the Judiciary is essential to the attainment of its objectives and the proper performance of its functions in a free society observing the Rule of Law. It is essential that such independence be guaranteed by the State and enshrined in the Constitution or the law.".

2.14.1 Adverting to Judicial administration and budgets, it says:

> "Judicial Administration:
>
> Article 35:.....
>
> Article 36: The principal responsibility for Courts administration including appointment, supervision and disciplinary control of administrative personnel and support staff must vest in the Judiciary, or in a body in which the Judiciary is represented and has an effective role.
>
> Article 37: The budget of the Courts should be prepared by the Courts or a competent authority in collaboration with the Judiciary having regard to the needs of judicial independence and administration. The amount allotted should be sufficient to enable each court to function without an excessive workload".

2.14.2 In two other Articles dealing with relationship with Executive, it is stated:

> "Article 41: It is essential that Judges be provided with the resources necessary to enable them to perform their functions.
>
> Article 42: When economic restraints make it difficult to allocate to the court system, facilities and resources which judges consider adequate to enable them to perform their function, the essential maintenance of the Rule of Law and the protection of human rights nevertheless require that the needs of the Judiciary and the Court system be accorded a high level of priority in the allocation of resources."

2.15 India is a signatory to the U.N. Charter and the Covenant and Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and also a party to several of their resolutions and to the resolutions of the LAWASIA for Asia and Pacific regions. There is, therefore, a bounden duty on the part of the Government to conform, to these resolutions.

CHAPTER III

UNITED STATES OF AMERICA

Part A

Historical Background

3.1 It is necessary to refer to the historical background and to the efforts of Chief Justice Taft in 1921-22 in laying firm foundation for the judicial independence in policy making and for the financial support and autonomy of the Federal Court.

3.2 When the need for a statutory back up on these aspects was initiated, there were several opponents from among the politicians. Thomas J. Walsh of Montana described the proposed Judicial Conference as a 'Junket' and as ending in 'dinners' and nothing else. He said:

> "...it means absolutely nothing on earth except a junket and a dinner...There is not any business, so far as I can see which can be transacted.... It involves an expanse which...has no justification whatsoever." (see Origin of the Judicial Conference by David S. Myers) (1971) – 57 Am. Bar Association Journal PP 597-600).".

Socialist Meyor London of New York argued that 'an annual conference of Judges would be an additional burden on the time of the Chief Justice and the senior circuit Judges'. In view of the sizeable backlog of cases already in the Federal Courts, he did not favour imposing an additional burden on their times. Clarance Fo Lea of California felt that the Conference "could become a propaganda organization for legislation for its own benefit," exposing the members of the Conference to public criticism and discredit. Fritz G. Lanham of Texas felt that the statistical data proposed to be gathered by the Conference could as well be gathered from the reports of the Federal Judges to the Chief Justice. John K. Shields of Tennessee likened the Chief Justice to a Commander-in-Chief and the senior Circuit Judges to General staff and district Judges to the men in ranks and he felt that the judicial Conference would encroach into the legislative and executive domains. The Conference would remain a 'social function'. Others attacked the provision which stated that the Attorney General was to report to the Judicial Conference on matters relating to business of the Courts. In spite of all this, the Bill was passed finally on September 14, 1922 (ibid, Myers p.597-600).

3.3 As pointed out by Frankfurter and Landis, the rise of US as a predominantly industrial nation required local needs to be taken up on the basis of national considerations. (Ibid, Myers, p.597). Types and volume of litigation, character of issues, duration of trials and speed of disposition had to be known in order to determine competence or laxity in the judicial administration. Records showed in 1921 that prior to the World War I, the dockets in US were over crowded. New legislations were adding new rights and new crimes into the law and were leading to tremendous increase in the cases going to the Courts. It was in those circumstances that the American Congress passed the law in 1922 which is now in Title 28.

3.4 Taft who became Chief Justice and was also the President of USA could make proper assessment and he said that Judges are better suited to make policy decisions. He said:

> "Judicial force ought to be under the executive direction of somebody, so that the number of Judges needed to meet the arrears of business at a particular

place should be under the control of one who knows what the need is. ...." (2. Pringle, The Life and Times of William Howard Taft, 993 (1939) quoted by Myers ibid, p. 598).

3.5 An annual survey of the Courts' work, gathering statistics of records of work done and proper coordination among courts. was necessary. In 1921, the Attorney General, H. Daugherty appointed a Special Committee of three Federal Judges and two US attorneys to recommend legislation for judicial reforms. The Committee adopted Chief Justice Taft's suggestion that:

> "each district Judge be required to file an annual report with the senior Circuit Court Judge of his Circuit, relating the conditions of his docket and presenting various statistics as to the functioning of his Court".

3.6 Legislation based on the Committee's recommendation was "promptly introduced" in Congress and passed. Chief Justice Taft testified before the Judicial Committee of the Senate as follows:

> "...One feature which I was glad to see...is the idea of giving some executive head to the management of the judiciary of this country for the purpose of massing against the places where arrears... (exist), enough judges to reduce arrears and produce normal condition. That provision is the assembling of Council of some of the nine senior Circuit Judges..."

3.7 After the 1922 legislation, for the first time, the entire structure of the federal judicial department was opened to discussion as new theories of judicial organization and administration came to be debated.

Part B

3.8 Prof. Shimon Shetreet, in the final Chapter (Chapter 52 – pages 590-658) of his book (Judicial Independence: The Contemporary Debate, 1988) while dealing with the subject of 'Judicial Independence: New Conceptual Dimensions and Contemporary Challenges' has pointed out that until 1939 the Central responsibility for court administration at the federal level in the United States of America was vested with the Attorney-General. The Judicial Conference (initially Circuits Conference) was founded in 1922. In 1939, the responsibility for court administration was statutorily transferred to the Judiciary by the 28 U.S.C.A.S.605 (P.592), to be performed as per the policies of the Judicial Conference. In that year the statute created the "Administrative office of the United States Courts" and the entire administration of the Federal Courts was transferred from the Department of Justice to the above 'Administrative Office of U.S. Courts'. The result was the creation of a largely centralised federal judicial administrative system autonomous in the conduct of its administrative and financial matters. Consequently, budget estimates were not submitted to the Executive but directly to Congress and budget estimates submitted by the Judiciary were not subject to executive sanction after this date (603). (See E.C. Friesen, Managing the Courts, 1971, Indiana policies Ind:) But the State Judiciary, which is not uniform as regards these matters, did not always have effective administrative control and certainly had not the budgetary freedom of the federal courts. The problems of shortage in court-financing led to actions in courts to mandate court-financing against the (local) government organisation which had often failed to provide the budget necessary for the State Courts. (See Smith vs. Millen 381. F.2d/ 738 (1963); Judges for the Third Circuit vs. Country of Wayne: 172-nW:2d. 436 (1969).

3.9 Chapter 29 of Dr. Shimon Shetreets' Book contains an Article by Prof. Robat B. Mckay & James M. Parkinson as to the position in USA. In regard to State Courts (i.e. other than Federal) It is said there that in the US (State Courts), Chief Justice of the Court en banc, is responsible for

court administration at the court level in all American jurisdictions. The Court Administrator or clerk of Court, prepares the budget of the Court. The budget is then approved by the Chief Justice of the Court en banc before submission to the proper authority in the executive and legislative branches. In municipal courts (City Courts) and courts of general trial jurisdiction in decentralised state systems –buildings and facilities are frequently under the management of the executive branch of government. In the state systems that are more unified and centralised, the Court administrator plays a larger role in facilities' management. Several State Supreme Court and the Supreme Courts of U.S.A. manage their own facilities and buildings.

3.10 There is, according to the above authors, no function in the US Courts comparable to what a Minister of Justice does in other countries. The Court administrator or the clerk of the Court, is usually responsible for court statistics at both State and Central levels. Court budgets are prepared by the Court administrator and approved in the ordinary procedure. These are judicial systems which exhibit relatively strong management with only a limited degree of budgetary unification as in New Jersey. Again as in Connecticut, a system may have a relatively decentralised administrative structure although its financial specifications are unified in a single subject. (360-361).

3.11 In the case of Federal Court budgets and those of States such as New York, the Court budget is brought directly to the legislature for approval. Other States, for example, like Missouri, include Court budgets as a regular part of the executive budget. In still other States, the budget is submitted simultaneously to the executive and legislative branches. The services to Federal court are financed by the federal government. The services to State Courts are financed by the respective State and local governments. The court buildings are generally the responsibility of the appropriate department of government but this is not so with the U.S. Supreme Court and several State Supreme Courts, which are solely responsible for their own administrative personnel and buildings. (p.363).

3.12 The question of Judicial salaries has been put before the Courts. On December 15, 1980, the U.S. Supreme Court effectively gave themselves and all other federal Judges a pay rise of more than 10% in a class-action case, U.S. vs. Will, (1980) 449 U.S. 200, involving the payment of cost-of-living index raise to federal Judges. (p.364).

3.13. Judges' salaries in U.S. were covered by a statutory provision for annual pay adjustment unto 1975 when the Executive Salary Cost-of-Living Adjustment Act was passed. This law provided that Judges would receive the same percentage increase accorded to General Schedule Employees. However, the provisions of this Act were rarely implemented because in subsequent years, Congress passed separate measures cutting off such raises for themselves and others. A further limitation was placed on federal Judges in 1981 when Section 140 of Public Law – 97-92 was enacted, which provided that no salary increase shall be given to Judges in the absence of separate legislative action. Finally, in 1989, Congress passed the Ethics Reform Act, which provided a catch-up pay raise approximately 33% over two years. But freeze in increase started again 1993.

3.14 In 1990, the Chief Justice of the State of New York submitted the budget for the Judiciary to the Governor seeking a 4% increase but instead, but the budget stood reduced by 4%. Consequently 1700 non judicial staff were discharged and no civil Judge trials were held for 3 months in some counties while in some others, the court rooms were closed. Judges remained in chambers. So Chief Justice Wachtuer filed a complaint verified on oath against Governor Cuomo and the legislature, - in the State Court of first instance claiming that the Judiciary has an inherent right and power to compel reasonable and necessary funding of court operations. Later the Chief Justice resigned following some other allegations of misconduct unconnected with his office. (See (1994) 6 Aust.L.J. 14(22) by Justice Miles, State of the Judicature in the Australian Capital Territory). There were precedents for both sides. For instance, the Pennsyluvanian Supreme Court in 1986 ordered Philadelphia to appropriate more than 1 million for its court of common pleas (Commonwealth vs. Tate 274 A. 2d.193). On the other hand, the New York Court

of Appeals in 1975 refused to rule that there was a right to counsel at public expense in matrimonial cases. (In Re Smilcy: 36 NYS 2D.87). That Court said:

> "The absence of appropriate funds and legislation to raise taxes under our State Constitutional system – is not a judicially fillable gap."

3.14.1 For other earlier court cases in USA see Russel R. Wheeler (Judicial Administration)(1977) pp.122-123.

3.14.2 The above thought, although perhaps not the language, echoes the remarks of Justice Brennan of Australia in (1992) 67. AJAR 1 at 16.

3.15 In 1991, for want of funds eight States ceased hearing Civil cases so that they could hear criminal cases. In 5 States, public defenders of accused rejected cases because of insufficient funding of their offices.

See also Beckert vs. Warren. Pa Carrol vs. Tate : 442 Pa. (1971). These cases are based on the contention of an inherent power in the courts concerned to compel budget appropriations for the reasonable needs of the Judiciary in carrying out constitutionally mandated duties.

3.16 Recently in 1998, a group of senior Judges who said that their salaries have not kept pace with inflation has sued the Federal Government (Washington Post, 8th January, 1998). They are seeking to restore cost-of-living raises denied to federal Judges from 1993 to 1997. The class action was filed in December 1997 in U.S. District Court, Washington, where Judge John Garrat Penn would have to decide the case relating to himself and his peers. The Judges contended that the non-payment on the basis of cost-of-living adjustment violated the 1989 Ethics Reform Act and the Constitution' guarantee that Judicial salaries will not decrease while in office. The Ethics law includes a provision for executive level federal employees – including Judges – to receive cost-of-living increase beginning in 1991.

3.17 In 1995, the Judicial Conference's Judicial Branch Committee responded quickly to the Senates' budget plan to freeze pay increase for Judges until the year 2002. The Committee notified the dire effect of a 7-year freeze on federal Judges' salaries. In 1997, the Judicial Conference has resolved for a catch-up pay adjustment of 9.6% for the four last years, a delinkage of Judges' pay from the Executive Schedule and repeal of Section 140 of P.L.-97-92. In the 104th Congress, legislation was introduced to repeal Section 140 and delink the pay of Judges but the Bill could not be passed.

3.18 Chief Justice Willian H. Rehnquist recently stated in the 1996 Year-end-Report on the Federal Judiciary on their salary problems:

> "Once again this year – in my eleventh annual report on the state of the Judiciary – I am struck by the paradox of Judicial independence in the United States: We have as independent a Judiciary as I know of in any democracy, and yet the Judges are very much dependent on the Legislature and Executive branches for the enactment of laws to enable the Judges to do a better job of administering Justice".

3.19 In Article published in (1997) Electronic Journal, p.3 by Justice Breyer of the U.S. Supreme Court, tilted "Judicial independence in the USA", he states as follows: There are three primary institutional pillars on which the U.S. Judicial administration is based. The first is the Judicial Conference of the States – which was created in 1922. It comprises the Chief Justice of the Supreme Court, 13 Chief Judges of the Circuits, 12 Dt. Court Judges and the Chief Judge of the Court of International Trade. The Judicial Conference is the national policy-making body for the Judiciary, and supervises the Adminstrative office of the U.S. Courts (which was established

in 1939). The Second one is the Administrative Office of the U.S. Courts. It addresses to the needs for centralisation of Judicial administration and contains a body of professional administrators subject to the direct control of the Judicial Conference, which administers the federal court budget, personnel management, procurement and other house keeping and support functions. The third one is Circuit Judicial Councils which have the primary responsibility in the judiciary's disciplinary system.

3.20 Another independent, but centralized institution of the Judiciary is the Federal Judicial Centre, created by Congress in 1967. It is the Judicial Conference of the U.S. and headed by the Chief Justice and is composed of six Judges selected by the Judicial Conference and the Director of the Administrative Office. It has the responsibility of conducting research into Judicial administration and issues relevant to the administrative of Justice, as well as to propose and prepare educational programme for federal Judges." The Judicial Conference of the U.S. & the Administrative Office

3.21 The Conference of Senior Circuit Judges was created by Congress in 1922 "to serve as the principal policy making body concerned with the Administration of the United States Courts. In 1948, Congress enacted Section 331 of title 28, US States Code, changing the name to the 'Judicial Conference of the United States'. It supervises the Administrative Office under Section 604 of title 28.

3.22.1 As stated earlier, the Administrative Office was created in 1939 by Congress. The Judicial Conference consists of 27 Judges, drawn from all Courts – viz. the Supreme Court, the Chief Judges of Circuit Court of Appeal, District Judges from each regional Circuit Courts, as stated above. There are none from the legislative or executive wings.

3.22.2 The Chief Justice of US is required to submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations (Section 331 of title 28).

3.22.3 The Conference meets twice in a year and goes into the disposal of cases, the requirements of the Judiciary, and the impact of new legislation on Courts. The Conference estimates the budgetary requirement and makes recommendations to the Congress. Members of the Conference in the Committees including the Chief Justice can even address Congress in regard to the said requirements. The Conference also takes into account the additional needs of the Judiciary on account of cases that may arise due to fresh legislation. The Conference also supervises and issues directions to the Administrative office of the U.S. Court.

3.22.4 Among the important Committees of the Judicial Conference are the following (see booklet of Judicial Conference Published in USA P 1-10)

(i) Committee on Budget.
(ii) Committee on Court Administration and court Management.
(iii) Committee on Information and Technology.
(iv) Committee on Security, Space and Accommodation.
(v) Committee on Long Range Planning.
(vi) Committee on Financial Disclosure.
(vii) Committee on international Judicial relations.
(viii) Committee on the Judicial Branch.
(ix) Committee on Judicial Resources.

3.22.5 The Committee on Judicial Resources concerns all issues of human resource administration, including the need for additional Article III Judges and support staff and oversees the organization of statistical systems and the development of methodologies for human resource needs, assessment and allocation. The Committee meets twice in a year, usually 2 months before the biennial meetings of the Judicial Conference.

3.23. In the booklet prepared by L. Ralph Mecham, Director of the Administrative Office regarding the Judiciary budget (p.15-16), it is stated as follows:

"One the key functions of the Judicial Conference and of the Administrative Office relates to the Judiciary's budget. The Judicial Conference and its Executive Committee, with specific financial responsibilities, all have roles in developing budget-formulation and budget-execution policy for the Federal Judiciary. The Administrative Office, working closely with the Courts, develops the budget estimates for consideration by the Judicial Conference and its Committees. Once the Conference approves the budget request for the Judiciary, the Administrative Office prepares the necessary support materials for Congress and carries out entire liaison with the appropriations Committees' staff.

In developing the budget request, a variety of statistical and analytical techniques are used, including Caseload forecasts and sophisticated work measurement formulas, in conjunction with year-round program analysis and review of actual expenditures. The entire budget-formulation process takes 18 months from the time estimates are developed until the appropriations bill for the Judiciary is enacted.

Once an appropriation is enacted by Congress, the Executive Committee approves a spending plan for the federal Judiciary. The Administrative office implements the Plan by allocating money to program – management division, which collects the funds to the Courts. Under budget decentralization, each court – unit controls its own budget and can shift resources among activities to meet its needs. The agency provides technical assistance and guidance in the obligation and disbursement of appropriated funds in accordance with existing statutes and Judicial Conference guidelines, and maintains the Judiciary's official financial system and accounting records.

(p.18) Over the last several years, Administrative Office program manager's have addressed some of the most pressing needs the courts have, for automation leadership, space and facilities planning support, administrative improvements, and board-ranged trouble-shooting support for Judges and other Court-Officials. The agency has improved its internal management systems and reorganized the staff to operate more effectively and efficiently to meet the ever-changing demands of the federal Judiciary.".

3.23.1 Decentralisation is done as follows: (p.18-19)

"Rather than making decision in Washington about what a Court needs, those decisions are better made by the Courts themselves, with the Administrative Office providing needed guidance assistance and oversight.

In particular, budget decentralization has provided court managers with more flexibility to apply resources and meet local needs more expeditiously. The decentralisation of personnel management and classification of authorities will be another major step in granting each court flexibility over the composition of its work place."

3.23.2 Towards managing future changes, the Administrative office says (p.19).

"As the Courts have grown in size and the workload has become more complex, the responsibilities of Judicial administration have increased

significantly. Also, the structure and activities of the Judicial Conference and its Committees have expanded in recent years. In support of these changes, the agency has been examining the demands likely to confront the federal courts in the future.

Many tasks confront the Administrative office: helping the Courts function with limited resources; working with Congress to obtain its resources and legislative changes the Judiciary needs;...supporting Judges and court staff in carrying out their responsibilities effectively; and reengineering operations to meet workload demands and take advantage of the most efficient use of emerging technologies.

A primary initiative for the Administrative office is to identify ways to reduce cost, improve service, and implement solutions that will enable the agency's staff to do the best job it can, with scarce resources.".

(More information can be obtained from office of Legislative and Public Affairs – Phone 202 – 272 – 1120.)

3.24 In a paper by Hon'ble Lloyd D. George (Chief U.S. Dt. Judge, Nevada), he states that in the US these 'administrative structures and procedures ... contribute to the independence of the Judiciary in the following aspects:

(1) The Judicial Conference of the US controls judicial administration generally.
(2) Judges (through the Judicial Conference and its budget Committees), prepare and submit the Judicial branch budget to the Congress.
(3) The Judicial Conference, (through its various Committees), generally controls the preparation of rules of procedure for the Courts.
(4) Judges (through the Chief Justice and a Committee of the Judicial Conference exercising over sight the Administrative office) control the day-to-day operations of the Court-pay roll, personnel, equipment and supplies.
(5) Judges themselves deal with disciplinary procedures.
(6) Judges control judicial education. The education of court personnel is done by Judges
(7) Judges participate in the management of Court space and facilities (through the Judicial Conference and the Administrative Office).

He says that "Members of the Judicial Conference and Committees members, including at times the Chief Justice, may be invited by Congress to speak at congressional hearings regarding the proposed legislation. Congress may thereby consider the impact of the legislation on the Judiciary" (i.e. increase of the workload). He says that in the US, on account of the mechanism of the U.S. Judicial Conference and the Administrative Office.

"the administrative structure of the Judiciary developed a Constitutional frame work providing for the inter-relationship of the three branches of government. ... The system has saved the Judiciary of the United States so successfully that often emerging governments may wish to incorporate within their appropriate frameworks, some of the following basic concepts:

(1). Promotion of inter-relationship and communication between the Judiciary and other divisions of government.

(2). The establishment of a centralized organization (like the Judicial Conference) within the Judiciary for co-ordinating and communicating with other divisions of government.

(a) The creation of Committees within that centralized organization to carry out assignments regarding their problems.

(b) The development of methods, of self-management and setting of professional standards by the centralized organization."

3.24.1 He concludes that Congress indeed has a vested interest in the successful operation of the Judiciary. The administrative structures and procedures established by Congress strengthen the independence of the Judiciary of the United States". He states that the US systems are a model for 'emerging governments'.

3.24.2 The above paper by Judge Lloyd D.George clearly summarizes how the Judicial Conference and the Administration of office of US bring about a fine inter-relationship between the three wings of Government and how it helps in the maintenance of judicial independence in Judiciary as an institution.

3.25 The Federal Judicial Centre, Washington has published a pamphlet enumerating the 'Building Blocks of an Independent Judiciary' in USA. It says that

"There can be no genuine human rights without the protection of an independent judiciary".

3.25.1 The Building Blocks are 18 in number and read as follows:

(1) Separation of powers.
(2) Equality of status of the Judicial branch with other branches of government.
(3) Separation of the Judicial branch from the department (Ministry) of Justice.
(4) Judges appointed for life.
(5) Adequate compensation for Judges.
(6) No reduction in Judges compensation.
(7) Adequate staff of Judges.
(8) Removal of Judges only by impeachment.
(9) The power of Judicial review.
(10) Discipline of Judges occurs only within the Judicial branch.
(11) Judicial Code of Conduct – prohibition against political and after kind of activity.
(12) A Conference of Judges (the "Judicial Conference of the US") which controls judicial administration.
(13) Judges prepare and submit the budget for the Judicial branch.
(14) Judges control rules of procedure for Courts.
(15) Judges control day=to-day operation of the courts.
(16) Judges have control over judicial education.
(17) Judges have control over court space and facilities.
(18) Lawyers serve as officers of court.

3.26 In a paper on the "Independence of the Judiciary in the 1980s." Sir Nicolas Browne – Wilkinson, then Vice Chancellor (see 1988 Public Law p.44) (at 51-52) says this about the American system:

"In the USA, the problem of the financial independence of the federal Judiciary has been approached in a typically whole-hearted manner, reflecting the strict adherence to the doctrine of the separation of powers. Since 1939, there has been a Judicial Conference comprising the Chief Justice of the Courts and often elected Judges. The Judicial Conference is the federal Judiciary's policy-making body. Answerable to it (that is to say, answerable to the Judiciary) is a separate civil service, the administrative office, which runs the courts in their entirety, together with certain related services which we would not include in the Court service. The Judicial Conference prepares a budget which has to be

transmitted to Congress without alteration by the executive: the executive may comment on the budget but not amend it. Congress then fixes the total budget, and the Judicial Conference is accountable directly to Congress for its expenditure. Thus the Judicial conference both prepares the total budget and is wholly responsible for its allocation and the administration through its own administrative branch, which is answerable to it. The executive has no power on either aspect of the matter".

3.26.1 Fixation of 'total budget' in the USA leaves to the Court, the entire flexibility of using the monies under any head of expenditure. His Lordship laments about the position in UK. He says:

"This position is exactly the converse of that, in the United Kingdom where both the total budget and its allocation are under the exclusive control of the executive, who administer the system through ordinary civil servants who are not answerable to the the Judges. Judges have no power or function in relation either for the total budget or its allocation (For information on US position see J.M. Slack, "Funding the Federal Judiciary (1979) 82 West Viginia L.R. p.1.)".

3.26.2 He praises the US system as follows:

"So far as I can discover, no other country goes to the same length as the United States in ensuring Judicial control over the financing and administration of the legal system.

3.26.3 He refers to Australia. The position appears to be better than in UK. The Court prepares the budget under the High Court of Australia Act, 1979, but those are submitted to the Ministry of Finance and then referred to Parliament. The Court is accountable to the Ministry of Finance for monies expended. Similar is the position in Canada. Position in Germany also is said to be comparatively better than in U.K.

Part C

The Statutory Framework in US: (The Judicial Conference, Judicial Council, Administrative Office and Budget)

3.27 The statute of 1922 created (i) the Judicial Conference of the United States and (ii) a Judicial Council for each circuit and a Judicial Conference for each circuit.

3.28 Before reference is made to the statute, it is necessary to refer to the structure of the Federal Courts in US. There are District Courts exercising original federal jurisdiction, then the circuits Courts (now called Courts of Appeals) exercising intermediate federal jurisdiction and then the US Supreme Court. There are other federal Courts such as the Court of Claims, the Court of Military Appeals, the Text Court of the US, the Customs Court and the Court of Customs and Patent Appeals. The District Judges who exercise original jurisdiction, also exercise admiralty and bankruptcy jurisdiction.

(i)(a) Judicial Conference of US:

3.29 Section 331 of Title 28 US Code Service states that the Chief Justice of US shall summon annually (a) the Chief Justice of each circuit, (b) the Chief Justice of the Court of

Claims, (c) the Chief Justice of Court of Customs and Patent Appeal, (d) a District Judge from each Circuit. The District Judge nominees are to be selected at the annual conference of the Circuit under section 333 and shall serve for one year or two years or three years as stated in the Act. The Conference is to make a comprehensive survey of the condition of business in the Courts in US, prepare plans, submit suggestions to various Courts, and carry on a continuous study of the operation and effect of the rules and procedure for eliminating delay and unjustifiable expense. The Attorney General, upon request of the Chief Justice of US, is to report to such Conference on matters relating to the business of the several Courts, with particular reference to cases to which the US Government is a party. The statute further says that the Chief Justice of US shall submit to Congress an Annual Report of the proceedings of the Judicial Conference of US and its recommendations for legislation.

(b)(i) Judicial Councils in each Circuit

3.29.1 The Judicial Council of a Circuit consists of all the Circuit Judges of the Circuit Court i.e. the appellate Judges. Section 332 states as follows: The Chief Justice of each Circuit shall call, at least twice in each year, a Council of the Circuit Judges for the Circuit. At the meeting, the Chief Justice of the Circuit shall submit to the Council, the quarterly reports of the Director of Administrative Office of US Courts. The Council shall take such action thereon as may be necessary. Each Judicial Council shall make all necessary orders for the effective and expeditious administration of the business of the Court within its Circuit. The district Judges in the Circuit shall promptly carry into effect orders of the Judicial Council. A Judicial Council of each circuit may appoint a "Circuit Executive" from among persons who shall be certified by the Board of Certification. The "Circuit Executive" shall exercise such administrative powers and perform such duties as may be delegated to him by the Circuit Council.

3.29.2 The "Circuit Executive" shall serve at the pleasure of the Judicial Council of the Circuit. The Board of Certification is to select the Circuit Executives. On the basis of the standards set up by it – including (i) experience in administrative and executive positions, (ii) familiarity with court procedures and (iii) special training. The Board shall consist of five members, three of whom are elected by the Judicial Conference of US and at least one of the three so elected, shall be a person experienced in executive recruitment and selection. The other two members of the Board are the Director of the Administrative office of the US state Courts and the Director of the Federal Judicial Centre. These five members of the Board are elected for five years. Certification of an Executive of the circuit shall be for three years unless re-certified. The decision of the Board shall be a decision of at least three of its members. Expenses of the Board are borne from the funds of the Federal Judiciary. Any member of the Board who is an employee of the US shall serve without any extra compensation.

3.29.3 The duties delegated to the "Circuit Executive" of each circuit include:

(i) Exercising administrative control of all non-judicial activities of the Court of appeals of the circuit.
(ii) Administering the personal system.
(iii) Administering the budget of the Court of appeals of the circuit.
(iv) Maintain a modern accounting system.
(v) Establish and maintain properly control records and undertake a space management programme.
(vi) Conduct studies relating to the business and administration of the Courts in the circuit and prepare recommendations and reports to (a) the Chief Judge, (b) the Circuit Council and (c) the Judicial Conference.
(vii) Correct, compile and analyse statistical data for purpose of the reports.
(viii) Represent the Circuit as its liaison to the Courts of various States.
(ix) Arrange and attend meetings of Judges of the Circuit and Circuit Council.

(x) Prepare annual report to the Circuit and to the Administrative Office of US Courts for the preceding year plus its recommendations for the expeditious disposition of the business of the circuit.

All the duties are subject to the general supervision of the Chief Justice of the circuit.

(b)(ii) **Judicial Conference of each Circuit:**

3.29.4 There are as many Judicial Conferences for the Circuits as there are Circuits.

3.29.5 This conference consists not only of the entire Judges in the Circuit Court (i.e. appellate Judges) but also the District Judges of the Circuit. Members of the Bar are also invited. (see also Oliver, Reflections on the history of Circuit Judicial Councils and Grant Judicial Conference 64 FRD. 201).

3.29.6 Section 333 refers to the 'Judicial Conference of Circuits' and requires the Chief Justice of each Circuit to annually summon the Circuit and district Judges of the Circuit, for the purpose of considering the business of the Courts and advising means of improving the administration of justice within such Circuit. The Court of appeals for each Circuit is to provide the rules for representation and active participation at such conferences by members of the bar of such Circuit.

Administrative Office of US Courts:

3.29.7 The Administrative Office of the US Courts is crucial for the implementation of the new statute. Sections 601 to 611 of Title 28 are in one chapter. Section 601 states that the Administrative Office of US Courts shall be maintained at the seat of the Government and will have a Director and a Deputy Director appointed, subject to the approval of the Supreme Court.

3.29.8 Section 602 states that the Director may appoint staff, subject to the civil service laws and section 603 states that his salary shall be the same as that of a District Judge.

3.29.9 Section 604 enumerates the duties of the Director as including :-

(i) to examine the state of Court's dockets and secure information as to the Courts' need of assistance; prepare and transmit quarterly to the Chief Justices of Circuits, statistical data and reports of business of the Courts;
(ii) to determine and pay, necessary office expenses of Courts, Judges and officers;
(iii) to disburse, directly or through several US marshals, moneys appropriated for the maintenance and operation of the Courts;
(iv) to purchase, exchange, transfer, distribute and assign, the custody of law books, equipment, and supplies need for the maintenance and operation of the Courts, the Federal Judicial Center, the offices of the US magistrates and Commissioners and offices of the pre-trial services agencies;
(v) to audit vouchers and accounts of the Courts, and of the Federal Judicial Centre, and of the pre-tria; services agencies and their staf;
(vi) to provide accommodation for the Courts, the Federal Judicial Centre, the pre-trial services agencies and their staff;
(vii) to perform such other duties assigned by the Supreme Court or Judicial Conference of US.

The Director's Report and recommendations will be public documents.

The Director, under the supervision of the US Judicial Conference shall compile data, which shall be laid before Congress annually by way of statistical tables and other information.

Budget Estimates

3.29.9 Section 605 is the crucial provision. It will be advantageous to extract it as it stands (the words which are not relevant here are shown in brackets).

> "Section 605: The Director, under the supervision of the Judicial Conference of the United States, shall submit to the Bureau of the Budget, annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the Courts and the Administrative office and the operation of the judicial survivors annuity fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law. (The Director shall cause periodic examinations of the judicial survivors annuity fund to be made by an actuary, who be an actuary employed by another department of the Government temporarily assigned for the purpose, and whose findings and recommendations shall be transmitted by the Director to the Judicial Conference.)
>
> Such estimates shall be approved, before presentation to the Bureau of the Budget, by the Judicial Conference of the United States, except that the estimate with respect to the Customs Court shall be approved by each Court.
>
> All such estimates shall be included without revision but subject to the recommendations of the Bureau of Budget, as provided by section 11 of Title 31 for the estimates of the Supreme Court"

3.29.10 It is thus clear that the budget sent up by the Director, as approved by the Judicial Conference of US, does not (unlike the procedure in the case of other departments) suffer any revision at the hands of the Bureau of Budget and is forwarded. The further procedure is stated in section 11 of Title 31. We shall now refer to that section:

Section 11 of Title 31: The title of section 11 is "President to transmit Budget to Congress; Contents thereof". Sub clause (5) of section 11(a) is very important.

> "Sec.11: (a) The President shall transmit to Congress during the first fifteen days of each regular session, the Budget, which shall set forth his Budget message, summary data and text, and supporting detail. The Budget shall set forth in such form and detail as the President determine –
>
> (1) ....
> (2) ....
> (3) ....
> (4) a recommendation of the summary data on expenditures with proposed appropriations;
> (5) estimates expenditures and proposed appropriations necessary in his judgment for the support of the Government for the ensuing fiscal year, except that estimated expenditures and proposed appropriations for such year for the legislative branch of the Government and the Supreme Court of the United States shall be transmitted to the President on or before October 15 of each year, and shall be included by him in the budget without revision.".

3.29.11 It will be noticed that under section 605 of Title 28 the budget estimates of the entire Federal Judiciary as prepared by the Administrative Office and as approved by the Judicial Conference of US are to be included under the head of "Estimates for the Supreme Court" (vide the last part of section 605 title 28) without revision by the Bureau of the Budget (with its recommendations i.e. for the entire amount) and the President submits the said estimate, without revision, before the Congress under section 11(5) of Title 31. The budget estimates of the Federal Judiciary are treated on par with budget estimate of the Legislative branch and the

President does not revise the estimates. The Congress as pointed in Chapter III (USA) of this Paper by leading writers, does not (and it is the convention) make any cut in the estimates.

3.29.12 It is here necessary to point out that, in fact, section 16 of Title 31 deals with the 'Bureau of the Budget" which Bureau normally has power to "revise, reduce or increase the requests for appropriations from various departments" but the exception is with regard to the Budget Federal Judiciary and the Legislative Wing. Other sections of Title 31 deal with the appointment of the Comptroller and Auditor General and an elaborate procedure is laid down.

3.29.13 Section 84 of Title 31 deals with 'rendition of accounts of officers of courts'. This is also important. The latter part of the section says, while referring to certain other accounts to be submitted to the General Accounting Office, that the accounts of the United States Commissioners, clerks of Courts and other officers of the Courts of the United States except the Supreme Court of the United States and Consulor Courts, shall be sent with their vouchers to the Director of the Administrative Office of the United States Courts and examined by them under their supervision. In other words, the expenditure accounts for the money spent for the Federal Courts which are included in the Supreme Court budget are not to be submitted to the General Accounting Office but are to be submitted only to the Director of the Administrative Office of the US Courts. This is also a remarkable feature.

3.29.14 Summarising the position in the US Federal Courts, we find that in US there are the District Courts at the lowest level and the Appellate Courts (are called the Circuit Courts) and above them is the Supreme Court. These courts administer the Federal laws and the Federal Constitution. All the Judges in the Courts of Appeal for each Circuit form the 'Judicial Council of the Circuit' and meet twice in an year. They have a 'Circuit Executive' who implements their decisions, on the basis of the report of the Director of the Administrative Office of US Courts. He sends his reports to the Judicial Council of the Circuit and also to the "Judicial Conference". He prepares a report to the Administrative Office of the US Courts. The "Judicial Conference" of each Circuit consists of the Judges of the appellate Circuit Court and the District Judges and considers the business of the courts and method of improving the administration. Members of the bar are also invited to its meetings. The Director of the Administrative office of courts examines the dockets of all the courts and reports to the Chief Justices of Circuits every quarter, collects statistics and determines the total expenditure and also disburses the budgetary grants, deals with buildings, infrastructure and accommodation and audits the vouchers and accounts of the courts. These vouchers need not be submitted to the General Accounts Wing as done by other departments. The Director acts under the supervision of US Judicial Council which consists of Chief Justice of US and the circuit Judges and a district Judge from each Circuit and certain Judges from the special courts. The Director prepares the budget estimates and sends the name to the Chief Justice of US Supreme Court who heads the Judicial Conference of US. The said Conference, through the Chief Justice of US Supreme Court sends the estimates of budget to the Bureau of Budget. The Bureau of Budget sends the estimates without any revision (but which with its recommendations) to the President of US who places the budget estimates, again without revision before Congress directly. This procedure is similar to that in the case of the budget estimates of the Legislative Department. Then the appropriation bill is passed. As stated earlier, a Judge of the US Supreme Court may attend Congress at that time and by way of convention, the budget estimates are sanctioned in full without any revision. The budgetary grants are implemented by the Director of the Administrative Office at the various levels.

3.29.15 The recent 2000-2001 year report on the Federal Judiciary Budget gives us an idea of the procedure in US-

> The Administrative office of the United States Courts-
>
> "The Administrative Office of the United States Courts serves as the central support agency for the administration of the Federal Court system. Among the Administrative Office's most important responsibilities are preparing, under the guidance and direction of the Judicial Conference and its Committee on the

Budget, the Judiciary's annual budget requests, and subsequently submitting that request to Congress. Because the Judiciary's appropriations bill is included with those of the departments of Commerce, Justice, State and certain other federal agencies, the Judiciary's budget was once again delayed this year because of policy differences between the Congress and the President. Although these issues had nothing to do with the federal Courts, the uncertain budget situation had the potential to jeopardize the effective and efficient operation of the Judicial Branch. Ultimately, however, under the leadership of the Judicial Conference's Budget Committee chaired by Judge John G. Heyburn, II, and Administrative Office Director Leonidas Ralph Mecham, the Judiciary fared well in the Fiscal Year 2001 Appropriation Bill. The 8% funding increase will enable the Judiciary, for the first time in two years, to hire new staff. This will come as especially welcome news to the Southwestern border courts, which have experienced a 125% increase in criminal case load over the past three years.

Because much of the Judiciary's budget is expended for the salaries of its personnel, the Judiciary devotes considerable attention to developing scientifically derived staffing formulas based on the functions and work requirements of the different court offices. In order to ensure staffing formulas reflect current work, they are updated periodically. After an intensive study of all major staffing formulas, new formulas were developed and implemented this year. The new staffing formulas reflect deficiencies realized in all program areas since the last formulas were developed, as well as new work."

An independent comprehensive study of the Judiciary's space and facilities program was completed this year. The consultant's report described numerous program achievements, including actions to achieve savings in the space and facilities program, a useful U.S. Courts Design Guide, and an effective long-range facilities planning process. Due to the efforts of the Judicial Conference's Committee on Security and Facilities, chaired by Judge Jane R. Roth, the Administrative Office and the General Services Administration, Congress approved funding for eight critically needed courthouse construction projects totaling $ 559 million over the next two years."

A top priority of the Administrative Office is developing and implementing new technologies and systems that enhance.".

CHAPTER IV

UNITED KINGDOM

4.1 The best discussion of the subject generally and as far as UK is concerned is contained in the article by Justice Browne – Wilkinson, Vice Chancellor in his The Independence of the Judiciary in the 1980s (See 1988 Public Law, p.44).

4.1.1 According to him, lack of "financial support" by a Government is a clear "threat to the independence of the legal system". The threats have arisen by reason of the executive control of finance and administration. He says:

"Control of the finance and administration of the legal system is capable of preventing the performance of those very functions which the independence of the Judiciary is intended to preserve, that is to say, the right of the individual to a speedy and fair trial of his claim by an independent Judge....the enforcement of the rule of law by the Judges could be wholly frustrated by the refusal to appoint Judges, to provide court rooms for them to sit in or staff to service those courts....there is a failure of the provision of adequate courts and court staff to meet society's current demands for Justice....It is that aspect of the independence of the Judiciary which I wish to consider...."

4.1.2 He points out that in England, the Lord Chancellor and his department prepare a budget which is negotiated with the Treasury. The Government then asks Parliament to vote the money. Once this is voted, then the Lord Chancellor with the help of his department often allocates funds amongst the different demands for legal services. The Lord Chancellor, as a member of the government and a responsible minister is accountable to Parliament for the expenditure incurred of the money voted. But if Parliament and the Minister, between them, control the provision and allocation of funds, how can the administration of Justice be independent of the legislative or executive?" He says;

"He who pays the piper calls the tune".

4.1.3 According to him, things in Courts have changed over from 1950 or at any rate from 1970. There had been an upsurge in crime and also an increase (though in a lower degree) in civil cases. To meet this, There had to be a large increase in the number of Judges, Courts, Court staff and other legal expenditure. He, however, agrees:

"The cost of providing the legal system (although still small as compared with that in any other developed country) has increased substantially; no longer is it possible for Judges to obtain all the facilities which in their view, are required."

4.2 The Beeching Report, 1971 led to a reorganization of Courts which shifted court administration from Judges to the executive in a substantial measure. In para 75 of the Constitution Paper No. 6 for the Civil Justice Review it was said that -

"The Lord Chancellor is responsible as a Minister to Parliament for the Supreme Court and the Country Courts, He exercises His responsibility for those Courts through The administrative Court service created by the Courts Act, 1971"

4.3 The creation of a separate Court service in 1971 over which the Judiciary had no control had also created problems. Judge Browne-Wilkinson says that there is a profound difference of views as to where administration ends and where Judicial function begins. That lies at the root of much of the friction. The assumption in the Beeching Report that administrative and judicial functions are distinct is according to him, not correct in the sense that the number of courts and Judges and adequacy of staff has a direct impact on the justice delivery system. After 1971, the Court administrators in UK are answerable not to the Judges but to their superiors in the civil service.

4.3.1 In the context of the Treasury's insistence on scrutinizing the spending by the concerned department, and theory of 'value for money' during the Thatcher regime, certain difficulties have arisen so far as the Lord Chancellors' office is concerned because -

"It is not for the executive alone to determine whether a particular Judicial procedure provides 'value for money: Justice is not capable of being measures by an accountants' computer".

4.3.2 While in other departments, the concerned Ministries can weigh the balance between money expended and "value of service produced", this is not true of the Lord Chancellor's Department. Here assessment of the need for a facility is within the province of the Judge and not the executive. He says:

> "Under our Constitution, it is for the Judge to determine what is just and what is not just, subject always to legislation by Parliament.".

4.3.3 The result is that we have a system in which the Lord Chancellor's Department makes policies to subserve theories of 'value for money' – even without consulting Judges. He says that Judges must be involved in these decisions. He finally sums up the problems as follows:

> "To sum up my argument so far, it seems to me that the old machinery regulating the administration of justice no longer ensures the independence of the system from executive control. Judges are sitting in an environment wholly determined by executive decision in the Lord Chancellor's Department, which in turn is operating under the financial constraints and pressures imposed by the Treasury.".

The result is

> "The yardstick for decision-making is financial value for money, not the interest of Justice. What constitutes value for money is being determined by executive, not Judicial decision".

4.3.4 The Lord Chancellor's office is according to him, under the dictates of Finance Department of Government.

He says that a possible solution could be as follows:-

(1) Judges have to accept that there are not and will not be sufficient funds available to meet all the demands of the legal system. The cost of providing justice is only one of the calls on public revenue. There is no justification for a claim that the legal system has a greater right to public funds than, for example, the National Health Service or Education. Division of available funds is to a large extent a political question.

(2) But if there is to be Judicial independence, the Judges must at least be involved in the preparation of the estimate on which the total budget is voted. More important, the judges must be involved in the allocation of that budget, once voted, amongst the various functions of the legal system to ensure that, subject always to the supremacy of Parliament, the administration of Justice is under independent control.

(3) There must be a person or body which can speak for the Judges as a whole. The way the Lord Chancellor is positioned, it does not meet this problem fully. It will therefore be necessary to appoint a Lord Chief Justice as a person who can speak on behalf of the whole Judiciary or to establish some form of Collegiate body, like the American Judicial Conference, which has authority on behalf of all the Judges. Such a body would be responsible for those administrative functions which are to be controlled by the Judges.

(4) Now unfortunately, the Judges have the responsibility of providing justice without any responsibility for the economic and effective expenditure of the money required for that purpose: the executive have power to control finances, but no responsibility for the end-product, namely, the Judicial

decision. This kind of separation of powers and duties – seems to be one of the basic shortcomings of the present system.

(5) Judges must be involved in the formulation of policies or objectives of the legal system. Now Parliament is evolving the policies without any consultation with Judges and such a system is unacceptable.

(6) If the American model were to be adopted and England is to have a Judicial Conference funded directly by the legislature and responsible for the whole administration of courts, these problems would at once be solved. But the British Constitution does not permit a system, which does not involve a minister.

(7) If the American model is not permissible in U.K., any other system would necessarily requires some departure from the separation of powers, it requires the acceptance of some degree of executive involvement in the administration of justice. An element of compromise has to be accepted, and an attempt is to be made to distinguish between those functions which the interests of justice require to be under Judicial control and those which are purely administrative. Experience in other countries suggests that in practice, such distinctions are extremely hard, may be impossible, to draw. There will always be demarcation disputes.

(8) There is a pressing need for a review of the entire Judicial finance system as done in USA, Australia and Canada.

(9) There must be a collegiate body – apart from the Lord Chancellor of Judges charged with the responsibility for taking policy decisions on behalf of the Judges. The said body shall be responsible for the management of certain functions of court administration, with the assistance of an administrative staff answerable directly to the collegiate body. The collegiate body would be funded by the Lord Chancellor's Department which would be accountable to the Lord Chancellor for these funds.

(10) If such a collegiate body were established, any decisions as to policy or objectives to be pursued in the administration of Justice could be taken by the Lord Chancellor in conjunction with the judicial college. The allocation of these funds so far as they relate to functions of management to be carried out by the Judicial College would be made by the college.

(11) If in any case agreement between the Judicial College and the Lord Chancellor proves impossible, the ultimate decision would have to be the Lord Chancellor's.

(12) But, in the event of the Judges' views being rejected, the Lord Chancellor would be required to put before Parliament, a statement by the judicial college of their views."

4.4 Indeed the solutions to the problem indicated by the Vice-Chancellor, Sir Nicolas Browne – Wilkinson are of great importance to countries like India and all Countries which do not have the American model.

4.5 In the recent book "The Independence of the Judiciary', the view from the Lord Chancellor's Office" by Robert Stevens (1993): it is pointed out (p.2) that the Lord Chancellor's has become a relatively large department after the passage of the Court's Act of 1971 and lies in the hands of lawyers employed therein who are exempt from basic Civil Service Regulations, but

these officers have in 1990 been integrated into the Civil Service. The Lord Chancellor's Department has an annual budget of $ 1.4 Billion approved by Parliament.

4.5.1 In the Epilogue of the book, it is stated that in UK while the dignity and the financial status of Judges has slowly become eroded, their prestige flourished. While the general concept of Judicial independence (i.e. as a body) is vague, the independence of individual judges is protected. Their public political role has lessened but their reputation for professional and personal integrity has risen (p.182). The Lord Chancellor's office agrees that political control through budgetary constraints has been recognized by the Vice-Chancellor, Sir Nicholas Browne Wilkinson (1988 Public Law, 44). It agrees that in addition to the usual concerns about freedom from government pressure which is secured by payment-out of monies out of the consolidated fund, there is 'a subtler threat' through the 'executive's control of finance and administration'. It notes that, according to the Vice-Chancellor, U.K. is having court administrators reporting to the Civil Service rather than to the Judges and this has threatened the independence of the Judiciary – The 'value for money' theory was the Thatcher doctrine p.182). The Judges are obviously upset that they have not been consulted when the Lord Chancellor's Department produced its 'yardsticks' for the Treasury's analysis. 'A number of Judges think that there is some form of civil service conspiracy to erode the independence of the judiciary and their powers' (p.182-183).

4.6 The Lord Chancellor's office says that the paronia has further increased because of what was said in a Consultative paper in the Civil Justice Review, implying that Judges are indolent. This paper has been severely criticized by Lord Ackner. (Parliamentary Debates, H.L. Vol.505, Col.1415 (9th April 1989). It is in this context that there is further discussion of the threat of possibility of a Ministry of Justice being set up; and one can detect a level of friction between the Civil Service and the Judiciary which has resonances of the relations between Schuster and Hewart and Hewart and Sankey. As to whether there will be a threat of a Ministry of Justice, according to the Lord Chancellor's office, the threat is much ado about nothing. (Seek also G.Drewy, Ministers, Parliaments and the Courts) (1992) (142 New L.J. 56). Whatever the future holds – whether it is a more formalized Ministry of Justice or a less professional department – the Department remains currently effectively integrated into Civil Service (i.e. in 1990) (See also S.C. Silkin : The legal Machinery of Government, 1984 Public Law, 179-86).

4.7 According to the Lord Chancellor's Office, this suggests that the Courts will be treated as a wing of government – that Judges and lawyers are treated as providers of services as part of such a social service in a welfare State. This will surely demand a serious analysis of the independence of the judiciary. It asks, what should be the relationship of this independence to the public services which the Courts and the Judges provide? It says that in England, without any clear separation of powers, the status of the Judges has become the core of the discussion of the independence of the judiciary. Analysis of that aspect is essential if Judges are to play an appropriate role in the future of the Constitution and of the public service. Britain in 1990's has to face concepts of separation of powers and judicial independence and as to how far Judges can be thought of as a coordinate branch of government.

4.8 The Rt Hon'ble Lord Steyn has, it will be noticed, treated the Lord Chancellor's Office as unsatisfactory in his lecture 'The Weakest and least Dangerous Department of Government'. (1997 P.L. 84).

4.9 But the most recent article 'Judicial Review – the tensions between the Executive and the Judiciary', Rt. Hon'ble Lord Woolf (1998) (114 Law Quarterly Review p.579) has presented a different scenario, and says things are very much satisfactory in UK. However, a reading of his article shows that Lord Woolf has not referred to the core problems analysed by the Vice-Chancellor Lord Borwne-Wilkinson.

4.9.1 According to Lord Woolf the Lord Chancellor, - as the sole head of the Judiciary, then as a Minister and as Speaker of House of Lords always acts as a safety valve." As a member of the executive, the Lord Chancellor can "ensure that the Courts are properly resourced, and he can also explain to the Judiciary the political situation and the constraints of resources". But says

Lord Woolf, the Lord Chancellor has to keep his roles punctilious so far as separation of powers is concerned. According to him the justice system is now better served than it would have been by having its interests represented by a Minister of Justice who would lack these other roles.

4.9.2 Lord Woolf points out that the "far reaching" recommendations of the Beeching Report 1969 were implemented in the Courts Act, 1971. No doubt, a centrally administered court system was created and the control of Judges over the Court administration was substantially reduced. Under section 27 of the Courts Act, 1971 the Lord Chancellor was given power to

> "appoint such officers and other staff of the Supreme Court and Country Courts as appear to him necessary for –
>
> (a) setting up a unified administrative Court services;
> (b) discharging any functions of these Courts; and
> (c) generally for carrying out the administrative work of these Courts."

The new Court Service which the Act set up was, he agrees, intended to be virtually, in the exclusive control off the Executive, that is the Lord Chancellor's Department.

4.9.3 But according to him, there appears to be a change – due to fortuitous circumstances, of things from what they were in 1980. He says that within a few years after the new 'Court Service" being established,

> "It was accepted both by the Lord Chancellor's Department and the Judiciary that the judiciary needed once more to be involved in the management system. The result is that today, the Courts are managed by the Court Service in partnership with the Judiciary. The Court Service fully accepts that one of the principal functions is to perform its responsibilities in a way which supports the judiciary and assists them to perform their role. Without friction or confrontation with the Court Service, the Judiciary has come to be more involved and responsible for the administration of Justice than at any time since the nineteenth century."

4.9.4 According to him, the working relationship between the judiciary and the Court service is "now" usually entirely harmonious and he says that the judiciary has at the same time remained fiercely independent. Their status of Judges and their role in achieving justice has not been diminished and on the contrary, it has been enhanced. He points out that since 1971, the number of Judges has increased dramatically. The increase has been in each tier of the Judiciary. Numerous new Courts have been built. The size of the Lord Chancellor's office has mushroomed at least proportionately. New offices have been created for members of the Judiciary. Among others, a Judge is now Chairman of the Law Commission. Another is Chairman of the Judicial Studies Board. He says there is now a "Judges' Council presided over by the Lord Chief Justice and a Council of Circuit Judges and an Association of District Judges". He says that at present the Judiciary is better organized to look after its own interests and the interests of justice than ever before. He says:

> "These changes have taken place with the complete support of and the finances provided by the Government. Successive Lord Chancellors have used their clout within government to ensure that system is properly resourced."

Meetings take place regularly between the Lord Chancellor and the heads of Divisions. In general, the consultation between the Judiciary and the Lord Chancellor's Department and the Court Service is excellent.

4.9.5 According to Lord Woolf, this degree of co-operation between the Judiciary and the executive is made possible because of the dual roles of the Lord Chancellor as Head of Judiciary

and minister in Government. If he was not the head of the judiciary, the partnership between his department and the Judiciary would be much more difficult. The Lord Chancellors have, according to him, been able to keep their balance on the tightrope. According to Lord Woolf, the Judiciary in UK, has nonetheless retained its independence, in view of the Lord Chancellors' various roles and the present state of cooperation between the Judiciary and the civil service.

4.9.6 From the above views of Lord Woolf, it appears that in spite of the staff of the Lord Chancellor's office being integrated into the Civil Service and Judges not being consulted regarding the budget – the present Lord Chancellors have by tight rope-walking and by their clout been able to achieve what Rt. Hon'ble Browne-Willkinson thought could not be achieved unless there was an independent civil Service under the Judicial Service and Judges had a say in the budget proposals. But Lord Woolf agrees that if the Lord Chancellor were not the head of the Judiciary this would not have been possible.

4.10 Salaries of Judges: One significant development in UK regarding 'salaries' of Judges has to be noticed. (See Independence of the Judiciary, The view from the Lord Chancellor's Office by Robert Stevens, 1993). It was not until the Judges' Remuneration Act, 1965 brought in the Labour Government was passed that the Judges salaries became comfortable. Salaries were raised by 25% and in future, salaries could be dealt with by delegated legislation. The Bill also meant that, for a short while, High Court Judges would be paid more than Permanent Secretaries in government departments, whose relative increase in salaries over the previous 100 years had reflected the increasing importance of the executive and the declining importance of the Judiciary (pp.132-133).

4.10.1 The establishment of a procedure whereby High Court Judges salaries would be increased by delegated legislation solved only half the problem. There was still friction between the Civil Service and the High Court. By 1971, the High Court Judges again lagged behind the Permanent Secretaries.

4.10.2 In May that year, the Conservative Government appointed a permanent body, the 'Top Salaries Review Body' to advice the Prime Minister on the remuneration of the high judiciary: senior civil servants, etc. As inflation gathered speed, increase was added on a yearly basis. The book refers (p.136) to the Report 6 of 1974 of the Review Body on Top Salaries (Cmnd. 5846 p.6,7) which said that, bar earnings are to be taken into consideration. They said:

> "The Advisory Group on the Judiciary saw no special merit in principle in the present equivalence between the salaries of a High Court Judge and of a Permanent Secretary in the Higher Civil Service; They also felt that bar earnings (net expenses) (of the bar) provided a valuable independent means of checking whether Judicial salaries were likely to prove sufficient to maintain satisfactory levels of recruitment."

4.10.3 The Review Body said that since 1971, the salary of High Court Judges had been the same as that for Permanent Secretaries:

> "This relationship has evolved without principles and we have considered ourselves not bound by it.

They said significantly -

> "The group saw no special merit in preserving the present parity between High Court Judges and the Permanent Secretary, as the work content is very different." (P.32)

4.10.4 The said Body also dealt with Pensions. The arrival of the Top Salaries Committee led the Judges to outpace inflation pp.138). By 1992, the High Court Judges were drawing more than the

Permanent Secretaries - $ 84, 300 for High Court Judges, $ 97,000 for Lords of Appeal and $ 93,000 for Lords Justice of Appeal, with $ 82,780 for Permanent Secretaries. Because of the Top Salaries Review Committee, the Judges salaries kept ahead of inflation, because it bore some proportion to salaries of business executives and members of the bar –

> "This was because of the rapid size in salaries of business executives and members of the Bar." (P.138).

In 1991, the Committee noted that the net average earnings in 3 years before appointment (of a member of the bar) appointed to the High Court was $211, 300 and for those appointed as Circuit Judges was $ 75,000.

4.10.5 In 1992, a 19% increase for ahead of inflation was recommended (p.168) in the 15th Report of the Committee. It was understandable. "The notion of comparability of salaries is an art, not a science, and it is arguable that the Review Body on Top Salaries has been forced to rely on intuition rather than principle. It has simply assumed that Judicial salaries should bear some comparison with those of leaders in industry and leaders at the bar". (p.168).

CHAPTER V

AUSTRALIA

5. The High Court of Australia Act, 1979 provides that the High Court administers its own affairs under the supervision of a Clerk who is bound to comply with any directions given to him, by the court and who holds office on terms fixed by the Court. Under the Clerk are certain other officers answerable indirectly to the Court.

5.1. The High Court prepares its own budget estimates. But these estimates are submitted to the Minister of Finance and voted by Parliament for the purposes of the Court. It appears that the High Court is accountable to the Minister of Finance when monies are expended. In South Australia, the Court – through the Registrar (appointed upon the recommendation or concurrence of the Chief Justice), is responsible for its own administration. It is said that in Victoria, there are proposals under which, although the Judges are accountable through the Ministers for the spending of the funds appropriated for the benefit of their Courts, the allocation of the sum so appropriated and the administration of the Court lies wholly within the Judges' own Control free from interference by the executive. (See 1988 P. L. 49 at 52-53L The Independence of the Judiciary in the 1980s by Sir Nicholas Borwne-Wilkinson, V. C.).

5.2 Justice Michael Kirby in his article relating to Australia (See Ch. 2 Judicial Independence: The Contemporary Debate by Shimon Shetreet, p.8). states that the "administrative personnel of the Courts (in Australia) are responsible in each jurisdiction to a Chief Administrative Officer, in some Courts known as the Registrar. The Registrar is responsible to the Chief Justice for all matters pertaining to the business of the Court. The administrative personnel are government employees and the Registrar is, therefore, responsible to the executive government with respect to the terms and conditions of employment, financial accounting and other non-judicial matters. The exception to this system is the High court of Australia where the administrative personnel are responsible, even in non-Judicial administrative matters, to the Judges in whom is vested by law, the responsibility for the administration of the Court.

5.3 The Chief Administrative Officer, often known as the Registrar, is responsible for preparing the budget of the Court, for contacts with the appropriate minister and organized bar and statistics.

5.4 Except in respect of terms and conditions of employment of administrative and financial accountability, executive control of the above matters is according to Justice Kirby, considered as being incompatible with judicial independence.

5.5 In most jurisdictions, the Court's budget is an identifiable part of the budget of the Department of Justice. In the High Court of Australia, it is a lump sum figure for the expenditure of which Judges are responsible. (This permits Interchange from one head to another). Court budgets form part of the executive budget and are approved in the same way as other budgets, according to ordinary procedure. The services to federal courts are financed by the federal government. The services to the States are financed by the respective States.

5.6 The Minister of Justice, or his equivalent is responsible for administrative personnel but in all matters pertaining to the business of the Court, these officers are responsible to the Chief Justice. Court buildings are the responsibility of the Minister. The exception is the High court of Australia, which is solely responsible for its own administrative personnel and buildings.

5.7 At the federal level and in some States, machinery has been established for the regular, automatic review of Judicial salaries. The salaries are determined by the Remuneration Tribunal pursuant to the Remuneration and Allowances Act, 1977 (Cmwth) (Part IV) and the Remuneration Tribunal Act, 1973 (Cmwth). The Chairman of the Tribunal is a State Judge. The Tribunal's report is placed before Parliament which if disapproved within 15 sitting days, it shall not come into operation or if it has already come into operation, it shall terminate from the date on which the resolution is passed. The Tribunal treats the Consumer Price Index as relevant in fixing the salaries.

5.8 Pressure of an indirect kind may be more important, according to Justice Kirby. The failure to appoint an adequate number of Judges to cope up with Court business or to authorize adequate expenditure or personnel for Court functions, provides an illustration of indirect executive pressure on Judges.

5.9 Justice Mason in his 'Judicial Independence and the Separation of Powers : Some Problems old and new (1990) (Vol. 13(2) U.N. SW Law Journal p.173) says while speaking of the institutional independence, that increase in litigation and legal aid costs have required greater financing by the State in recent years. He says that in earlier times the administrators were inclined to show deference to the Judges' views on matters of administration. Now they are more inclined to impose their own solutions. He says that, in Australia, no doubt, at the federal level, Courts have acquired greater autonomy in matters of administration and expenditure. The High Court of Australia Act, 1979 (cmwth) gave the High Court corporate status and made it responsible for its own administration. The Court enjoys a one line appropriate and, within certain parameters, it is theoretically at liberty to expend its own funds as it sees fit (i.e. it can shift monies from one head to another). The Federal Court and the Family Court now have the benefit of a one-line appropriation and the 'Courts and Tribunal Administration Amendment Act, 1989' (cth) has made the Chief Justice in each case responsible for managing the administrative affairs of these two Courts, though without giving them any corporate status.

5.10 So far as the High Court is concerned, although Parliament appropriates the High Court's funds by the annual Appropriation Acts, for all practical purposes the High Court's budget is determined by the Department of Finance after negotiation with officers of the Court and officers of the Attorney General's department. The process of negotiation may involve the Attorney-General and the minister of Finance and ultimately, if a decision is not reached at that level, it goes to the Expenditure Review Committee of Cabinet.

5.11 The participation of the Attorney-General and his officers is essential. Because in Australia, the systems of Executive Government reflect the Westminister model, important decisions affecting the Courts are made at ministerial or Cabinet level. So, it is essential, according to Justice Mason, that the Court be represented by a responsible Minister in negotiation with other Ministers or in Cabinet discussions. Australia has not followed the US procedure of negotiating an appropriation directly by the legislature. That is a public procedure in which the Justices of the Supreme Court of US appear and testify before a Congressional Committee.

5.12 Australian system has some disadvantages in staff recruitment. Courts can only offer a limited career while staff turnover tends to be high. While Courts participate in the negotiation of their budgets, the problem of securing adequate funds continues if government considers that it must reduce public expenditure. Justice Mason says that determination of Court funding by Parliament, rather than by the Executive, might alleviate this problem and eliminate this source of conflict with the Executive. It should involve a public process of negotiation in contrast to the existing process of private negotiation.

5.13 Justice Mason says that it is wrong for governments to think of funding Courts only through Court fee collections. He also refers to the fixation of salaries by the Tribunal.

5.14 In 1986, the Australian Institute of Judicial Administration conducted a seminar on financial budgeting of the Judiciary and the said seminar has gone into these aspects in great detail.

5.15 As pointed earlier, before 1986, the only Court in Australia which since 1979 had full control over its own budget and internal administration was the High Court of Australia. Subsequently, the federal Courts of Australia were given similar powers and responsibilities.

5.16 Justice B.M. Debbele (1993) 67 Australia Law Journal (p. 243-248) says that in 1989, the Fitzgerald Report of a Commission of Enquiry, stated as follows:

> "The independence of the Judiciary is of paramount importance and not to be Judicial Independence is an over-dependence upon administrative and financial resources from a government department or being subject to administrative regulations in matters associated with the performance of the Judicial role. Independence of the Judiciary be speak as much autonomy as is possible in the Internal management of the administration of Courts."

On 27th August, 1992, the South Australian Government took a step forwards for establishing a system independent of the Executive Government by introducing a Bill to enact the Court Administration Act. The Bill was referred to the Select Committee. The Judicial Council is to be a body corporate comprising the Chief Justice of the Supreme Court, the Chief Judge of the District Court and the Chief Magistrate of the Magistrates' Court. The said Council is to be responsible for providing or arranging for the provision of the administrative facilities and services. The Judicial Councils' Chief executive officer (the Court Administrator) will not be a member of the Public Service and would be responsible to the Judicial Council. Subject to the direction and control of the Judicial Council, he is responsible for the control and management of staff, property and facilities of the Department.

5.17 If enacted, the legislature will enable the Judicial Council to determine administrative policy and give major policy directions to the Court Administrator. The Court Administrator would be responsible, subject to the directions of the Judiciary through the Council, for preparation of the Court budget for submission to the Attorney-General. Under the Bill, the Attorney-General would continue to be responsible to Parliament for the operation of the Court system. The responsibility will entitle him to require and receive information of the administration of the Courts and to convey the Government's views to the Judiciary or Court Administrator as to any changes

which should be made. Full accountability of the Judicial Council for its budget administration is provided for in the Bill.

5.18 The Select Committee recommended the Bill, making certain amendments. It also suggested that 'any member of the Council shall, if requested, attend at the Estimates Committees of the House of Assembly and at any Parliamentary Committee established under the Parliamentary Committees Act. [It is not clear what happened thereafter].

5.19 Justice R.D. Nicholson of Australia in his 'Judicial Independence and Accountability: Can they Co-exist', (67)(1993 Australia Law Journal 404) has gone into the subject in greater detail. He has discussed the question of separation of powers and other aspects, including 'Finances' (p.421). He refers to what Justice Malcolm, Chief Justice of Western Australian, Stated (Judicial Power, (1991) UWA L.R. 13):

> "the preparation of Judicial estimates by anyone not acting under the direction of the Judiciary and the exercise of control by the Government over the way in which the Courts expend the funds granted to them necessarily poses a potential threat to Judicial independence."

Justice Nicholson points out that for this reason, some countries provide for the judicial branch to have a right to present its budget direct to the legislature rather than through the Executive. This is the practice in the U.S. Federal Courts. In Papua New Guinea there is a constitutional right for Parliament to increase proposed expenditure for the services of the Judiciary where it falls below the estimate submitted by the Chief Justice [Papua New Guinea, Constitution, s.209 (2B) s.210(3)]. Absent such a legal base and given political realities, there is a substantial problem which the judicial branch faces if a government fails to adequately fund the branch. That has not generally been the position in Australia but it has been the case in relation to Victoria measured on a comparative basis (see Alan Barnard and Glenn Withers, 'Financing the Australian Courts' – The Australian Institute of Judicial Administrations Incorporated, 1989): Probably the only potent weapon the judicial branch possesses in such a case is to publicly state the respects in which it is unable to deliver the services expected of it, although it could not be pretended that such an issue would either be understood publicly in the context of Judicial independence or would long hold the public imagination.

5.20 Sometimes there are sudden demands on the judicial branch because of unexpected statutory amendments resulting in fresh influx of cases or increase in legal aid – such as the Bhopal disaster in India or the worldwide share-market crash of October, 1987 giving rise to substantial litigation, or the success of one litigant, -- such as in the asbestos cases. New remedies introduced by Parliament without adequate regard to the resource implications etc. could increase the workload heavily.

5.21 The existence of Judicial independence cannot, according to Justice Nicholson – be separated from adequate and proper judicial administration. This was recognized in Russell Wheeler's seminal essay in which he observed that

> "The importance of Judicial independence permeates judicial administration".

(Russel Sheeler, Judicial Administration: It's relation to Judicial Independence: National Centre for Courts, 1988 p.4). He said that 'our contemporary understanding of judicial independence includes a panoply of administrative arrangements'. (ibid p.7)

5.22 Judicial Administration involves both policy making and policy administration. If the Judicial branch is poorly resourced and administered, its independence will be of little value to citizens. Appropriate Judicial administration requires adequate financing that leads to

preservation of public confidence by the efficiency, which it produces. Consistent with Judicial independence, Judicial administration should be provided to the Judicial branch by its own staff.

5.23 The 1991 report of the Australian Institute of Judicial Administration (by Thomas.W.Church & Peter A. Sallmann) "Governing Australian's Courts" has examined three models—

(i) the first is the 'traditional' model, present in most Australian States, whereby a generalised executive department, provides Court services;

(ii) the second is the 'separate executive department' model, seen in South Australia, by which Courts are administered by a separate department of State devoted exclusively to Judicial administration; and

(iii) the third is the 'autonomous' model, seen in the Federal and Family Courts and the Administrative Appeals Tribunal, whereby a substantial administrative autonomy lies with the Court. (Prof. Sallman is Executive Director of the Australian Institute of Judicial Administration. Prof. Thomas W. Church of State University of New York is a specialist in Judicial Administration).

5.24 According to Wheeler (n; 88, p.37), the efficiency and integrity of the judicial branch can be enhanced by three methods, namely:-

(i) by the daily promotion of effective administration of justice in the daily work of Court administration;
(ii) by protection of courts from dependence on other branches; and
(iii) by promotion of Courts' accountability through their relations with the external public which have interest in court operations.

5.25 Planning, according to Justice Nicholson, is of great importance. Planning of space and facilities necessary for the conduct of the business of the judicial branch – is to be done in advance. Long-range Planning, the determination of priorities for growth, the approval of minimum standards, factors pertaining to the location of courthouses, the role of technology in court-rooms and court-houses, are matters in relation to which judicial leadership and input are important. The Chief Justice of South Australia has expressed that it is essential that control of Court buildings and facilities be vested exclusively in the Judiciary, including the power to determine the purposes to which parts of the buildings are to be put and the right to maintain and make alterations to the buildings (Chief Justice J. King "Minimum Standards" of Judicial Independence, (1984) 58 A.L.J. 340 at 342-343).

5.26 It is true that increased Judicial independence will result in more judicial accountability at a time when Caseloads have increased. It also imposes an additional duty to maintain high efficiency in reducing delays so that public confidence is increased. (A.J. Miller, 'Public Confidence in the Judiciary: Some Notes and Reflections: (1970) 35 LAW and Contemporary Problems 70 at 82). It is also necessary that the Court system be economically and procedurally accessible to all citizens. 'The authority of the law rests on public confidence' (Gallaghare vs. Durack (1983) 152 C.L.R. 238 at 243).

5.27 In (1994) 88 Australia Law Journal p.173 (at p.174) Justice Ken Marks, who was a Judge of the Supreme Court of Victoria, referred to his experience on financial 'Judicial Independence', as follows:

> "My only experience of the budget process is in Victoria where it can be confidently said that the administration of justice is quite adversely affected by the dominance of the Executive and the financial allocation for it. While lip service is paid to some kind of consultative process between the department and the Judges, decisions for the most part are made without regard to the information provided by the Judges or their views as to need. But more seriously, the chance of adjusting Court administration to the needs of a

modern society is greatly reduced by the institutionalized disregard of the perception of those needs by the Judges. Needless to say, their opinions, which are not altogether irrelevant, have little or no persuasion."

He says that by under-resourcing and controlling of the staff, the Executive does undermine the independence of the judicial branch. In Victoria, for example, the budget is allocated to what is now called the Justice Department which itself decides the allocations between itself and the Courts. Each year's allocation progressively shrinks. He refers to the Australian Institute of Judicial Administration Report, which says:

"Many Judicial officers lack interest in budget matters. But it is fuelled in Victoria by a common perception in the Courts that judicial efforts in the area seldom come to anything."

The Report says:

"Australian Courts like their cousins in England and Canada, are not independent; on the contrary, in most Courts, the situation is one of almost complete dependence on the executive branch."

CHAPTER VI

CANADA

In Canada, the Judiciary does not – according to Hon'ble Jules Deschenes, Justice of the Supreme Court of the Province of Quebec and author of many works on Judicial Independence – enjoy the same independence in the court administration as it does in relation to judicial prerogatives. (See Judicial Independence, The Contemporary Debate, 1988, by Shimon Shetreet and J. Deschenes, Chapter 47, pp. 514-524). Everywhere across Canada, it is basically the provincial Ministers of Justice who are responsible for the administration and in turn they call upon various departments for the purposes of judicial administration. This administrative subordination of the Judiciary to the executive causes a great deal of friction. The friction has attained a uniform level throughout the Country, in the 13 States namely, the Central Government, the 10 provinces and two sparsely populated territories. Essentially, he says, the Judiciary is disturbed by two factors:

(1) The ambiguity in the position of the Minister of Justice or Attorney of Justice or Attorney-General who combines the function of Attorney for public prosecution and that of provider of courts services;

(2) The ambivalent relations existing between Court staff and judiciary.

The subordination of the Judiciary is rooted in the executive's overt intention to take, exercise and keep total control of the management of the courts.

6.1 According to him, the public perception of justice does get adversely affected by this situation, where Judges are seen entreating permission and beg for resources from the executive. The Canadian Judiciary moved in depth in 1980 into the assessment of the situation. The Canadian Judicial Council, the Judges' Conference and the Institute for the Administration of Justice therefore jointly decided to sponsor and study and the same was started in 1981 by Justice Deschenes and Prof. Carl Baar of Brock University, in Ontario. It resulted in a Report which was produced in mid-September, 1981 – called "Matters in their own House".

6.1.1 The inquiry by the Committee was extensive on the following:

(i) collection and study of 312 statutes dealing with various aspects of the administration of Justice;

(ii) examination of 99 written expressions of opinion received from Judges of all parts of the Country;

(iii) interviewing privately 187 people of 8 different nationalities in 27 cities of 4 countries;

(iv) meeting 12 of the 13 Ministers of Justice, 12 Dy. Ministers, 25 administrators of Court services; leaders of 11 Provincial or Territorial Bar and 40 Chief Justices of Chief Judges appointed by each of 13 governments;

(v) making on the spot-study of Federal and State systems in the USA, UK and meeting representatives of 25 countries in Lisbon;

(vi) embarking on extensive research programme which was carried to fruition by Prof. Carl Baar and enabled Justice Deschenes to have access to useful information in 125 works from Australia, England, France, Italy, Israel, New Southwales, New Zealand, Nigeria, USA and Canada; and

(vii) reflecting on the situation in 650 federally appointed and 1000 provincially appointed judges in all 13 Jurisdictions in a system which employs 10,000 support staff and spent in the fiscal year 1979-80, strictly for the administration of the Courts one can $ 322 million.

6.1.2 The above effort of the Committee ripened into 198 recommendations which bear the essence of the administration of Courts in Canada.

6.1.3 According to him, the study on the independent judicial administration of the Courts ought to be undertaken within the broader framework of the theory of the general independence of the judicial power. Canada got a Charter of Rights in 1982. The above Report made the Montreal Gazette congratulate its authors. But the newspaper stated that it was a sad story that the Report revealed and

> "demonstrated that the (Judicial) pillar rests on dangerously sandy ground (p.520)".

6.1.4 Thereafter, the Research Committee of the Judicial Council of Canada studied the Report and gave its recommendations.

6.1.5 Justice Deschenes refers then to the International efforts to promote Judicial Independence – which has been set out already in Chapter II. It appears that the Syracuse Report had the benefit of the Report of Justice Deschenes & Prof. Baar and finally the over-embracing study took place under the Special Rapporteur, Dr. L.M. Singhvi by the ECOSOC.

6.1.6 He concludes by criticizing the unsympathetic bureaucratic approach to the problems as follows: (p.523)

> "That is why in Africa as in America, in Europe as in Asia, Court ought and want to escape from the smothering hold of the political power. In their (Courts') administrative autonomy lies the necessary guarantee of their independence fundamental freedoms that, by right of birth, each man and woman is entitled to enjoy. Let us join hands and efforts in order to achieve our aim. Once upon a time, Moses had thought that he could concentrate the whole administration of Justice into his hands. Jelthro, his father-in-law admonished.

"Thou wilt surely wear away, both those, and this people that is with thee, for the thing is too heavy for thee; though art no able to perform it thyself alone (Exodus, 19:18)."

He says, let us not delude ourselves either: we need each other. But together, nothing is beyond our reach and the universal independence of the Judiciary can be seen dawning on the horizon.

6.2 Prof. Carl Baar – Co-author of the above Report in Canada – in an article 'The Courts of Canada' in the book 'The Political role of Law Courts in Modern Democracies', by Judge L.Waltiman and Kenneth M. Holland, 1985 – has again given a picture of financial independence in Canada.

6.2.1 He says that in all the provinces (except the Supreme, Federal and Tax Courts of Canada), the responsibility regarding the administration of court services has been delegated to the provincial Attorney-General/Minister of Justice. Therefore, all Court administrators are employed by an executive department; according to standards developed for executive departments; even the rules of courts in most provinces require Cabinet approval. The provincial Attorneys General who are members of the provincial Cabinet justify their roles in Court administration. They argue that someone must be held accountable for the expenditure of public funds to operate the Courts, and only they as ministers can be called upon to account before the legislature; Judges as independent officers cannot be (so accountable). They say that executive control over Court administration does not compromise the independence of the Judiciary because the Judicial independence extends only to the 'adjudicative functions' and not to the administrative support services'. The Court clerk who is appointed, paid and promoted by the Attorney General's department is nonetheless under the direction of the Judge while in the Courtroom.

6.2.2 Prof. Baar says that therefore members of the Judiciary have grown increasingly apprehensive about this administrative system even though it has been the norm for a century. But, to many Canadian officials, the contrast between executive control of court administration in the provinces and judicial control of court administration in the US illustrates a difference in constitutional systems; a parliamentary system requires ministerial responsibility and hence executive control – while a system based on separation of powers leads to judicial control over the court administration within a separate branch of government (see Carl Baar, Patterns and strategies of Court administration in Canada: Canadian Public Administration XX: 242 (Summer 1977). According to Prof. Baar, this constitutional contrast ignores history for before 1939, the US federal courts too were administered by the Attorney General, who ceded control when the US Federal Judiciary showed its willingness to take responsibility. In 1977, initial steps in the same direction were taken by the Supreme Court of Canada, so far as superior courts were concerned.

CHAPTER VII

OTHER COUNTRIES

GERMANY

7. In order to reduce bureaucratic pressure over Federal Administrative and Fiscal Courts, Parliament in 1969 shifted supervisory authority from the Ministries of the Interior and Finance, respectively, to the Ministry of Justice, over whose policies the Courts could not sit in Judgment (Schram, Recruitment of Judges, p.692).

7.1 Because the Constitutional Court is a co-equal constitution organ, it draws up its own budget and receives appropriations directly from Parliament, by – passing the Justice Ministry. (See the book 'The Political Role of Law Courts in Modern Democracies by Jeord L. Waltman and Kenneth M. Holland: Chapter V by Kenneth M.Holland).

7.1.1 So far as Court supervision over Court services is concerned, the Judges are treated as part of Court administration – as distinct from their judicial functions. In matters of Court administration, they are subject to the directives of the competent Minister. (See Ch.10 by Prof. Peter Schlosser and Prof. Walther Habscheid in Prof. Shimon Shetreet's book).

7.1.2 On the financial side, the Courts have no financial autonomy. They cannot apply directly to Parliament for their budgets. This is done for them by the Ministry of Justice or other Minister who is competent for the sphere concerned.

7.1.3 In the budget plan of Parliament, no special provisions are made for the Judgeships and financial needs of any single Court, but are made for the Judiciary generally. The allocation to the individual Courts are the sole concern of the Minister of Justice or of the special Minister who is granted judicial powers in a particular field. In the latter case, the principle of global allocations to a ministry is particularly awkward, since there exists the danger that it will neglect its 'legal department'.

FRANCE

7.2 Court budgets are part of the executive budget. They are approved by the same ordinary procedure as all other budgets. At the central level, the Minister of Justice is responsible for the Justice budget in collaboration with the Finance Minister, like any other State administration. Chapter 8 of Prof. Shimon Shetreet's book by G. Grivant de Kerstrat).

7.2.1 The judiciary was suppressed by the revolutionaries, as well as the Bar but Napoleon "restored the Courts" though not the Judicial power. The existence of a judicial power enjoyed collectively and as an entity apart from the legislature and executive, has never been restored.

7.2.2 Curiously, the traditional French doctrine is resolutely against the very idea of 'separation of powers' though it was the French political theorist, Montesquieu who was the inventor of the phrase. This is borne out by the integration of the Judiciary into the executive and the 'functionalisation' of their personnel (Ch.7 in Prof. Shimon Shetreet's book by Dallisk Radamaker).

ITALY

7.3 The Italian Judiciary enjoys a high level of institutional independence. The Italian magistrates are recruited into the Judiciary and cannot be removed except by the Higher Council of Judiciary.

7.3.1 The heads of the several divisions of the Ministry of Justice must by law be chosen from among top-level magistrates and the Ministry has also selects among them its head of Cabinet. The Ministry of Justice is staffed in its top positions, by Magistrates, but the Minister – a politician with scarce experience in Judicial matters – has only limited authority over them since he cannot influence their career. Consequently, the resources that Judges and public prosecutors (recruited by the Judiciary) can exploit in order to enlarge their power, has increased (Chapter 8 by Giuseppe of Fediric and Carlo Guanieri in the book 'The Political Role of Law Courts in Modern Democracies').

JAPAN

7.4 Judicial administration is now in the hands of the Judicial Conference composed of 15 Supreme Court Justices. It is policy-making body as per the Constitution, with rule making power to ensure its judicial independence and autonomy. (There is also Judicial Conference for each Court).

7.4.1 Assisting the Judicial Conference of the Supreme Court is the general Secretariat of the Supreme Court. It's Secretary General as well as all its supervisory personnel are Judges. These top Judge-bureaucrats replaced the pre-war Justice Minister (See Ch.10 by Hirosha Itch in the book 'The Political Role of of Courts in Modern Democracies by Jerold L.Wiltman & Kenneth M. Holland).

7.4.2 According to Prof. Jasuhei Taniguchi (see Ch.18 of Prof. Shimon Shetreet's book pp.205 etc.), at the level of each Court the Judicial Conference presided over by the President of the Court is responsible for the matters of Court administration. The Ministry of Justice has no organizational relation with the Judiciary. The Judicial Conference makes decisions by way of resolution and the president of the Court enforces them. The Judicial Conference of each Court decides various matters pertaining to judicial administration involving the subjects of personnel and preparation and enforcement of budget, maintenance of court buildings and facilities. On the other hand the President of the Court is internally responsible for enforcement of the decisions of the judicial council. He has control of his administrative staff. Contact with the Minister of Justice is handled by none except the Chief Justice of the Supreme Court. Responsibility for the central administration of the whole Judiciary lies with the Judicial Conference of the Supreme Court.

7.4.3 The budget procedure though presented to the Executive and by the Executive to the Legislative (the Diet), there are important safeguards. The budget is prepared by the Judicial Conference of the Supreme Court for the whole Judiciary. The budget for the Judiciary is an independent item of the national budget. It is not part of budget for any ministry. The budget is proposed by the Cabinet before the Diet. But if the Cabinet proposes cuts in the budget proposed by the Conference it has to place its proposals for cuts also before the Diet and indicate which item is to be cut or not to be cut to satisfy the Supreme Court's demand, so that the Diet can make a choice. In most cases, a compromise is reached between the Supreme Court and the Ministry of Finance and the above procedure is rarely followed (p.207). Court services are financed by the State. The Judicial Conference of the Supreme Court is responsible for the Court buildings of the whole country.

7.4.4 Judicial salaries are fixed by the Diet but are kept higher than salaries of the non-judicial employees though in 1988 they were below those of the non-judicial employees.

There is a recent Article in 1996 Aust. L.J. p.125 by Davind Tan entitled "Death of Judicial Independence: The Japanese Judicial Bureaucracy on Trial". He says (p.128) that the existence of judicial independence cannot be divorced from adequate and proper judicial administration. Consistently with judicial independence, the judicial administration should be provided to the Judicial branch by its own staff and not by the executive branch.

> "In Japan, the Judicial bureaucracy that manages the day-to-day operations of the national judicial system is the "saibankan Kaigi" – the Grand Bench convening as a Judicial assembly to discuss matters of judicial administration – and it acts through resolutions that are implemented by the General Secretariat of the Supreme Court.".

There is also the exchange between the judiciary and the Ministry of Justice or the public prosecutors. In 1982, 14 Judges and Asstt. Judges were on transfer to the Ministry of Justice.

CHINA

7.5 Justice Mason, Chief Justice of Australia while referring to the lack of autonomy given to the High Court of Australia in the matter of its own administration and expenditure states that he noticed something curious in China during his visit. He states:

> "To my surprise, on a recent visit to China, I learned that the People's Republic had granted similar autonomy to the court system over its administration 10 years ago – an interesting development in a country which has not seen the need for Judicial independence as we have seen it". (See Vo.19 (1993) Commonwealth Law Bulletin, Speech by Sir Anthony Mason, Chief Justice of Australia in 'The Independence of the Bench' etc.).

CHAPTER VIII

INDIA

8. To have an independent Judiciary in India is not merely a fundamental right of the citizen but is part of the basic structure of the Constitution as held by the Supreme Court. Therefore, the independence of the Judiciary must have topmost priority.

8.1 In the last 50 years, there has been no proper allocation of funds commensurate with the corresponding increase in population, legal awareness, increase in legislation. There not being a periodic Five Year or an annual Plan for the Judiciary, the absence of such plans has compounded the problem. The result is that there is, in terms of international Covenants and resolutions set out in Chapter II, a clear violation of the basic structure of the Constitution and of the basic human rights resulting in an excessive 'overload' of cases.

8.2 The Judges in all courts are constantly under pressure for early disposal of all cases, old and new. The pressure today weighs on the mind of the Judges so much that it can lead to a miscarriage of Justice. Delay in disposal of criminal cases is resulting in the prosecution not being able to establish the guilt of the accused. Long delays in the criminal courts at trial stages are requiring bail orders to be given to the accused or otherwise they would spend more time in jails than as under trial prisoners. Delays in criminal cases are resulting in witnesses turning hostile in many important cases, due to extra legal approaches made to them.

8.3 Property matters and Rent Control cases if not decided early can lead to parties taking the law into their own hands or resorting to extra judicial methods. Delay in disposal of matrimonial cases is resulting in the spouses not being able to get early adjudication of divorce disputes. So is the case of land acquisition and motor accident cases. It is not necessary to multiply examples. Trial Judges and appellate Judges are blamed when they adjourn cases to dates far off on the time scale. Litigants do not understand that if cases are listed to closer dates, cause lists will explode on the adjourned dates due to addition of an unreasonably large number of cases, and cases cannot at all be taken up. More time will be spent in calling out cases for adjournments.

8.4 So far as the Indian scenario is concerned, it is not as if there are not plus points. In certain respects we are in a better position than some other Countries, so far as the Judicial services, and that control of supervision of the Judicial services, both in the higher and subordinate Judiciary. The officers and staff in the Supreme Court of India and in the High Courts are wholly under the control of the Chief Justice of India or the Chief Justice of the High Courts, as the case may be, under Article 146 and Article 229 respectively – in regard to recruitment and

disciplinary action etc. The salaries and pension and administrative expenses of the Supreme Court and High Court, including salaries, allowances and pension payable to Officers and Staff are charged upon the Consolidated Fund of India and any fees or other money taken by the Courts is to form part of that Fund. Article 112(2)(d) and Article 202(3)(d) of the Constitution are also relevant. So far as the officers and staff in the Subordinate Judiciary are concerned, they are under the control of the District Judge, subject to the overall supervision of the High Court under Article 235 of the Constitution of India. There is absolutely no interference either from the executive or the legislature. No doubt Rules governing the condition of services of these officers in regard to salaries, leave or pension require the approval of the Executive, if there are financial implications but even then rules have to be made in consultation with the High Court.

8.5 However, so far as financial independence or support is concerned, our present system is suffering from serious difficulties. It is these difficulties that are the cause for the clogging of cases in the subordinate courts and in several High Courts. It is true that by means of Alternative Dispute Resolution systems such as Lok Adalats several lakhs of cases have been disposed of in the last more than a decade, but that, in the overall perspective, has not reduced the general congestion in the subordinate courts and the High Courts.

8.6 Basically, lack of long-range planning and lack of finances have been the main causes for the storage of courts and Judicial officers in all parts of the country.

8.7 In principal cities like Delhi, Bombay, Calcutta and Madras even increasing the court rooms has become difficult due to lack of land for construction or ready accommodation. Further extreme bureaucratic procedures requiring consultation with half a dozen departments thwart any progress. A stage has reached where, if officers upto the full strength of the Judicial service are recruited, some of them have to sit idle for want of court rooms.

8.8 From the analysis of the system in other countries, including USA, constitutional government of Germany and Japan, it is clear that the policy making for the Judiciary is by the Judges and the budgets are prepared by an administration which is responsible to the Judges and not to the executive and it takes into account the demand for extra Courts and the increase in Civil and criminal cases because of new legislation and it draws plans for the future, both long range and short range. The budget as prepared by its bureaucracy is approved by the Judicial Council as in US and German constitutional Court and sent (1) directly to Parliament or sent to Parliament through the Executive by placing before Parliament (as in Japan), the budget as prepared by the Judges council and as cut by the executive and at that stage, a broad settlement is made between the Judges Council and the Executive and approved. In the US a Judge may appear before the Congressional Committee if need be. It is therefore essential to have a Judges' Council as a policy making body to look into its own needs and a regular bureaucratic system of administrators who will prepare the budgets and receive a lump sum grant for the government and spend it, under the supervision of the Court and are accountable to the Court. The Judicial Council is accountable to Parliament or its committee.

8.9 But we do not have a system by which the Judges can be involved in the preparation of long range Plans for the future, or a body which will be responsible for making statutory recommendations keeping in view the present excess work-load and the anticipated increase if cases, say, in the next five years. In India, no body does go into the question as to how any fresh legislation can increase the work-load – a study which is mandatory in USA before the legislation is brought into force. We have no judicial organization or body which can fight for the needs of the Judiciary.

8.10 In the Supreme Court and the High Courts, budgets are prepared by the respective Courts but these budgets have to be submitted to the Union or State Governments, as the case may be, which will have the final say in regard to the extent of budgetary support. On the theory that the Judiciary is not productive of 'goods' or utilities, or application of "value for money' theory, propounded in England by Mrs. Thatcher, the judiciary has always been a very low priority. The result is that the judiciary has never got its due share of finances in the last fifty years either for

increasing the number of Courts or the number of Judicial Officers and supporting staff, in the whole country.

8.11 Again, the Chief Justice of India alone has powers to shift the monies allocated for one subject to another subject (Justice P.N. Bhagwati, Vol.I CIJL Year Book p.16)(1992). The High Court Chief Justices had no such power. Result was that if monies allotted to one head are not spent, they will lapse at the end of the financial year. Only recently pursuant to a resolution of the Chief Justices' Conference, several State Governments have agreed to this shifting of allocations within the budget provided an officer of the Court (not a Judge) appears before the legislative committee. Further, in some States, for every unit of expenditure (say) above Rs.10,000/-, a further approval of the executive is necessary, even though the expense is within the budget for that item. Registrars keep shuttling between the High Court and Secretariat of Government.

8.12 While the control of the staff and Judicial officers is within the power of the Indian Judiciary, their cadre strength cannot be enhanced under Article 146 and Article 229 inasmuch as such increase has financial implications. All such increases have to go for the governmental approval as per the rules made in this behalf. Rules cannot be made to remove these financial restrictions (see Article 146 and 229). Again establishment of new Courts involves expenditure for acquiring land for the constructions of buildings, and consequently the expansion programmes have to be submitted to the executive.

8.13 While it is true that the Judiciary cannot expect an undue share of the finances as compared to certain other important items of governmental expenditure having higher priorities, the fact remains that the Judiciary has not received – in the last 50 years – even a reasonable proportion of what was due to it.

8.14 In other words, while the matters relating to appointment, disciplinary control and supervision of the officers and staff of the Courts are in better shape and are directly under the control of the Judiciary, the expansion in strength of officers or staff and certain service conditions of these personnel involving financial implications are not exclusively within the purview of the High Courts. Whether it be long range planning or short range planning for purposes of increasing the number of Courts, Judges and staff, there is no serious scientific planning done in consultation with the Judiciary. No policies are laid down by the judiciary. Again, budgets are generally based on usual recurring expenditure on the pattern of the previous year and these budgets are also submitted to the Executive, pruned or cut down in size and then placed before the legislature by a Minister. This is so both at the Central level and States level. It is this procedure based on total executive control that has resulted in the acute shortage in the number of Courts and Judges in the country.

Possible solutions for the above problems will be discussed in Chapter XI.

CHAPTER IX

PLANNING FOR COURTS

9. One of the best books on Court Planning and Management is the 'Handbook of Court Administration and Management' by Steven W. Hays and Cole Blease Graham Jr. (1993). The book contains 25 chapters contributed by leading Jurists on Planning and by Court Management experts. Each chapter gives reference to a very large number of books, articles and committee reports on Court Planning and Administration. The book also contains the historical development

of Court Planning initiated in the USA in the last thirty years. So is the book by Russel R. Wheeler & Howard R. Whitcomb 'Judicial Administration, Text and Readings', (1971) which is quoted in almost all works on Court Administration.

9.1 It appears that the movement towards court restructuring and management was started by Roscoe Pound in his 1906 keynote address to the American Bar Association (ABA : Pound, 1937 a). He criticized 'the general complacency of the established legal profession'

He condemned the fragmented court structures, duplication through concurrent jurisdictions, and waste of Judicial resources. He emphasized an improved, unified court structure along with administrative simplicity, flexibility, and responsibility. Several reports were prepared by others. In 1922, the Conference of Senior Circuit Judges (later Judicial Conference of US) was established by the State to deal with all these matters. The first Court administrator came in 1947. Meanwhile in 1939, as the Administrative Office of US was created in 1939, a separate bureaucracy to work under the Judicial Conference was set up. In 1940 Roscoe Pound published 'Principles and Culture of a Modern Unified Court Organisation'. In 1949, Minimum Standard of Judicial Administration were prepared by the ABA. In 1952, the Institute of Judicial Administration was established at New York University Law School. The National College for State Judiciary was founded in the sixties. In 1960, the National Association of Trial Court Administrators and National Association for Court Administrators were established.

9.2 In 1967, came the "Task Force Report: On the Court" by the Presidents' Commission on Law Enforcement and the Administration of Justice.

9.3 In 1967, under the leadership of Chief Justice Warren Burger, the 'Federal Judicial Centre' was started at Washington, sponsored by the Judicial Conference, a research facility for the Judiciary.

9.4 Due to the untiring efforts of Chief Justice Warren Burger, the Institute of Court Management – which gives a degree in Master of Judicial Management (MJA) – was started in 1970. The Institute publishes the 'Justice System Manual'. In 1971, the National Centre for State Courts was established at Williamsburg, Virginia. It publishes the 'State Court Journal', a professionally oriented compendium of court management developments nationwide. The National Centre for State Trial Courts was created in 1971 by the National Conference of the Judiciary in Williamsburg. Standards relating for the Court Administration were published by ABA in 1974 and 1983.

9.5 Planning and future problems began to receive more attention in the US on the last 30 years. Finally, the 1990 Conference of State Courts set afresh agenda for the Courts. Planning for Courts is done by the method called POSDCORB: Planning, Organising, Staffing, Directing, Coordinating, Reporting and Budgeting.

9.6 In Hay's book, Chapter 24, 'Planning for Court Management' by Theodore J. Fetter (p. 483), the subject of Court Planning is discussed in detail. It is said:

> 'Court planning retains at least 4 vital uses. First planning can guide decision about budgeting and allocation of resources. Second, planning can help to inform Court managers about the performance of individual units or individuals. Third, planning can be a mechanism by which all Judges and staff can share the same sense of the entire organization and its goals. Fourth, Planning can assist in responding to individual issues as they arise.'

9.7 Budget and Resource Planning require us to think of what does the Court seek to accomplish in the next (say) 5 years or in this year? What is the most important need to be addressed? In times of cut back, what activities have to be curtailed? If the resources need to be concentrated in just a few essential tasks, what should those our priorities?

9.8 We have to estimate the annual increase in the filing of cases in trial court or in the appellate courts over the last 5 years. Using statistical projection techniques, it is possible to predict the increase in the case load for the immediate future. If such a prediction is possible, then we can find out the Courts in which the increase will show up in the years to come and at what percentage. To meet the demand, we can estimate the required increase in Courts or Judges or staff or in what best manner the existing Courts/Judges/Staff can be reorganized. We can estimate how much money is needed for increasing the court services and whether the Government will be able to provide this money in one or more years. We can also estimate to what extent alternative dispute resolution systems can reduce the cases? This is what is meant by 'Planning for the Future'.

9.9 There are a number of articles on Long Range Court Planning techniques published in (1993) 68 South California Law Review. The various types of statistical analysis, projections, graphs etc. which can lead macro as well micro Planning are referred to.

9.10 Literature about management frequently mentions 'Planning – programming – budgeting system. (PPBS). Planning precedes budgeting. It determines the organisations' goals and sets the priorities. Then programming examines the ways of achieving goals and evaluates them before deciding which way to take. Finally budgeting decisions become largely secondary, being the process of assuring that the resources are placed in the correct areas.

9.11 Planning is a structured and conscious process to define and revise goals, to assess and to determine strategies and implementation methods. But if planning for Courts is left to the Court Administrators leaving Judges merely to oversee the work of such administrators, it can be of no help. Planning must be done by the personal participation of Judges and they must be involved and share the planning process. Just as the Director's of a company cannot stand aloof from the corporate management, Judges can neither avoid nor keep aloof from the planning and court management processes.

9.12 The subject of 'Court Finances and Unitary Budgeting' is dealt with (at p.110) by Geofrey C. Hazard Sr. Prof. Yale Law School in R.Wheeler's book above mentioned. He also discusses the Court cases involving the 'inherent power doctrine' where American Courts started giving directions for budgetary grants. The pros and cons of 'inherent power' doctrine are also examined. Various systems of budgeting and their advantages are discussed.

9.12.1 He says (P.123) that the Courts' oldest method of raising revenue – charging fees for their services – is now substantially unavailable and unavailing. Clearly, this is so in criminal cases – where accused are mostly without money. Gideon vs. Wainwright 372 UDS 335 (1962): Griffin vs. Illinois 351 U.S. 12 (1956).

9.13 In our Constitution, clause (3) of article 146 provides that all administrative expenses of the Supreme Court including salaries, allowances and pensions payable to, or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of India and any fees or other moneys taken by the Court shall form part of that Fund.".

Similarly, clause (3) of article 229 provides that the administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.".

9.14 In the first All India Judges Case, Ranganath Misra, C.J. (see 1992 (1) SCC 119) gave directions that all Court fees that is collected must be made available for the Courts expenditure.

Indian Scene and Plan:

9.15 A question has arisen whether the Judiciary is included as a subject for the Plan by the Planning Commission. It appears that, in a way, it is included. In the Second All India Judges Case [1993 (4) SCC 288], Sawant, J. observed (p.310):

> "We now understand the Judiciary has been included as a plan subject by the Planning Commission."

9.15.1 But the question is in what manner? Judges have not been involved by the Planning Commission in any policy planning for the Judiciary. There is no exclusive grant by the Centre for Court expenditure. Neither has the Finance Commission gone into this subject at any time. All that we have is an insignificant 'Centrally Sponsored Scheme' for Courts prepared by the Planning Commission which allots some monies for each State on population basis. There is no understanding or application of mind to the actual needs of the Courts in various States or in metropolitan towns like Bombay, Delhi, Calcutta and Madras etc., nor to the needs of specific types of Courts – like criminal courts where thousands of cases are pending. The Planning Commission has to consult the Judiciary. It must take into account the large number of parameters which should be the basis for distribution of monies among States. Before that, it must set apart a large fund for distribution for the Judiciary. Expenditure shows that the monies allotted under the present central scheme when distributed to various Districts in a State it comes down to a few thousands in some Districts. In fact if a big District Court Complex in a single District is taken up in an year, the entirety of the funds allotted to the State get exhausted.

9.15.2 Further, the present scheme has become nothing but an eye-wash for it requires the States to provide a matching grant, or else the central grant lapses. Most States are not able to provide the matching grants and the result is that the central grant lapses. To put it bluntly, the so called inclusion of Judiciary as a plan subject is no inclusion at all as it is totally unrealistic, unplanned and unrelated to the scenario at the grass-root level and also at the level of the appellate and superior courts.

9.15.3 This has necessitated the Supreme Court to give directions to the Central and State Governments in providing various basic facilities for the Judges and the Courts to the subordinate Judiciary in the public interest cases filed by the All India Judges Association. In the first case, Ranganath Misra, CJ observed: [1992 (1) SCC 119 (p.135) that the State cannot plead financial stringency for providing certain minimum standards required. His Lordship observed:

> "The efficient functioning of the Rule of law under the aegis of which our democratic society can thrive, requires an efficient, strong and enlightened Judiciary. And to have it that way, the Nation has to pay the price".

In the second case, [1993 (4) SCC 288], Swant, J. also rejected (p.305) the pleas of financial stringency as follows:

> "The alleged financial burden that would be thrown on the State exchequer on account of....is negligible, considering the enormous advantage that the administration of Justice and society would derive...."

As Rajeev Dhawan pointed out in his recent article 'The Least Expensive Branch' (Hindi, 20.11.1998), we are living in times when each Member of Parliament has been given one crore of Rupees for use in his constituency and only it appears that government has no money only for the Courts.

Fast Track Courts

9.16 Recently, it appears that pursuant to certain observations in State of U.P. vs. Upadhyaya, a PIL pending in the Supreme Court, a sum of Rs.502 crores were released for fast track courts where retired Judges are being employed to clear backlog of old cases, on a contractual tenure

basis. Problems such as dearth of retired Judges of the sub-ordinate judiciary who are willing to accept the cases or willing to work outside the places where they have settled, accommodation for the Courts/Judges, infrastructure etc. have surfaced. Above all, the question of disciplinary jurisdiction of such contractual appointees has also been raised.

9.17 Coming to figures of Judge-population ratio, the conditions reflect a pathetic situation and total governmental apathy. The Law Commission in its 120th Report on 'Management and Planning in Judiciary': A Blue Print' (1987) stated as follows:

> "the State should immediately increase the present ratio from 10.5 Judges per million of Indian population to at least 50 Judges per million of Indian Population within the next five years. It was further recommended that by the year 2000, India should command at least 107 Judges per million of Indian population."

This has not happened. Meanwhile the population is galloping and the Courts and Judges do not increase in numbers. The above views were reiterated by the Law Commission in its 127th Report 1988 (p.12).

9.17.1 Recently, the Chief Justice of India, Justice A.S.Anand, in his address at the Bar Council of India (10th October, 1998) stated that

> "in several European Countries, the number of Judges per million varies from 90 to 100. However, in India, it was only 11, which was rather disappointing.".

9.18 Dr. Rajeev Dhawan in his article 'The Least Expensive branch' (Hindu, 20.11.1998). He says that –

> "We need an institutional mechanism to support the judiciary in its financial endeavours which are concerned not just with courts, but with the whole process of Justice – including legal aid and assistance.

9.18.1 After referring to some figures in the increase of cases and nominal increase in funds, he says -

> "there is no real procedure or basis of which the financial autonomy of the Judiciary can be assured. What emerges is frightening adhocism of a kind that is Humiliating and wholly contrary to the Interdependence of the judiciary. Law Ministers have often resorted to bullying When they should have demurred. Many Budgets are discussed at the Under-Secretary level with the Law Ministry Having an edge. The Judges have no choice But to make their modest demands more Models".

CHAPTER X

COMPARATIVE REVIEW OF THE POSITION ABROAD AND IN INDIA

10. Having referred to the Court systems in various countries about Court Administration and Finances and to salaries position in US, UK and Australia, it is time to give a birds eye view of the picture so that we can know where we stand in the global scene.

10.1 At the outset, we have emphasized that 'institutional or collective independence of the Judiciary' is a part of the judicial independence and in fact a crucial part. It is as important as the other aspects relating to judicial appointment, tenure, removal, or even judicial independence in the adjudicatory process. India is a party to important covenants. International bodies under the UN and the International Commission of Jurists and LAWASIA have passed numerous resolutions to which we are signatories. All these deal with the need for financial independence of the judiciary.

10.2 Now the position in USA, Italy and Japan appears to be the best for there is in those countries almost total independence given to the judiciary in its finances and Court Administration. In the USA, the Judicial Conference of the US is a statutory body for the Federal Courts created in 1922 and it is the policy making body and it acts through its various Committees including committees for long-range Planning, Budgeting, space or Accommodation and Technology. It has its own bureaucracy – under its control – the Administrative office of the Courts in the USA. Statute vested the entire judicial administration in 1939 in this Administrative Office under the control of the Judicial Conference after shifting it from the office of the Attorney General. The staff and officers of the Courts are under the control of Courts. Budget for the Federal Courts is prepared on the basis of the policies of the Conference, the data prepared by the Administrative Office, in consultation with the Courts. It normally takes 18 months to prepare a budget. The Conference has to meet twice in one year. The Administrative Office gives it two reports in advance before each meeting. The budget proposals do not go to the Executive but are submitted direct to the Congress. Judges in the Committees can appear, if requested, before congressional Committees or the Congress. The budget asked for is normally passed in full by Congress. The budget allotment enables the Judiciary to use the amount in the best manner it thinks fit by shifting expenditure from one head to another. The judiciary is wholly responsible for the budget. It has to submit annual Reports to the Congress on its performance or plans for the future. This part of the judicial independence has reached a stage of perfection. But in the area of the Judges' salaries, there are clear problems as these are not revised periodically to keep pace with inflation. This is so in spite of the Ethics Act, 1989 which requires inflation to be taken into account.

10.3 In England, as pointed out by the Vice-Chancellor, Browne-Wilkinson in his article (see 1988 Public Law, P.44), the position is quite the reverse of what it is in USA. Judges are not involved in any policies or planning. The Court officers are integrated into the civil service. The officers in the Lord-Chancellor's office are also part of the Executive. Judges are not consulted in the budget formulations. The matter is under the exclusive control of the Lord Chancellor's office. The Lord Chancellor's office prepares the budget. The budget is not directly submitted to Parliament but is submitted through the Executive. There is no place for the Judges in any of these matters. The Vice Chancellor has grave doubts whether such a system is conducive to judicial independence. Lord Woolf in his recent article (1998) Law Quarterly Review, p. 579) has not addressed himself to these problems though he refers to the points raised by the Vice Chancellor. According to him the Lord Chancellors, as of now, are able to do some 'tight rope walking' and are able to use their 'clout' in getting whatever they feel is the requirement of the Judiciary. This has become possible in UK because the Lord Chancellor heads the judiciary and is also a Member of the Cabinet and Speaker of the House of Lords. Thus in the area of Court finances the Judges have no say in UK. But in the matter of salaries, UK is far ahead of all countries. With the setting up of the 'Top Salaries Review Board' for Judges, Permanent Secretaries and others. The Advisory Group for Judiciary in that Board has thought it fit to consider that Judges' salaries must bear a reasonable proportion to the salaries received in Industry and to the net income of leaders of the Bar. Because of this approach, Judicial salaries which at one time were below (and later equal to) those of the Permanent Secretaries have now gone ahead of the salaries of Permanent Secretaries and also gone ahead of inflation.

10.4 In Australia, atleast in the High Court, the Federal Courts and Family Courts the control over the staff and financial budget is within the Judiciary. But the budgets are presented to the Legislature by a Minister. The Legislature makes a 'single line' appropriation and there is

flexibility in shifting the budget grants from one head to another. In all other courts, the staff and budgets are under executive control. There the budget is an identifiable part of the budget of the Ministry of Justice. Policies are not made in consultation with the Judiciary. However, salaries are increased according to inflation and the matters can go before a Tribunal manned by a former Judge and his decision is placed before the legislature for approval or deemed approval.

10.5 In Canada, except for the Supreme, Federal and Tax Courts, the Court administration is part of the Attorney General's office and is not under the control of the Judiciary. All the Court administrators are employed by the executive department. Budgets, staffing levels and personnel policies are set according to standards of the Executive. The Attorney Generals are members of the Cabinet in the States too. According to the Canadian executive, the American system is not capable of being introduced in Canada as, they say, there is no clear separation of powers. The Courts have thus no say in policy matters.

10.6 In Germany, the Constitutional Court alone draws its own budget and presents it directly to the legislature. In all other courts, there is no financial autonomy. But curiously so far as Court administration is concerned, the Judges have a dual role – one as Judges and another as Court Officers; that is, as part of the executive. In their latter role as part of the executive, they are under the control of the Ministers. On the financial side – except the Constitutional Court – other Courts have no autonomy. They cannot send budgets directly to Parliament. Budgets are presented by a Minister. But the allotment for a judiciary is a lump sum and not item-wise. The allotment to the individual courts is done by the Ministry of Justice.

10.7 In France, there is no separation of powers and the court budgets are part of the executive budget. The Minister of Justice is responsible for the Court budget.

10.8 In Italy, things are totally in favour of the Judiciary. The Judiciary recruits the Judges staff and the public prosecutors. Curiously, the several divisions of the Ministry of Justice are also manned by the magistrates recruited by the Judiciary.

10.9 In Japan too, things are in favour of the Judiciary. The Judicial administration is in the hands of the Judicial Conference composed of Judges. It is a policy making body as in USA. The Judicial Conference is assisted by a general secretariat of the Supreme Court and its Secretary-General and supervisory personnel are all Judge-bureaucrats.

10.10. In China, though there is no separation of powers, the Court administration staff is controlled by the Courts, though the finances are determined by the Parliament.

10.11 There is a striking contrast between Germany and Italy. While in Germany the Judges have a dual role – treated as part of the executive – and in their latter role are treated as part of the executive amenable to the control of the Minister, the position in Italy is so different, the magistrates recruited by the Judiciary man the Ministry of Justice and get all things done at the level of the executive or in the legislature according to the Courts requirements.

10.12 In India, we have the advantage of the Court officers and staff being under the complete control of the Judiciary from the highest court to the lowest courts. That way, our system is better than the one in UK and France. But the main problems are in regard to policy-making and finances.

10.12.1 The Judges are not involved directly in any policy making. All the Judges are not involved in the preparation of the budget. The Chief Justice of India and the Chief Justices of the Courts no doubt prepare a budget with the help of their Registrars but these are routine budgets based upon a notional increase of the figures of previous years. They are not based on any long range or short range plans for the Judiciary. The budgets are sent to the Executive and suffer serious cuts. The budget is so even at the State level.

10.12.2 The Chief Justices Conference is presided by the Chief Justice of India. But this is a non-statutory body with no teeth and though sometimes it lays down some policies, it is customary for a Desk Officer or an Under Secretary to send a single line letter to the Registrar General of the Supreme Court that government is not accepting the recommendations.

10.12.3 There is neither an independent judicial council or conference with statutory status, nor an independent bureaucracy of court administration who can prepare the budgets and who can independently spend the lump sum allocation under various heads, subject to supervision by the Judges' Council. The judiciary's budget is part of the executive budget.

10.12.4 The Judiciary, as stated in Chapter IX relating to planning, is not involved in any planning policies prepared by the Planning Commission at the Central level or the State Planning Boards. The Finance Commission does not also deal with the requirement of the Judiciary as an Institution.

10.12.5 The unique distinction of the Judicial offices held by Judges as Constitutional functionaries – as opposed to Secretaries of Government – has been brought about in the first and second All India Judges' Cases referred to in Chapter IX, 1992(1) SCC 119 and 1993(4) SCC 288. It has been held, on a thorough consideration of the nature of the offices, their work and mode of recruitment – particularly when lawyers give up a lucrative practice to come to the District Court or High Court – that the Judiciary stands on a different and higher footing under the Constitutional scheme and cannot be equated with the Executive. The Top Salaries Board in UK has also proceeded on that basis.

10.12.6 In the All India Judges' Case, it was held that the Judges salaries in the Subordinate Courts have to be fixed by an independent Judicial Commission. Then the Government appointed the Jagannatha Shetty Commission for the subordinate Judiciary. Its terms were extended to include the staff of the subordinate courts too.

CHAPTER XI

INDIA – PROPOSALS FOR CONSTITUTIONAL AMENDMENT AND/OR LEGISLATION

11. At the outset, it is necessary to refer to the various problems that are confronting the Judicial administration and then refer to the solutions. Then we shall refer to the Legislative amendments necessary for implementing the solutions. Some of the problems that the judiciary in India is facing have been earlier referred to in Chapter VIII.

11.1 In the Constitution of India, in the Chapter on Union Judiciary (Chapter IV of Part V) and in the Chapter on State Judiciary (Chapter V of Part VI), reference is made to various aspects of the judicial set up in the country. We shall here refer only to one special aspect of these provisions. The Chief Justice of India and the Chief Justices of the State High Courts have been empowered to make rules (see Article 146 and Article 229) in regard to the service conditions, salaries and allowances of the officers and servants of the respective courts but if any such revision has any impact on the finances of Government, the rules require the approval of the President or the Governor of a State, as the case may be. The need to have some executive control so far as these items are concerned was emphasized by Sir Alladi Krishnaswami Iyer in the debates in the Constituent Assembly.

11.2 The same difficulties are faced in regard to the creation of posts by the Chief Justice of India and the Chief Justice of the High Courts. Further, Rules permit creation of extra posts only in regard to particular categories and not in regard to all categories though there may be need at those levels.

11.3 Then there is an existing problem regarding powers of the Chief Justice of India and the Chief Justices of the High Court relating to appropriation and re-appropriation of expenditure under the different heads in the budget as allotted. Only the Chief Justice of India and the Chief Justices of one or two States have been allowed under Executive Orders of the respective Governments to re-appropriate amounts allocated under one head in the budget to another. This aspect has been repeatedly taken up at the conferences of the Chief Justices. For example, if within the total budgetary allocation, the State PWD is not able to spend monies allocated under one head, there is no good reason as to why the Chief Justice should not be allowed to utilize the amount for other pressing needs such as for the library of the Court or for stationary or for the computer division of the Court. The Union Government has recently requested all the State Governments to remove this restriction and follow the same procedure which is applied in the case of the Chief Justice of India and permit re-appropriation at the discretion of the Chief Justices of the High Courts. But a query has been raised in the States as to whether the Chief Justice of the High Court would be prepared to appear before the Public Accounts Committee of the State Legislature at its meetings, if called. This aspect has been examined and it has been pointed out that to cover like situations, the Speakers of the Legislatures have made rules exempting Ministers from appearing before the Committees of the Legislature and that a similar procedure has to be adopted in the case of the Chief Justices. As in the case of Ministers, senior officers of the High Court can appear and answer any questions before the Committee. It has also been pointed out to the State Governments that even in the absence of a like rule made by the Speakers, the same procedure as applied to Ministers has to be followed in the case of the Chief Justices of the High Courts, having regard to their constitutional status. Obviously, the above query postpones the implementation of the request made by the Union Government to the States.

11.4 Yet another problem is that in respect of monies allocated within the budget, certain financial procedures require that whenever expenditure above a particular amount (sometimes as low as Rs. 10,000/-) has to be incurred only upon fresh sanction from the Secretariat. This is indeed an unnecessary bottleneck created to make the Registrars of the High Courts run to the Secretariat on each of these occasions.

11.5 The main difficulty is about proper budget allocation for the Judiciary. We may state that the Planning Commission has not been making any separate funds available for the Judiciary in the last fifty years, though (as pointed in Chapter VIII), the Supreme Court was informed that there would be an allocation in the Plan. Such allocation in the Plan has not been made except by way of (i) the Centrally sponsored scheme which requires the State to make matching grants and (ii) the recent allocation of Rs. 500 crores and odd for Fast Track Courts. So far as the Centrally sponsored scheme is concerned, as it requires a matching grant from the States, it has not been fully utilized in several States because the States are not able to make adequate matching grants. So far as the Fast Track Courts scheme is concerned, this type of a grant after fifty years, for Courts which are to last only for a temporary period, does not meet the problem. Appointing retired judicial officers on contract basis can even create problems if they are not within the disciplinary jurisdiction of the High Courts under the existing rules. This temporary measure should be replaced by permanent and lasting solutions.

Planning Commission and Finance Commission to allocate adequate funds for the Judiciary

11.6 The proper thing for each State is to first require separate allocation of funds by the Planning Commission and the Finance Commission for the purposes of the State judiciary and once this is done, most of the problems will be solved.

11.7 There is an important reason as to why provision is to be made in the State plan by the Planning Commission and by the Finance Commission. The crucial point here is that the Subordinate Courts and the High Courts have been administering not only the laws made by the State Legislatures but also the laws made by Parliament under various Entries in List I and List III. In fact, laws made under the Concurrent List in the Seventh Schedule (List III) are the most common statutes in use in the Courts everyday as they concern the civil and criminal administration of justice. These laws in the Concurrent List include the Indian Penal Code, the Civil and Criminal Procedure Codes, laws relating to Marriage and Divorce, Transfer of Property, Registration, Contracts, Actionable Wrongs, Bankruptcy and Insolvency, Trusts, Evidence, Forests, Adulteration of Food Stuffs, Drugs and Poison, Trade Unions, Education, Charities, Trade and Commerce, Factories, Electricity, Acquisition of Property and Requisitioning etc., - the list is unending. Then there is again a long list of Central statutes in List I. All these laws create a large number of rights and offences which are being administered by the subordinate Courts which are being run at the expense of the State Governments.

11.8 The Central Government cannot therefore throw the entire burden of establishing the subordinate Courts and maintaining the subordinate judiciary on the State Government. It is true that under Article 247, the Central Government has powers to establish additional Courts for purposes of the litigation arising in respect of subjects in List I of the Seventh Schedule. But, the number of Courts established at the level of the Subordinate Judiciary by the Central Government in exercise of its power under Article 247 of the Constitution even for purposes of cases arising out of subjects in List I, is almost negligible. It appears on the whole that there is a concurrent obligation on the Central Government also. Therefore, the Planning Commission and the Finance Commission must allocate sufficient funds from national resources to meet the demands of the State Judiciary in each of the States. These monies must come through the Planning Commission and the Finance Commission.

11.9 In fact, in Latin American countries, it may be noted, that there is a 'constitutional requirement' of allocation of a fixed percentage of the country's total budget to the judiciary. The most generous provisions are in Costa Rica, which grants the judiciary not less than 6% of the nation's ordinary annual receipts, excluding loans and grants. (see Article 177 of the Constitutional Practice de La Republica de Costa Rica). While Honduras allocates at least three per cent and Peru 2%, Gautamala and Panama allocate 2% of the nation's ordinary annual receipts (see Bulletin of the Centre for the Independence of Judges and Lawyers, No. 122, October 1988, page 18 in an article by Kutt S. Rosehn on 'The Protection of Judicial Independence in Latin America').

Proposals for Constitutional or Statutory backup for Judicial Council and Administrative Offices in each State and at the Central Level

11.10 In the earlier chapters, we have seen how in several countries, particularly in the US, Germany and Japan the problems of the judiciary are tackled by establishing a separate internal machinery for the purposes of planning, budgeting and implementation of the needs of the Judiciary. Thus the Judiciary is associated effectively in the planning, budgeting and the machinery for implementation. As Chief Justice Taft pointed out (see Chapter III), the Judges who administer the laws are best suited for planning the requirements of the judiciary and they must have the main say on all aspects of judicial administration.

11.11 The first step therefore is to create, under a law to be made by Parliament, a Judicial Council for India and Judicial Administrative Office of India and then create separate Judicial Councils and administrative offices at the State levels.

I. National Judicial Council and its Administrative Office

11.12 The National Judicial Council at the Central level should consist of the Chief Justice of India and two Judges to be nominated by him from the Supreme Court and will have to include all

the Chief Justices of the High Courts. They have to meet twice in a year and consider various aspects of judicial administration relevant to the whole country. The Administrative Office of the National Judicial Council will help it in various respects. It can gather national statistics from the Administrative offices attached to the State Judicial Councils.

11.12.1 So far as the "staff and the budgetary needs of the Supreme Court" are concerned, it may not be proper to associate the National Judicial Council with it. As of now, these aspects are, under Article 146(3), within the exclusive administrative jurisdiction of the Chief Justice of India and he alone can take decisions on these matters. The administrative powers of the Chief Justice of India cannot be diluted by making those powers subordinate to the views of the National Judicial Council. No doubt, the Chief Justice of India can take the help of the Administrative Office of the National Judicial Council, if need be. The Administrative office at the national level can help in laying down general and broad guidelines applicable for the whole country so that there can be uniformity.

11.12.2 The Judicial Council at the Central level can go into the question of the uniformity in the service conditions of the subordinate judiciary in the whole country. It can go into various aspects of the over all needs of the Judiciary in the country from the statistics as gathered by its Administrative Office through the State Administrative Offices working under the State Judicial Council. It can make general recommendations to the Central and State Governments and to the Planning Commission and Finance Commission after gathering statistics from each State Judicial Council about the needs of the High Courts and the subordinate Judiciary in each State. But it shall not have any administrative control over the State Judicial Councils or the Administrative offices of the State Judicial Councils.

11.12.3 The personnel of the Administrative Office of the National Judicial Council must be put on a strong pedestal at the Central level and also at the State Level and must consist of direct recruits recruited at a middle level who have a degree in Court administration from the proposed Institute of Court Management coupled with an LL.B. degree. There should be promotee officers too drawn from the cadres of Judicial officers of the subordinate judiciary at various levels and from the staff of the subordinate judiciary. They must be put in different cadres with promotional avenues. These Administrative Offices at the Central and State levels must work under the concerned Judicial Council of the State and assist them in planning, budgeting and implementation. The Administrative office at the Central level shall not have administrative control over the State Administrative Offices.

11.13 Four institutions to be under the general control of the National Judicial Council

(a) An Institute of Court Management;

11.13.1 Today, there is a great need to put the management systems in the Courts on a professional basis. A Post-Graduate Degree Course in Court Administration is to be started for those who are possessing degrees in Law. They must be eligible for being recruited into the staff of the Subordinate Courts or High Court or the Supreme Court or even to the various quasi-Judicial tribunals. The direct recruitment could be at a level of two stages from the lowest level and along with other departmental promotees, unified cadres can be formed. The lower staff could also be given training in the Institute. These graduates can also be recruited into the Administrative offices attached to the Judicial Councils at the Central level and State levels.

The Institute must be under the control of the National Judicial Council.

(b) The National Judicial Academy, Bhopal to be made a Commonwealth Law Centre

11.13.2 The National Judicial Academy was built at Bhopal a few years ago with an expenditure more than Rs. 70 crores.

The Academy must be converted into a Commonwealth Law Academy with faculty from India and other Commonwealth countries and it could conduct Research in Law, publish books and journals and also have a wing wherein Judicial Officers from all over the country could come for courses on Continuing Legal Education by itself and in collaboration with State Judicial Academies. The Institute could also be brought within the purview of the National Judicial Council.

(c) **The Indian Law Institute, New Delhi**

11.13.3 The Indian Law Institute must be made a deemed university with a separate campus where diplomas, degrees and PG degrees in subjects like Human Rights, Environment, Intellectual Property, International Law, Comparative Constitutional Law, Administrative Law etc. could be awarded. It should also be under the supervision of the National Judicial Council.

(d) **International Legal Data Centre, New Delhi**

11.13.4 There should be established at Delhi, an International Legal Data Centre, with internet facilities for the use of the Supreme Court, High Courts all over the country, the Subordinate Courts, all Bar Associations, Law Universities, affiliated Law Colleges, individual lawyers and faculty members and law students.

The Centre should have information about all legal literature, law books and law journals available all over the world and in India, including books and journals from the Supreme Court Library and the Indian Law Institute and those available in other libraries in India, in the Universities and the High Courts. Subject wise category of information is to be furnished.

This Data Centre should also be under the control of the National Judicial Council.

II. **State Judicial Councils and Administrative Offices**

11.14. Having regard to the fact that the State High Courts are independent constitutional Courts which are not administratively subordinate to the Supreme Court, it must be ensured that the National Judicial Council has no administrative control over the Judicial Council of the State. Nor can Administrative office of the National Judicial Council have any administrative control over the Administrative offices in the States. The Administrative Offices in the States must not be under the control of the State Governments but must be under the control of the respective Judicial Councils.

11.14.1 The State Judicial Council must consist of the Chief Justice of the High Court, four Judges of the High Court nominated by him, the Registrar General of the High Court and three senior District Judges nominated by the Chief Justice. They will be concerned with the policy-making, planning, budgets and implementation so far as the Subordinate Courts are concerned.

11.14.2 The State Judicial Council is not to interfere with the administration of the High Court which is within the exclusive control of the Chief Justice. Nor can it impinge on the powers of the High Court under article 235 of the Constitution of India.

11.14.3 In case there are any such overlapping areas, the State Judicial Council can make its recommendations to the High Court for its due consideration.

11.14.4 The Judicial Council at the State level shall have to go into the long range plans, budgets, space and accommodation requirements and suggest steps for clearing backlogs etc. It must also estimate the number of civil or criminal cases that may be added to the dockets of the High Court and the subordinate Courts every year by virtue of new laws passed under List I and List III of the Seventh Schedule by the Parliament and under List II and List III by the State legislatures.

11.14.5 The relevant committees which every State Judicial Conference must have, as in USA are as follows:

(i) Committee on Budget
(ii) Committee on Court Management
(iii) Committee on Information and Technology
(iv) Committee on Security, Space and Accommodation
(v) Committee on Long Range Planning
(vi) Committee on Financial Disclosures.
(vii) Committee on National and International Judicial Relations
(viii) Committee on the Subordinate Judiciary
(ix) Committee on Judicial Resources.

III. The Budget procedure for the Judiciary

11.15 This subject is most crucial to the autonomy and the financial support for the Judiciary.

(a) So far as the budget for the Supreme Court of India is concerned, it is not felt necessary to make any special provision in this Paper.
(b) So far as the expenditure required for the National Judicial Council is concerned, the same has to be prepared by the said Council with the help of its Administrative office and the budget will be finally settled in consultation with the Central Government. The budget estimates so settled shall, by way of a convention to be followed, pushed through the Parliament without any downward revision.
(c) So far as the budget estimates for the High Court are concerned, the matter is within the exclusive purview of the Chief Justice of the High Court and it will, therefore, be not within the jurisdiction of the State Judicial Council.
(d) So far as the budget estimates of the Subordinate Judiciary are concerned, they have to be prepared by the State Judicial Council.

11.15.1 The State Judicial Council, as already stated, will go into the pending of cases, civil and criminal and the number of Courts and judicial officers and staff available. It shall keep the average disposal of a judicial officer in mind and shall estimate the number of Courts/Judicial Officers/staff and also the infrastructure like buildings for Courts, buildings for judicial officers, furniture, telephones, fax, computers, stationery, conveyance, etc. that are necessary. A Plan will be prepared for the subordinate Courts in each State for implementation progressively. The Judicial Council shall also take into account the new legislations passed by the Parliament and the State Legislature and estimate how many new civil or criminal cases may get added to its dockets year after year. On that basis, the State Judicial Council, with the help of its Administrative Office, must prepare the annual budget estimates for the subordinate Judiciary.

11.15.2 Formulation of procedures for Budget of the State Judiciary, is very important. The Commission do not propose that as in the USA, the budget should be directly presented to the State Legislature. This is because the separation of powers between the Legislature, Executive and the Judiciary in our Constitution is not as distinct as it is in the USA. The following procedure is recommended. The State Judicial Council must prepare the budget estimates and must first submit the said budget estimates to the State Executive. The State Executive should, if it is not inclined to approve the budget proposals of the High Court, as presented, have an effective consultation with the State Judicial Council or with a committee of Judges and officers nominated by the State Judicial Council and then both of them will have to arrive at a consensus as to the budgetary needs of the State Judiciary. Once the State Executive and the State Judicial Council thus finalise the budget estimates in the above manner, as a matter of convention there should be no downward revision in the legislature. Again, once the budget is passed, the entire amount is to be kept under the control of the State Judicial Council and there should be no need to seek permission of the Executive for re-appropriation. Within the budgetary allotments, the

State Judicial Council must be able to spend the monies through the State Administrative Office. The expenditure will have to be scrutinized by the Financial Adviser drawn from the Office of the Comptroller and Auditor General of India.

11.15.3 If there is to be a convention of the agreed budget to be accepted by the State Legislature without revision, then there may be no need to include the budget estimates of the Subordinate Judiciary in the Consolidated Fund of the State by a State Law under Article 202(3)(f). The question of making law under Article 202(3)(f) may be kept as the last option if any such need arises over a period of time.

11.15.4 The approach of the State Government to the Judicial budget must be based on the following considerations. Having regard to the duty of the State to uphold the rule of law and to maintain peace, law and order in society, and the duty to render speedy justice, both Civil and Criminal, and in view of the various facets of 'life' falling under Article 21 of the Constitution of India as interpreted by the Supreme Court of India, the Central and State Governments must put the financial requirements of the Judiciary on par with other items of top priority like its development schemes. It must be realized that every other development activity of the State will depend upon the health and well being of the citizens and if adequate allocation is not made for upholding the rule of law, that is bound to affect every other sphere of activity adversely. A pragmatic approach is thus needed on the part of the Executive while dealing with the budgetary proposals that emanate from the State Judicial Council. The attitude of the Executive must be positive and fair and should not be one always, as a matter of course, to cut down the legitimate demands of the judiciary. It is no doubt true that the State has various other pressing demands on its revenues but the point here is that the requirements of the judiciary must be kept almost at the same level as the other most pressing demands.

11.15.5 The procedure indicated above in regard to budgets appears to be similar to the one in Japan (see Chapter VII).

IV. Legislation necessary to constitute the Judicial Council and the Administrative Offices and the Budget procedure:

11.16 Several Constitutional provisions, as already stated, deal with the Union and State Judiciary, but obviously there is little scope under the existing provisions for creation of Judicial Councils and Administrative Offices or for laying down budgetary procedures. Necessarily new provisions have now to be made. Question is (i) whether the Constitution is to be amended, if so, in what manner or (ii) whether fresh legislation can be made under any of the Lists.

11.16.1 We do not think that as of now, any amendment to the Constitution need be made. If a law is made by Parliament under Entry 11A in the Concurrent List that will be sufficient for the present.

> Entry 11A of List III reads as follows:
>
> "Entry 11A: Administration of Justice: Constitution and organization of all Courts, except the Supreme Court and the High Courts."

11.16.2 Under the first part of that Entry, a law can now be made by Parliament both for constituting the National Judicial Council and the State Judicial Council, while under the second part, Parliament can establish additional Courts also, in addition to the Courts it can establish under Article 247 for purposes of Entries in List I.

11.16.3 Parliament can also establish the respective Administrative Offices for the National Judicial Council and for the various State Judicial Councils. Parliament can vest the said Judicial Councils with the powers already referred to and delineate their functions as stated above. The manner in which the budget estimates may be prepared by the National Judicial Council and the

State Judicial Council can be elucidated. It may then be stated that the budget estimates so prepared will be discussed with the Union Executive or the State Executive, as the case may be, and a consensus will be arrived at keeping the needs of the Judiciary on par with other high priority items. The budget estimates as so settled will be placed before the Parliament or the State Legislatures, as the case may be. To that extent, there must be legislation.

11.16.4 The procedure, thereafter, is to be based on a convention to be followed. The Executive will place the Budget estimates as so finalized before the State Legislature and will see that it is passed in the Legislature without any downward revision. This part of the convention can not obviously be part of the proposed legislation.

11.17 Summary of suggestions

I. (1) Judiciary must be included separately in the Plan by the Planning Commission and, separate allotment be made by the Planning Commission and the Finance Commission.

(2) The National Judicial Council and the State Judicial Councils and their respective Administrative Offices are to be established. The membership of the Judicial Council must be as stated in this Chapter.

The National Judicial Council will deal generally with the overall needs of the Judiciary. The State Judicial Council will deal with the policy making, budget and implementation of the same, so far as the Subordinate Judiciary is concerned.

(3) Budgets are to be prepared by the National Judicial Council or the State Judicial Council initially and are to be presented to the Executive and finalized at that stage, by mutual effective consultation, keeping in mind that expenditure on the demands of the Judiciary are no less important than other development expenditure and thereafter the budget as finally settled, is to be presented in Parliament or the State Legislature, as the case may be. A convention is to be made that the budget estimates as so finalized shall be pushed through Parliament or the State Legislatures without any downward revision.

(4) Financial Advisers from Comptroller and Auditor-General of India's office to monitor expenditure and keep a check and take suitable action according to normal procedures, in their annual reports.

(5) A convention is to be accepted that officers nominated by the Judicial Council can appear before the Public Accounts Committee. If necessary, the relevant rules made by the Speaker/Chairman of the Legislatures, may be so amended.

(6) Within the budget, the Judicial Council must have full freedom for re-appropriation. This should be made clear in the statute. Again the Registrar of the High Court need not run to the Secretariat for obtaining sanction whenever the expenditure crosses a particular amount, as is the procedure currently.

(7) A National Institute of Court Management to be established to confer degrees and to train Court staff and Judicial Officers in Court management.

(8) A National Data Centre on Legal Information to be established at New Delhi.

(9) National Judiciary Academy, Bhopal to be converted into a Commonwealth Law Centre - bye-laws to be changed. It shall deal with continuing legal education of the judiciary and can collaborate with the State Judicial Academies.

(10) Indian Law Institute, New Delhi, to be made an autonomous deemed university with a separate campus to impart legal education in specialized branches and for conducting research.

(11) All these four institutions to be under the overall control of the National Judicial Council.

II. (1) Parliamentary legislation to be straightway made, establishing the Judicial Councils at the national and State levels and the Administrative Offices referring to the autonomy and financial support for the Judiciary, as enunciated in this Chapter.

(2) The said legislation will lay down the following procedure for the Budgets:

(a) Budget estimates to be prepared for the National Judicial Council and the State Judicial Council (the latter deals with the expenditure for the Subordinate Judiciary) by the said Judicial Council with the help of its Administrative Office and then it shall be finalized in consultation with the Executive. The budgets as finalized will be placed before Parliament or the State Legislatures, as the case may be.

(b) A convention is to be established by the Executive at the Central and State levels that the budgets as finalized with the Executive will be pushed through Parliament or the State Legislatures, as the case may be, without any downward revision.

QUESTIONNAIRE
ON
FINANCIAL AUTONOMY OF THE INDIAN JUDICIARY

1. Today, the judiciary in India is blamed for the huge backlog of cases. There is a dearth of courts and judges and buildings for both judges and staff. In several cases, even minimum facilities are not available. What, according to you, is the main reason for all these shortcomings?

Planning ☐ Finances ☐ Both Planning and Finances ☐

2. (a) The Judges who administer the laws are best suited for planning the requirements of the judiciary and that they must have the main say on all aspects of judicial administration. Hence, do you consider it necessary that a personal participation of the judges and their involvement in the planning process will bring considerable improvement in the judicial administration?

Yes ☐ No ☐

(b) If not, what specific measures are required to be taken to improve the situation?

(Not more than 200 words)

3. (a) Do you consider that, for independent and efficient functioning of judiciary, it should have full financial autonomy including preparation of its budget?

Yes ☐ No ☐

(b) If not, the extent of autonomy may please be suggested:-

(Not more than 200 words)

(c) Do you agree to the suggestion that the expenditure of the Supreme Court of India should be charged on the Consolidated Fund of India and the expenditure of the High Courts and subordinate judiciary should be charged on the Consolidated Fund of the concerned State/States?

Yes ☐ No ☐

4. It may be noticed that in USA, the budget estimates of the entire federal judiciary as prepared by the Administrative Office and as approved by the Judicial Conference of the US are to be included under the head of "Estimates for the Supreme Court" without revision by the Bureau of the Budget (with its recommendations) and the President submits the said estimate, without revision, before the Congress. The budget estimate of the Federal judiciary are treated on par with budget estimate of the Legislative Branch

and the President does not revise the estimates. The Congress does not make any cut in the estimate. Do you subscribe to the view that a similar system should be introduced in India?

Yes ☐ No ☐

5. (a) The Consultation Paper suggests for consideration the question of enactment of a Parliamentary legislation for constitution of a Judicial Council for India and Judicial Administrative Office of India and then create separate judicial councils and administrative offices at the State level. Do you subscribe to this proposition?

Yes ☐ No ☐

(b) If yes, please indicate the details of your suggestion:-

(Not more than 200 words)

(c) Do you agree to the suggestion that the management system in the Courts should be put on a professional basis, i.e. utilizing services of persons having special qualifications in court management system?

Yes ☐ No ☐

(d) Do you subscribe to the view that the Administrative Office of the National Judicial Council should have direct recruit law graduates at the middle level who have a degree in Court Administration?

Yes ☐ No ☐

6. The Paper suggests that the National Judicial Academy, Bhopal should be made a Commonwealth Law Centre with faculty from India and other Commonwealth countries so as to enable it to conduct research in Law, publish journals, etc. Do you subscribe to this suggestion?

Yes ☐ No ☐

7. The Paper suggests that the Indian Law Institute, New Delhi, should be declared as a deemed University with a separate campus where diplomas, degrees and post-graduate degrees in subjects like Human Rights, Environment, Intellectual Property, etc. could be given. Do you agree to this suggestion?

Yes ☐ No ☐

8. The Paper suggests for establishment of an International Legal Data Centre at Delhi with internet facility for the use of the Supreme Court, the High Courts and the subordinate courts in the country, Bar Associations, Law Universities, etc. Do you agree to this suggestion?

Yes ☐ No ☐

9. (a) The Paper suggests that the National Judicial Academy, Bhopal, the Indian Law Institute, New Delhi, and the proposed International Legal Data Centre, should be under the supervision and purview of the proposed National Judicial Council. Do you agree to this suggestion?

Yes ☐ No ☐

(b) If not, please give briefly your suggestions in this regard:-

(Not more than 200 words)

10. (a) The Paper suggests that the proposed Judicial Council at the State level should be empowered to go into plans, budgets, court room facilities, accommodation requirements, steps required to take clearing of backlog of cases, etc.

Yes ☐ No ☐

(b) Please indicate your suggestions, if any, in this regard:-

(Not more than 200 words)

11. Do you consider it necessary to amend the Constitution for making specific entry therein for establishment of Judicial Council and the administrative offices and new budget procedure for courts?

Yes ☐ No ☐

12. Do you consider that the judicial councils and the administrative offices and for laying down new budgetary procedures for courts, necessary legislation may be placed within the scope of the existing entries in the Seventh Schedule to the Constitution?

Yes ☐ No ☐

13. Do you wish to make any other suggestion on financial autonomy of the Indian Judiciary? If so, please give details:-

(Not more than 200 words)



NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

CONSTITUTIONAL MECHANISMS FOR SETTLEMENT OF INTER-STATE DISPUTES

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating a public debate and eliciting public response.

July 6, 2001
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CONTENTS

		Pages
CHAPTER 1	INTRODUCTION	839
CHAPTER 2	VARIETY OF MECHANISMS	839
CHAPTER 3	THE SUPREME COURT AND ITS JURISDICTION	840
CHAPTER 4	ARTICLE 262 AND INTER-STATE DISPUTES RELATING TO WATER	847
CHAPTER 5	ARTICLE 263 AND RESOLUTION OF DISPUTES BETWEEN STATES	848
CHAPTER 6	ARTICLE 293: BORROWING BY THE STATES	850
CHAPTER 7	TRADE AND COMMERCE	851
CHAPTER 8	POSITION IN CERTAIN OTHER COUNTRIES	851
CHAPTER 9	VIEWS INVITED	856
	QUESTIONNAIRE	857
	ANNEXURE	859

CHAPTER 1

INTRODUCTION

1.1 Scope of the Study

This study deals with the constitutional mechanisms in India for the settlement of inter-State disputes. This assumes increasing importance with the increasing complexities of the enlargement of Inter-state engagements in the context of the widening international economic order. Constitutional provisions relevant to the subject (as will be indicated a little later in this study) are scattered over several articles. But all of them are designed to reduce the tensions and frictions that are bound to arise in the working of the Federal text.

1.2 Importance of the subject

In a constitutional set-up based on the federal principle, sovereignty is divided between the federation and the units. Division of sovereignty implies the creation of boundaries, and this is bound to raise disputes, as to on which side of the boundary the matter falls. The reason is, that neither geographical phenomena, nor social currents, nor political forces, are defined by the boundaries so drawn. Boundaries are drawn by the minds of men. But they are mere intellectual creations, whose actual application to external realities cannot always be the subject matter of unanimity. Differences become insertable in this sphere. And, where such differences do arise, it is desirable that there be a well thought out systemic mechanism, for inter-state dispute resolution.

1.3 Scheme of discussion

This paper proposes to deal, first, with the variety of mechanisms available under the Constitution for the settlement of inter-State disputes. It shall thereafter concentrate on the jurisdiction of the Supreme Court, under article 131 of the Constitution and shall also refer to certain other articles of the Constitution which can be utilised for the purpose. Position obtaining in certain other countries will also be dealt with, in brief.

CHAPTER 2

VARIETY OF MECHANISMS

2.1 Judicial and extra judicial mechanisms

The Constitution of India contemplates a variety of mechanisms for the settlement of inter-State disputes – taking the word "dispute" in a wide and comprehensive sense, so as to cover not only disputes that come up before the judiciary, but also disputes for whose resolution an extra-judicial machinery is contemplated by the Constitution.

2.2 The judicial mechanism : article 131

The principal provision creating the judicial mechanism for dealing with inter-State disputes involving a legal right is article 131 of the Constitution. It confers, on the Supreme Court of India, exclusive jurisdiction to deal with disputes involving legal rights. This article covers any dispute[1] –

(a) between the Government of India and one or more States; or

[1] See paragraph 3.1, infra.

1208 LJ&CA/2002—6A

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States,

if, and in so far as, the dispute involves any question (whether of law or of fact), on which the existence or extent of a legal right depends.

2.3 Disputes relating to water

Under article 262 of the Constitution, it is permissible for Parliament, by law, to provide for the adjudication of disputes relating to inter-State rivers or river-valleys. The law so enacted can exclude the jurisdiction of the Supreme Court and other courts.[2]

2.4 Inter-State Council

Finally, in article 263 of the Constitution, there is provision for the formation of an inter-State Council. Although this Council has several functions, it is also competent to tender advice regarding the resolution of inter-State disputes.[3]

CHAPTER 3

THE SUPREME COURT AND ITS JURISDICTION

3.1 Original jurisdiction of the Supreme Court

The principal provision in the Constitution, that is relevant to the subject under discussion is contained in article 131 of the Constitution, quoted below. The article is based largely on its pre-decessor – section 204 of the Government of India Act, 1935. But the proviso (excluding the Court's jurisdiction in respect of certain treaties, etc.) is new.

The proviso itself was amended by the Constitution (7th Amendment) Act, 1956. The article (in its present form) reads as under :-

> **"131. Original jurisdiction of the Supreme Court.** – Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute –
>
> (a) between the Government of India and one or more States; or
> (b) between the Government of India and any State or States on one side and one or more other States on the other; or
> (c) between two or more States,
>
> if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:
>
> Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *sanad* or other similar instrument which, having been entered into or executed

[2] See Chapter 4, infra.
[3] Chapter 5, infra

1208 LJ&CA/2002—6B

before the commencement of this Constitution, continues in operation after such commencement, or which provides, that the said jurisdiction shall not extend to such a dispute.".

3.2 Parties (article 131)

Article 131 of the Constitution does not apply, if the other party is a public sector corporation. [*State of Bihar Vs. Union of India*, AIR 1970 SC 1446, 1449, 1452; (1970) 1 SCC 67, 69, 70].

3.3 Earlier proviso

It may be mentioned that article 131, proviso, before its amendment in 1956, read as under :-

"Provided that the said jurisdiction shall not extend to–

(i) a dispute to which a State specified in Part B of the First Schedule is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the commencement of this Constitution and has, or has been, continued in operation after such commencement;

(ii) a dispute to which any State is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which provides that the said jurisdiction shall not extend to such a dispute."

3.4 "Legal right" – decision under 1935 Act

Although article 131 of the of the Constitution[1] is very widely worded – covering, as it does, both questions of fact and of law it must be kept in mind, that it is applicable, only "if and in so far as the dispute involves any question, on which the existence or extent of a legal right depends". As to the meaning of the expression "legal right", the views of Salmond [Salmond, Jurisprudence 10th Ed, page 230] is often quoted. According to him, it is an interest recognised and protected by a rule of legal justice – an interest, the violation of which would be a legal wrong done to him whose interest it is, and respect for which is a legal duty.

In this connection, it would be proper to refer to a judgment of the Federal Court, on section 204 of the Government of India, Act 1935. [*U.P. Vs. G. G. in Council*, AIR 1939 FC 58].

In that case, the plaintiff brought a suit against the defendant for the recovery of certain sums of money, which, he alleged, were wrongfully credited to the Cantonment fund. The defendant, *inter alia*, pleaded that since no suit could be instituted by a Province against the Government of India under the law prevailing at the relevant period, the dispute was one which was not justiciable before the Federal Court in its original jurisdiction. The Federal Court held, that the suit would lie, because the dispute involved a question on which the existence or extent of a legal right depended. In the course of the judgment, Sulaiman, J. said:

[1] Paragraph 3.1, supra.

"The term 'legal right', used in section 204, obviously means a right recognised by law and capable of being enforced by the power of a State, but not necessarily in a court of law. It is a right of an authority recognised and protected by a rule of law, a violation of which would be a legal wrong to his interest and respect for which is a legal duty, even though no action may actually lie. The only ingredients seem to be a legal recognition and a legal protection. The mere fact that under the previous Act the Provincial Governments were subordinate administrations under the control of the Central Government and could only have made a representation to the Governor-General-in-Council or the Secretary of State, would not be sufficient, in itself, for holding that the former could not possibly possess any legal right, at all, against the Central Government, even in respect of rights conferred upon them by the provisions of the Act or the rules made thereunder".

3.5 Political disputes excluded

At the same time it is obvious that disputes which do not involve any questions of legal right, e.g. where the disputes have an exclusively political[2] dimension, are not covered by article 131. [*State of Bihar Vs. Union of India*, AIR 1970 SC1446: (1970) 1 SCC 67.

3.6 Cases which involve legal right

However, if a right arising, say, under the Constitution is at issue, then article 131 can be invoked, even if the subject matter might have provoked political controversy.

[(i) *State of Rajasthan Vs. Union of India*, AIR 1977 SC 1361; (1977) 3.SCC 592 (Rajasthan Assembly Dissolution Case).
(ii) *State of Karnataka Vs. Union of India*, AIR 1978 SC 68, paras 141-149, 159-165, 198-203 (1997) 4 SCC 608 [Case relating to Central Government's power to order a direct inquiry into State Chief Minister's conduct].

3.7 The scope of article 131 as to subject matter

At this stage, it may perhaps be proper to point out, that the jurisdiction of the Supreme Court under article 131 is not confined to disputes relating to specified or particularised controversies. Subject to certain other provisions of the Constitution[3] (which expressly or by implication exclude this jurisdiction), article 131 confers on the Supreme Court's original jurisdiction "in any dispute" (between the federation and its units, or between the units themselves). The jurisdiction is extremely wide, provided the dispute is a justiciable one. The intention of the Constitution-makers is, that such disputes should not be subjected to several tiers of the judicial hierarchy, but should come, for once and for all, before the highest court of the land.

3.8 Limitation regarding parties

Of course, the dispute must be between the parties mentioned in the preceding paragraph. A claim by a private individual cannot be entertained under article 131, [*State of Bihar Vs. Union of India*, AIR 1970 SC 1446: (1970) 1 SCC 67, 69, 70][4].

---

[2] See para 3.10(c), infra.
[3] Article 131, proviso and articles 262, 280, 290 etc. See also para 3.16, infra.
[4] See also para 3.2, supra and 3.14, infra.

3.9. Public law element

It further appears, that some element of "public law" should form a component of the dispute that can be brought before the Supreme Court under article 131. For example, disputes exclusively pertaining to ordinary business or commercial transactions are outside article 131. [*Union of India Vs. State of Rajasthan*, AIR 1984 SC 1675: (1984) 4 SCC 238].

3.10 Political matters

(a) In article 131, the words "any question (whether of fact, or of law) on which the existence or extent of a legal right depends", are words which seem, on the one hand, to amplify the scope of the article and, on the other hand, to qualify its scope.

(b) Thus, on the one hand, these words indicate that factual controversies are not excluded, provided that ultimately, on the outcome of a determination of the factual controversy, there emerges a decision on a question relating to the existence or extent of a legal right.

(c) At the same time, the controversy to be brought before the court must relate to a legal right. It is for this reason, that purely political questions are outside the scope of article 131. [*State of Bihar Vs. Union of India*, AIR 1970 SC 1446 : (1970) 1 SCC 67].[5]

3.11 "Legal right" – the crucial expression

The crucial expression in article 131 is the expression "legal right". This expression has the effect of excluding all controversies involving only non-legal issues[6] from the jurisdiction of the Court. However, unlike the scheme of the Code of Civil Procedure, which requires (*inter alia*) that the person coming to court (i.e. the plaintiff) must have a cause of action in his favour, article 131 does not prescribe that the legal right, asserted or denied in the proceeding in question, must be that of the party invoking the jurisdiction of the court or of the party against whom such jurisdiction is invoked – as the case may be.[7]

This aspect is illustrated by the following two decisions of the Supreme Court, noted below –

(i) *State of Rajasthan Vs. Union of India*, AIR 1971 SC 1361.[8]
(ii) *State of Karnataka Vs. Union of India*, AIR 1978 SC 68: (1977) 4 SCC 608.[9]

In the first case, mentioned above, the main question at issue related to the scope of the President's powers (under article 356 of the Constitution), to suspend the constitutional machinery of the State.

In the second case mentioned above, the question mainly related to the existence of a power, in the Central Government, to appoint a Commission of Inquiry to inquire into the conduct of Ministers of the State in the discharge of their official functions.[10] In both the cases, the jurisdiction of the Supreme Court was held to have been properly invoked.

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[5] See para 3.5, supra.
[6] Cf. para 3.10, supra.
[7] See also para 3.15, infra.
[8] See para 3.13, infra.
[9] See para 3.12, infra.
[10] See further para 3.13, infra.

3.12 The Karnataka Case

In fact, in this context, it may be worthwhile to examine in some detail the facts of the case from Karnataka –

[*State of Karnataka Vs. Union of India*, AIR 1978 SC 68 para 53: (1977) 4 SCC 608].

In that case, the Central Government had issued a notification under section 3 of the Commissions of Inquiry Act, 1952, to inquire into the conduct of certain Ministers of the State Government of Karnataka (including the Chief Minister). The State Government challenged the legality of this notification, mainly raising a constitutional issue connected with federalism. The principal point raised was, that the scheme of the Constitution was that the State Cabinet was collectively responsible to the State Legislative Assembly [article 164 (2) of the Constitution]. The Constitution did not contemplate a parallel overseeing of the State Cabinet (or its members) by the Centre. In the end, the contention of the State Government failed. But the jurisdiction of the Supreme Court (under article 131) to go into the above question was upheld. The point that is relevant for the present purpose, is the fact that by a majority judgment, the proceeding was held to be maintainable and it was specifically held, that in this context, the supposed distinction between the State (an abstract entity) and the State Government (its concrete representative), was immaterial.

3.13 The case from Rajasthan

The facts of the case from Rajasthan – *State of Rajasthan Vs. Union of India*, AIR 1977 SC 1361: (1977) 3 SCC 592, are equally interesting. In 1977 (after 19 months of the Emergency), a peculiar situation arose. In the country as a whole, one party was voted to power (through Parliamentary election) by an overwhelming majority. At the same time, in nine States, another party was already in power. The Central Government was of the view, that in these States, the Government should seek a fresh mandate from the electorate. A letter to that effect was addressed by the Home Minister to the Chief Ministers of the States. Apprehending that the letter would be followed by the issue of a Presidential Proclamation under article 356 of the Constitution, the States moved the Supreme Court, questioning the validity of such a Proclamation in the circumstances of the case.

The Supreme Court held that it had jurisdiction to entertain the proceeding. In the end, however, the court decided that the apprehended Proclamation would be valid [incidentally, the judgment also contains a detailed discussion of the scope of judicial review, in regard to Presidential action under article 356].

3.14 Parties to the dispute

The language of article 131 makes it clear, that the dispute to be brought before the court must be between Government of India and a State/s or between two or more States.

This is, in fact, evident from the very terms of clauses (a) (b) and (c) of article 131, itself.[11]

The nature of issues in respect of certain original suits under article 131 pending before the Supreme Court is indicated at Annexure.

[11] See also paragraphs 3.2 and 3.8, supra.

3.15 Denial of legal right

Of course, it is not necessary that the Government coming to the court must have a legal right vested in itself. It is sufficient, if it denies the legal right asserted by the opposite party – (which also must be a Government) [*State of Rajasthan Vs. Union of India*, (1977) 3 SCC 592, 634, 635 (Beg CJ), 637-642, (Chandrachud, J) 647 – 649, (Bhagwati & Gupta JJ); AIR 1977 SC 361].[12]

3.16 Questions excluded from the jurisdiction of the Supreme Court

By specific provisions or implications of the Constitution, certain matters are excluded from the scope of article 131 -

(a) either by specific provision, e.g. article 262; or
(b) implicitly (see articles 280 and 290); or
(c) by judicial interpretation.
[*State of Bihar Vs. Union of India*, AIR 1970 SC 1446, 1449, 1452] (Matters within advisory jurisdiction).[13]

3.17 Validity of central laws

Where the dispute is not between the Federation and a State or between States *inter se*, the matter goes to the competent civil court (including the High Court). It may be mentioned that by the Constitution (42nd Amendment) Act, 1976 (effective from 1st February, 1977), article 131A was inserted, which conferred on the Supreme Court exclusive jurisdiction in regard to the constitutional validity of Central laws. But this article was repealed by the Constitution (43rd Amendment) Act, 1977, section 4 (w.e.f. 13-4-1978).

3.18 Validity of laws and lower courts

Article 131 of the Indian Constitution is confined to inter-Government disputes. The question may arise as to the position where a question involving the validity of a Central or State law arises before a court (other than the Supreme Court) between Government and a third party.

Of course, the Code of Civil Procedure[14] in India does provide, that where the constitutional validity of a law (or of a statutory instrument) is in issue in a civil suit, then notice must be given to the Attorney General (of India) or the Advocate General (of the State) as the case may be. Further, the (concerned) Government may be made a party, if the court so orders. But the jurisdiction of the court (if the court is otherwise competent) is not affected.

Now, it needs to be pointed out, that a question about the constitutional validity of a law may arise, *inter alia* –

(a) if the law violates the constitutional provisions as to fundamental rights, or
(b) if the law is beyond the legislative competence of the Centre or the State (as the case may be), as per the scheme of distribution of legislative powers, or
(c) if the law is otherwise in conflict with the Constitution.

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[12] See also para 3.11, supra.
[13] See also para 3.7, supra.
[14] Order 27 A, CPC.

3.19 Question for consideration

The situations at (a) and (c) above[15] do not necessarily possess a federal element. But the situation at (b) above can arise, only in a federation. Now, what needs to be considered is this. If such a question arises in a civil suit (or, for that matter, in any proceeding), where (i) only one Government (Central or State) is a party, but the other is not, or (ii) both the Governments are parties, but, at the same time, there is a non-Governmental party also, then, does article 131 of the Indian Constitution apply, so as to deprive all other courts (except the Supreme Court) of jurisdiction?[16]

3.20 Spirit of the Constitution

Article 131 of the Constitution, so far as its text goes, is silent on the subject. But the spirit of the Constitution might demand, that the Supreme Court's jurisdiction should be exclusive in such matters. It is not proper, that a court lower than the Supreme Court should decide such questions. The Supreme Court should be given exclusive jurisdiction in controversies concerning the distribution of legislative powers, which have an all-India repercussion. For example, if a State law imposing a tax on, say, the assignment of copyright, is challenged by a publisher, the decision (of a court other than the Supreme Court) upholding or invalidating the State law, may have an impact which far transcends the frontiers of the particular State in which the decision is pronounced. Similar questions can arise in other States. Uniformity of approach is the first desideratum in regard to such questions. Besides this, if the matter is allowed to be decided by, say, the High Court and thereafter taken (if necessary) by appeal to the Supreme Court, the process would be time-consuming and most inconvenient. In the intervening period, there is bound to prevail considerable confusion and uncertainty; and serious inconvenience would be occasioned thereby.

3.21 Suggestion as to article 131

A reasonable interpretation should, therefore, be placed on article 131 of the Constitution and the Supreme Court should be regarded as having exclusive jurisdiction, if a question involving the distribution of power arises, and at least one of the parties is a Government. The accidents of litigation, and the question whether the point arises between two Governments or between Government and other parties, should not be regarded as conclusive.[17]

3.22 Would an Amended article 139A be an answer ?

It may be suggested that as the Supreme Court has already the power under article 139A to withdraw cases involving the same or substantially the same question of law which are pending in Supreme Court and one or more High Courts. In so far as cases pending in other courts where legislative competence of Central legislature is questioned, this would provide a suitable remedy if article 139A is appropriately amended to delete the specific conditions for the exercise of the power to withdraw of cases.

3.23 An issue would bear upon the larger question of distribution of legislative powers between the Union and the States. It would be possible that a Central law has been challenged only in one High Court on the ground of lack of legislative competence. The Constitution may be

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[15] Para 3.18, supra.

[16] Judicial decisions seem to take a negative view. State of Bihar Vs. Union of India, AIR 1970 SC 1446.

[17] Cf. para 8.12, infra.

amended so as to enable withdrawal of the case to the Supreme Court so that the question could be decided by the apex court.

CHAPTER 4

ARTICLE 262 AND INTER-STATE DISPUTES RELATING TO WATER

4.1 Disputes relating to waters, etc.

The Constitution makes a special provision regarding disputes relating to inter-State waters. Article 262 of the Constitution provides as under:

> "262. Adjudicatation of disputes relating to waters of inter-state rivers or river valleys.
>
> (1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.
>
> (2) Notwithstanding anything in this Constitution, neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute as is referred to in clause (1).

4.2 Legislation

The Inter-State Water Disputes Act, 1956 (33 of 1956) has been enacted to implement article 262. Its principal features are as follows:

(a) The Central Government is empowered to constitute a Tribunal, on a complaint received from a State Government that a water dispute has arisen (or is likely to arise) in relation to the waters of an inter-State river or river-valley. [Section 3]

(b) The Tribunal consists of a Chairman and two other members, nominated in this behalf by the Chief justice of India, from judges of the Supreme Court or of a High Court. [Section 4, as amended 1980].

(c) The decision of the Tribunal is final and binding on the parties. The parties must give effect to it.

(d) Jurisdiction of other courts is barred.[1]

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[1] Cf. (a) In the matter of Cauvery Water Disputes Tribunal, AIR 1992 SC 522, para 11.
(b) Re. Cauvery Water Disputes Tribunal, AIR 1992 SC 1183; (1993) Suppl 1 SCC 96 (II).

4.3 Separate study

The Commission proposes to prepare a separate study of such disputes, having regard to their importance.

CHAPTER 5

ARTICLE 263 AND RESOLUTION OF DISPUTES BETWEEN STATES

5.1 Scope of article 263

The Constitution has, through article 263, made a comprehensive provision relating to the discharge of certain functions on matters having an inter-State dimension. One of the functions to be discharged by the Council contemplated by the article is that of inquiring into and advising upon disputes which may have arisen between States, [under article 263 (a)]. The article (which appears under the sub-head : States "Co-ordination between States) reads as under –

> "263. Provisions with respect to an Inter-State Council.
>
> If at any time it appears to the President that the public interest would be served by the establishment of a Council charged with the duty of –
>
> (a) inquiring into and advising upon disputes which may have arisen between States ;
> (b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest or
> (c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination or policy and action with respect to that subject, it shall be lawful for the President by order to establish such a Council and to define the nature of the duties to be performed by it and its organisation and procedure".

5.2 J.P.C. Report (1934)

In this context it may be appropriate to deal with the genesis of the corresponding provision (section 135) in the Government of India Act, 1935.

The Joint Parliamentary Committe, (Report, pages 123, 124), observed as under –

> "It is obvious that if departments or institutions of co-ordination or research are to be able to rely on appropriations of public funds sufficient to enable them to carry on their work, the joint interests of the Provisional Governments in them must be expressed in some regular and recognised machinery of inter-governmental consultation. Moreover, we think that it will be of vital importance to establish some such machinery at the very outset of the working of the new Constitution, since it is precisely at that moment that institutions of this kind may be in most danger of falling between two stools, through

failing to enlist the active interest either of the Federal or the Provincial Government, both of whom will have many other more immediate occupations".

The idea in the last sentence of report as to the 'vital importance' of establishment of such institutions 'at the very outset of the working of the Constitution' seems to have been misused. The Inter-state Council was established in 1990, 40 years after the Constitution and what is more significant is that despite its establishment in 1990, it met for the first time in 1996.

5.3 Zonal Councils

In this connection, it may also be proper to mention that under the States Re-organisation Act, 1956, five Zonal Councils have been set up. Besides this, a North Eastern Council has been set up under the North Eastern Council Act, 1971.

5. 4 The Inter state Council, and its functions

Reverting to article 263 (dealing with the Inter-State Council), it is not proposed at this place to present a detailed discussion of its text. Limiting ourselves to the relevance of article 263 to the settlement of disputes, we would like to draw attention to the following features of the article[1].

(a) Where article 263 contemplates inquiry into, and advice upon, disputes between States, it does not bring within the scope of the article disputes between the Union and a State – see clause (a) – though it does authorise investigation and discussion of subjects of common interest and the making of recommendations upon such subjects - see clause (b).

(b) The functions of the Inter-State council (contemplated by the article are advisory and recommendatory.

5. 5 Scope for enlargement of article 263

Even as article 263 stands at present, it possesses considerable width and utility in regard to the matters dealt with in it. However, this Chapter is principally concerned with one particular question arising out of the treaty-making function of the Union. Legislation enacted (under article 253) to implement international treaties can cover any subject – irrespective of the general scheme of distribution of legislative functions – and can thus cover *inter alia* subjects in the State List also.

The context in which Article 253 came to be contemplated. Refer to A.G. Antan Vs. A.G. Canada (AIR 1937 PC 82)

Now, this particular situation may create tensions or friction between the Union and the States. To reduce such tension or friction, a possible device may be to consult the Inter State-Council, before the treaty is signed, which may vitally affect the interests of States regarding matters in the State list. Either a constitutional convention can be evolved to that effect, or, if necessary, article 263 could be enlarged or clarified, to permit consultation on the above point.

[1] Cf. Setalvad, Union and State Relations under the Indian Constitution (1974), Page 100.

CHAPTER 6

ARTICLE 293 : BORROWING BY THE STATES

6.1 Provision as to borrowing

Article 293 of the Constitution makes certain provisions as to borrowing by the Centre and the States. While clauses (1) and (2) of the article make general provisions empowering the respective Governments to borrow money, clauses (3) and (4) of the article raise certain interesting issues which deserve consideration for the present purpose.

6.2 Articles 293(3) and 293 (4)

Article 293 (3) prohibits a State Government from incurring a loan, where an existing loan is already outstanding against the State Government, unless the Central Government gives its consent. Article 293 (4) further provides, that while giving consent under article 293(3), the Central Government may impose such conditions as it think fit.

6.3 Likelihood of disputes

It has been suggested that the question should be examined whether the provisions referred to above, may raise any legal disputes and, if so, which existing mechanism should be utilised or a new mechanism should be created, for the settlement of such disputes.

Primarily, it appears that such a dispute can possibly arise where –

(a) the Central Government refuses its consent to a loan contemplated by the State Government [article 293(3)]; or

(b) the Central Government imposes certain conditions, while granting its consent, and the conditions are not acceptable to the State Government [article 293(4)].

6.4 Nature of disputes

(a) Generally, such refusal of consent, or imposition of conditions to be linked with a loan, would not raise justiciable issues, as the decision of the Central Government would, in most cases, be governed by financial and economic considerations. However, it is not inconceivable that a State Government may harbour a plausible grievance, that the consent has been unreasonably refused or that unreasonable conditions have been suggested by the Centre Government. Such a situation could possibly be regarded as involving a justiciable dispute.

(b) If so, there should be available a mechanism for the settlement of such disputes. It appears to us, that instead of creating a new mechanism for the resolution of such disputes, the matter could be appropriately dealt with by the Supreme Court under article 131 of the Constitution. In fact whenever a justiciable issue is involved, the situation would necessarily be one where a question as to the "existence or extent of a legal right" is at issue within the meaning of article 131. However, the matter could, if necessary, be dealt with by a clarificatory amendment of article 131 to cover such disputes.

(c) At the same time, it may be observed that if a justiciable issue is not involved, then it would be appropriate if the matter is settled by negotiations, rather than by a judicial or quasi judicial mechanism.

CHAPTER 7

TRADE AND COMMERCE

7.1 Articles 301-307

Articles 301-307 of the Constitution contain certain provisions as to the freedom of trade, commerce and intercourse throughout India. The provisions are somewhat complex; and, because of the vital importance of economic activities in modern times, their application and interpretation could conceivably lead to disputes between the Union and States or between States *inter se*.

7.2 Separate study

The Commission has, on a preliminary study of the relevant provisions formed the view that it would be more convenient to deal with the subject separately.

CHAPTER 8

POSITION IN CERTAIN OTHER COUNTRIES[1]

8.1 Introductory

The need for a machinery for the adjudication of disputes between the federation and a State, or between the States of a federation *inter se*, was demonstrated by Dicey in his inimitable style. This is no longer a matter of controversy. But the jurisdiction and pattern of the judicial organ, created for the adjudication of such disputes, can still vary, from federation to federation. Even the nomenclature of the organs can vary – it may be described as "Supreme Court", "High Court", or "Federal Court", or "Tribunal", or in any other manner. This Chapter does not profess to deal exhaustively with the federal judiciary in other countries in all its aspects. But a few important features will be noted.

8.2 U. S. A : the Supreme Court

(a) In the United States, disputes under federal laws are adjudicated by federal courts, while those under State laws will be adjudicated by State courts, subject to appeal to the U.S. Supreme Court in certain cases. The federal judiciary in the United States is supreme in the execution of the Constitution.[2]

(b) The Constitution of the United States, in Article III, section 2, defines the jurisdiction of the Supreme Court. This includes –

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[1] In preparing this Chapter the material contained in Mr. Justice Venkataramiah and P.M. Bakshi. Federalism in India (1992), pages 141-154, has been utilized.

[2] Cooper Vs. Haron, (1958) 358 U.S. 5.

(i) cases in law and equity, arising under the Constitution, the laws of the United States and treaties made under its authority;
(ii) cases of admiralty and maritime jurisdiction;
(iii) controversies between two or more States;
(iv) controversies between a State and citizens of another State; and
(v) controversies to which the United States is a party.

(c) Judicial power of the U.S. Supreme Court covers any case in which the United States is a party plaintiff, where the defendant is a State.

(d) Federal jurisdiction in respect of disputes between citizens of different States is wholly independent of the nature of the subject matter of such disputes. For jurisdictional purposes in the United States, a corporation is treated as a citizen of the State of its incorporation. Corporations organised under a federal statute are not regarded as citizens of any State, unless the Congress specifically so provides.[3]

8.3 Constitutional Courts in U.S.A.

Besides the U.S. Supreme Court, there are other courts created directly under the Constitution. These are known as "Constitutional Courts". Article III, section 1 of the U. S. Constitution vests the judicial power of the United States in "one Supreme Court and in such inferior courts as the Congress may, from time to time, ordain and establish". In exercise of this power, the Congress has established in following constitutional courts:-

(a) Courts of Appeal for each of the eleven judicial circuits plus one for District of Columbia.
(b) District Courts (89 + 1 in District of Columbia + 1 in Costa Rica).
(c) Court of Appeals for the Federal Circuit (newly created). In it are merged (I) the previous Court of Claims, (ii) the previous Court of Customs and Patent appeals. It hears appeals in patent etc. cases from any District, as well as appeals from the Claims Court and the Court of Trade.

All these are "Constitutional Courts", under Article III, section 1, of the U. S. Constitution.

8.4 Legislative Courts

Under other clauses of the Constitution, Congress has set up Legislative Courts, such as U. S. Tax Court (hearing appeals from Treasury rulings on tax) and Court of Military Appeals.

8.5 Supreme Court: appellate jurisdiction

Under Article III, section 2(2) of the U. S. Constitution, the Supreme Court has appellate jurisdiction with respect to law and fact and in other cases, subject to such limitations as Congress may lay down.

8.6 Courts of Appeal

Courts of Appeal (federal) hear appeals from federal District Courts sitting in their respective circuits, and from also tax courts and certain other courts.

8.7 District Courts in USA

(a) District Courts in the United States have original jurisdiction in (i) all cases involving more than 10,000 dollars, where the parties are citizens of different States, or (ii) the case raises a "federal" question.

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[3] Mason and Stephenson, American Constitutional Law (1986), pages 14,15.

(b) A "federal" question arises, where a correct decision depends on the construction of the Constitution, a law of the U. S. or a treaty entered into by the United States or where the case is an admiralty or maritime one. They have also jurisdiction to try civil actions in which States are parties, cases against the federal government and cases involving federal criminal laws relating to serious crimes.

8.8 Australia

(a) In Australia, disputes between the Commonwealth and a State, or between States *inter se*, are exclusively within the original jurisdiction of the High Court of Australia[4] (which is a national court and not a State court). It appears that the jurisdiction of the High Court of Australia in disputes between the two Governments is not limited to disputes involving public law. It is as wide as that of the Supreme Court of India and covers all justiciable disputes.

(b) There has been established the Federal Court of Australia. But this Court does not entertain disputes involving a question concerning federal-State relations, as such. Its jurisdiction covers certain controversies in administrative law and a few other disputes of a specialised character.[5]

8.9 Federal Court (Australia)

(a) Australia has, since 1976, for the first time, a federal Court of generalised jurisdiction and structure, that is to say, a court which is structurally capable of exercising any federal jurisdiction below the High Court which may be conferred upon it.[6] The Commonwealth Government, under Mr. Malcolm Fraser as Prime Minister, made it plain that it favoured conferring jurisdiction on that Court, only in relation to particular matters of federal jurisdiction which (for policy or other reasons) were particularly suitable for exercise by a federal court, and, at the same time strengthening State Supreme Courts by adding to their federal jurisdiction in certain areas.

(b) Following the setting up of the Federal Court of Australia, various Commonwealth statutes have conferred, on that court, jurisdiction in a range of areas. It took over the work of the former Federal Court of Bankruptcy and of the former Industrial Court. In addition, jurisdiction was conferred on it in regard to restrictive trade practices and consumer protection, administrative law, and a number of other matters.

8.10 Canada

(a) In Canada, the Supreme Court has (besides its appellate jurisdiction) exclusive original jurisdiction in disputes between the Federation and a Province, or between one Province and another.

Section 101 of the British North America Act authorised the establishment of "a general court of appeal for Canada" and "any additional courts for the better administration of the laws of Canada". Under the first power, the Canadian Parliament established the Supreme Court of Canada, with civil and criminal appellate jurisdiction throughout Canada. The present governing statute relating to the Canadian Supreme Court is the Supreme Court Act (Revised Statutes of Canada, 1970, Section 19).

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[4] Section 75, Commonwealth of Australia Act.
[5] Para 8.9, infra.
[6] See papers presented at the 21st Australian Legal Convention, (1981) 55 Australian Law Journal.

(b) It may also be mentioned that since 1949, jurisdiction of the Privy Council by way of appeal from Canada has been abolished.[7]

(c) The Canadian Supreme Court has some original jurisdiction, of which the most important component is the power to determine questions posed in "references" made to the Court by the Federal Government. The reference procedure is not confined to constitutional questions, though it is chiefly resorted to, for that purpose. This is in contrast with the position in the United States and Australia, where there is no advisory jurisdiction. Validity of the Canadian provision relating to reference has been upheld.[8]

(d) Since 1978, in civil cases; an appeal to the Supreme Court of Canada lies, only with the leave of the Supreme Court of Canada or with the leave of the Provincial Court of Appeal or the Federal Court of Appeal for Canada.

(e) In criminal cases, appeal to the Supreme Court is mainly limited to questions of law. Leave is required in a criminal case, where there was no dissenting opinion in the Provincial Court of Appeal.[9]

(f) In general, a full court is of the Supreme Court of Canada, though there is power to sit in benches of three.[10]

8.11 **Malaysia**

(a) Malaysia does not have a system of dual courts for disputes under federal and State laws.

(b) The Supreme Court of Malaysia has[11] -

(i) exclusive original jurisdiction in disputes between the Federation and a State and in regard to disputes between States;

(ii) reference jurisdiction;

(iii) appellate jurisdiction over the High Courts; and

(iv) advisory jurisdiction.

(c) High Courts in Malaysia have original jurisdiction in other cases under federal or State law.

(d) Inferior courts may be established by federal law.

8.12 **Supreme Court (Malaysia)**

(a) From the angle of federalism, the most important jurisdiction of the Supreme Court of Malaysia[12], is its jurisdiction to decide disputes (i) between the Federation and a State or (ii) between two or more States.

Where the dispute is between parties mentioned in (i) and (ii) above, the jurisdiction of the Supreme Court is exclusive.

(b) But, where the dispute is between other parties and involves a question whether [13] a law made by Parliament or by the Legislature of a State is invalid on the ground that it

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[7] Hogg, Constitutional Law of Canada, (1977) pages 40,121, 122.
[8] *A. G of Ontario Vs. A. G. Canada*, (1912) AC 571 (PC).
[9] Section 338, Criminal Code, Canada (as amended 1974 – 1976).
[10] Bora Laskin, in (1975) 33 Canadian. Bar Review 469, 470.
[11] Articles 121, 128 and 130, Malaysia (1957).
Recently, there has been some re-naming of the Courts.

[12] Articles 128 (1) and 128 (2), Malaysia.
[13] Articles 4(3), 4(4), Malaysia.

makes provision with respect to a matter with respect to which Parliament or, (as the case may be), the Legislature of a State has no power to make laws, then proceedings for a declaration of invalidity of the law shall not be commenced, without the leave of a judge of the Supreme Court.

(c) The object in giving exclusive jurisdiction to the Supreme Court of Malaysia "is to ensure that a law may be declared invalid on this very serious ground, only after full consideration by the highest court in the land".[14]

8.13 Switzerland

In Switzerland, the Federal Tribunal decides disputes between the federal authorities and the authorities of the Cantons and also adjudicates upon allegations of violation of the Constitution.

8.14 The Federal Constitutional Court in Germany

The Basic Law for the Federal Republic of Germany – the Bonn Convention of 1949 – was drafted and formally adopted at a time when the influence of American constitutional ideas and practice in (West) Germany were still very strong. The Basic Law stipulates, in terms, for the institution of judicial review in West Germany.[15] Article 92 of the Basic Law provides for the creation of a Federal Constitutional Court (Bundesverfassungsgericht), and Article 93 goes on to define the Court's jurisdiction in the following terms :-[16]

"93(I) The Federal Constitutional Court shall decide:

1. on the interpretation of this Basic Law in the event of disputes concerning the extent of the rights and duties of the highest federal organ or of other participants accorded independent rights by this Basic Law or in the Standing Orders (Rules of Procedure) of the highest federal organ;

2. in cases of differences of opinion or doubts on the formal and material compatibility of federal law or Land law with this basic law, or on the compatibility of Land law with some other federal law, on the application of the Federal Government, of a Land Government or of one-third of the members of the Bundestag;

3. in cases of differences of opinion on the rights and duties of the Federation and the Laender (States), particularly in the execution of federal law by the Laender (States) and in the exercise of federal supervision;

4. on other public law disputes between the Federation and the Laender (States), between different Laender (States), or within a Land, in so far as appeal to another court is not provided for;

5. in all other cases provided for in this Basic law.

(II) Furthermore, the Federal Constitutional Court shall act in cases otherwise assigned to it by federal legislation."[17]

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[14] *Ah Thien Vs. Government of Malaysia*; (1976) 2 Malaysia Law Journal 112, 113 (Suffian, Lord President)

[15] Articles 92, 93, and 94, Basic Law (West Germany).

[16] MC Whinney, Constitutionalism in West Germany (1962), pages 17-19. Cf. M. Singer, "The Constitutional Court of the German Federal Republic", 31 ICLQ 331, 338.

[17] See G. Brinkman, "The West German Federal Constitutional Court" (1981) Public law 83.

8.15 **Detailed organization**

The detailed organisation, and also the regulation of the mode of operation and procedure of the Federal Constitutional Court in (West) Germany were left, according to Article 94 of the Basic Law, left to be settled by later federal legislation. This object was, in fact, achieved by the enactment of the special statute concerning the Federal Constitutional Court (12 March 1951).

CHAPTER 9

VIEWS INVITED

6.1 **Views invited**

Views are invited from interested persons and bodies on the subject matter of this study, as per the Questionnaire annexed.[1]

[1] See Questionnaire annexed to this study.

QUESTIONNAIRE
ON
CONSTITUTIONAL MECHANISMS FOR THE SETTLEMENT OF INTER-STATE DISPUTES

1. Do you agree with the suggestion that where the validity of a Central law is questioned (even in a dispute to which is not between the Union and a State or between States *inter se*) the Supreme Court should be vested with exclusive jurisdiction, by expanding the scope of article 131 of the Constitution?[1]

Yes No

Or

Are you of the opinion that the purpose would be served by an appropriate amendment to Article 139A enabling the Supreme Court to withdraw, cases in which a Central legislation is questioned on grounds of lack of legislative competence.

Yes No

2. Do you have any other suggestion to make regarding article 131 of the Constitution? If so, please give suggestions.

3. Do you consider it desirable[2], that where a treaty entered into by the Central Government concerning a matter in the State list, vitally affects the interests of States, the Inter-State Council (article 263 of the Constitution) should be consulted?

Yes No

4(a). What kind of inter-state issues, you would envisage, are likely to arise in future having regard to the multi-lateral international trade treaties entered in to by the Union Government and the context of the World Trade Organisation?

(b) What mechanisms would you contemplate for resolution of such inter-state issues ?

(c) Do you share the opinion that Article 263 even as it now stands is comprehensive enough to accommodate and permit the establishment of the dispute resolution mechanisms which are likely to arise in future?

Yes No

[1] Para 3.17 to 3.20, supra.
[2] Paragraph 5.5, supra.

5(a). Would you agree with the suggestion[3] that in cases where, with reference to article 293(3) and article 293(4) of the Constitution, the Central Government refuses its consent to a loan requested by a State or seeks to impose conditions which are not agreeable to the State and the grievance of the State, is that the action of the Central Government is unreasonable, the disputes (between the two Governments), should be within the jurisdiction of the Supreme Court and that the scope of article 131 of the Constitution should be amplified, to achieve that result?

Yes No

(b) What should be the time-frame for resolution of such disputes?

(c) Or should there be a separate mechanism under Article 263 of the Constitution for the purpose?

Yes No

6. Have you any other suggestion to make, regarding constitutional provisions for the adjudication of disputes between the Union and the States or States *inter se*, (not being suggestions relating to articles 262 or articles 301-307 of the Constitution)? Please give details.

Not more than 200 words

[3] Para 6.4, supra.

ANNEXURE

ORIGINAL SUITS UNDER ARTICLE 131 OF THE CONSTITUTION OF INDIA AS ON 14.06.2001 (see paragraph 3.14)

S.No.	Matter No. & C/T	Subject Matter	Present Status
1-2	OS 10-11/68 State of Orissa Vs. State of A.P.	Dispute between State of Orissa and State of A.P. with regard to boundary/Territory.	The Hon'ble Court vide its Order dt. 30-10-2000 directed to list after six months, Listed on 11.07.2001.
3.	OS 2/88 State of Assam Vs. Union of India	Dispute between State of Assam and State of Nagaland in regard to encroachment or reserved forests within the Constitutional boundary of the Plaintiff by the Defendant (i.e. State of Nagaland).	Listed on 18.7.2001
4.	OS 1/89 State of Assam Vs. Union of India & ORS.	Dispute is about boundaries between State of Assam & Arunachal Pradesh.	Listed on 18.7.2001
5.	OS 2/89 State of Sikkim Vs. Union of India	Dispute between State of Sikkim and Union of India with regard to the legal rights of the State of Sikkim based upon State of Sikkim Income Tax Manual 1948 which is protected by Clause (k) of Article 371(1) of the Constitution of India.	Constitution Bench Matter Shown in TL of 2001. Page 653/Item 16
6.	OS 3/94 State of Orissa Vs. Union of India	Dispute between the State of Orissa & Union f India in regard to the decision of the Union of India o sign the GATT treaty on 15th April, 1994 arising out of Uruguay Round on Negotiation of GATT.	The Hon'ble Court vide its Order dated 13.3.2001 referred the Suit to CB. Page 666/Item 39 of T.L. 2001
7.	OS 2/96 State of H.P. Vs. Union of India	Dispute between State of Himachal Pradesh and Union of India, Punjab, Haryana and Chandigarh and Rajasthan with regard to the Plaintiffs share in Bhakra Nangal and Beas Projects.	The Hon'ble Court vide its Order dt. 20-11-2000 directed to list the matter after 24 weeks to be listed after Summer Vacation.
8.	OS 6/96 State of Haryana Vs. State of Punjab & ANR.	Dispute between State of Haryana and Punjab with regard to re-starting and completion of STL Canal Project by the State of Punjab and to enable the State of Haryana to receive its share in Ravi and Beas Waters.	Shown in TL 1/2001. Page 32/Item 22 of TL 2001
9.	OS 1/99 State of M.P. Vs. Union of India & ORS.	Dispute between State of M.P. and Union of India, Gujarat, Maharashtra, Rajasthan with regard to utilization of Narmada Water.	The Ld. Registrar vide his Order dt. 25.4.2001 directed to send the file to him after Summer Vacation.
10.	OS ...../2001 State of Karnataka Vs. State of A.P.	Krishna Water Dispute.	Defective matter (Filed on 6/6/2001)



NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper
on

TREATY-MAKING POWER UNDER OUR CONSTITUTION

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating public debate and eliciting public response.

January 8, 2001
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Advisory Panel

on

Strengthening of the institutions of Parliamentary Democracy (Working of the Legislature, Executive and Judiciary; their accountability; problems of Administrative, Social and Economic Cost of Political Instability; Exploring the possibilities of stability within the discipline of Parliamentary Democracy)

Member-in-charge

Justice Shri B.P. Jeevan Reddy

Chairperson

Justice Shri H.R. Khanna

Members

- Shri K. Parasaran
- Dr. Jayaprakash Narayan
- Dr. V. A. Pai Panandikar

Member-Secretary

Dr. Raghbir Singh

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The Commission places on record its profound appreciation of and gratitude to Shri Bakshi for his contribution.

CONTENTS

		Pages
Part – I	**Introduction**	869
Part – II	(i) Kinds of Treaties	874
	(ii) Australia	876
	(iii) France	877
	(iv) United States of America	877
	(v) Switzerland	878
	(vi) Canada	878
	(vii) United Kingdom	879
	(viii) OECD Countries	879
Part – III	(i) The effect of Treaties on Indian Domestic Law:	880
	(ii) Absence of consultation with Parliament in the matter of treaty-making – the Indian experience	882
	(iii) Attempts at amending the Constitution to provide for Parliamentary scrutiny of the treaty-making power of the Union Executive:	882
	(iv) Role of Judiciary in Treaty-making:	885
Part – IV	Recommendations:	885
	Questionnaire	887

Part - I

1. INTRODUCTION

Entering into treaties and agreements with foreign powers is one of the attributes of State sovereignty. No State can insulate itself from the rest of the world whether it be in the matter of foreign relations, trade, environment, communications, ecology or finance. This is more true since the end of the World War II. The advent of globalization and the enormous advances made in communication and information technology have rendered independent States inter-dependent. Every State has entered into and is entering into treaties – be it multi-lateral or bilateral – which have a serious impact upon the economy and the social and political life of its society. In spite of the fundamental importance of the treaty-making power, it has unfortunately received very little attention in our country, though in many other countries, good amount of research and debate has gone into it. We in India cannot afford to ignore this subject any longer, particularly because of the experience of W.T.O. treaties signed by our Government without consulting or without taking into confidence either the Parliament or the public or, for that matter, groups and institutions likely to be affected adversely thereby. The Agreements signed on Intellectual Property Rights, trade, agriculture and services are so far-reaching that there is a body of opinion, which honestly thinks that some of the provisions of these Agreements are adverse to our national interest - so much so that the Human Development Report, 1999 published by the U.N.D.P. has called for a review – a roll back – of the Agreement on Trade-related Intellectual Property Rights (TRIPs) to protect the health of the people and economies of the developing countries. At page 10, the Report says "Intellectual property rights under TRIPs Agreement need comprehensive review to redress their perverse effects undermining food security, indigenous knowledge, bio-safety and access to health care." It may be that some people may not agree with the above opinion expressed in the Human Development Report, but that is not the issue. There can be no dispute with the proposition that the power to enter into treaties, agreements and covenants/conventions has, in some cases, serious impact upon our economy, our security and the life and livelihood of our citizens as such – whether beneficial or prejudicial. It is a highly potent power. Many other agreements containing clauses having deleterious effects upon our economy have also been signed during the Uruguay Round of Trade Negotiations. The questions we must address therefore are: to whom does this power belong – whether to the Executive or to the Parliament? and if it is the power of the Executive, whether it is subject to Parliamentary control or supervision? What is the impact of treaty-making power conferred by entry 14 of List I of the Seventh Schedule and Article 253 of the Constitution upon the federal structure which we have adopted for ourselves? We may have to incidentally examine what is the position in other countries, whether common law countries or others, and how they are grappling with the issues arising in this behalf.

2. It would be appropriate to examine, in the first instance, the legal background to our constitutional scheme. It is well known that British India had been following the British practice in the matter of treaty-making. What the British practice is can better be set out in the words of Privy Council in its celebrated decision in ATTORNEY GENERAL FOR CANADA Vs. ATTORNEY GENERAL FOR ONTARIO (1937 A.C. 326 = AIR 1937 P.C. ...). It said:

> "It will be essential to keep in mind the distinction between (1) the formation, and (2) the performance, of the obligations constituted by a treaty, using that word as comprising any agreement between two or more sovereign States. Within the British Empire there is a well-established rule that the making of a treaty is an Executive act, while the performance of its obligations, if they entail alteration of the existing domestic law, requires legislative action. Unlike some other countries, the stipulations of a treaty duly ratified do not within the Empire, by virtue of the treaty alone, have the force of law...

> Parliament, no doubt, has a constitutional control over the Executive; but it cannot be disputed that the creation of the obligations undertaken in treaties and the assent to their form and quality are the function of the Executive alone. Once they are created, while they bind the State as against the other contracting parties, Parliament may refuse to perform them and so leave the State in default. In a unitary State whose Legislature possesses unlimited powers, the problem is simple: Parliament will either fulfill, or not, treaty obligations imposed upon the State by its Executive. The nature of the obligations does not affect the complete authority of the Legislature to make them law if it so chooses."

It would be equally relevant to notice the context in which the said observations were made. The question before the Privy Council concerned the competence of the Federal power to implement international obligations in areas of provincial jurisdiction without provincial cooperation. (It may be remembered that Canada is a federal State with a distribution of powers between the federal government and the Povinces). The Privy Council held that the federation had no power to legislate in respect of the matters, which fell within the exclusive jurisdiction of the Provinces. This was so held in the light of S.92 of the British North America Act, 1867.

3. It would be legitimate to presume that our Founding Fathers were acutely aware of this decision and have consciously provided for a departure therefrom in two respects. Firstly, they expressly included the treaty-making power within the legislative competence of the Parliament (as I will explain presently) and secondly they incorporated Article 253 in Part XI of the Constitution. I may elaborate:

4. Article 246 effects a distribution of legislative power between the Union and the States. Article 246(1) says:

> "... Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List")."

Clause (2) speaks of the concurrent power of Parliament and State Legislatures to legislate with respect to matters in Concurrent List (List III) while clause (3) empowers the State Legislatures to legislate with respect to matters in the State List (List II). Clause (4) empowers the Parliament to make laws with respect to Union territories without any limitation of division of legislative power.

5. The Seventh Schedule to the Constitution (which is referable to Article 246) contains three Lists: Union, State and Concurrent. Entries 13, 14, 15 and 16 in the Union List are relevant, particularly Entry 14. They read as follows:

> "13. Participation in international conferences, Associations and other bodies and implementing of decisions made threat.
>
> 14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.
>
> 15. War and peace.
> 16. Foreign jurisdiction."

From a reading of Article 246 along with the said Entries, it is obvious that the Parliament is competent to make a law with respect to the several matters mentioned in the above entries. In other words, treaty-making is not within the exclusive competence of the Executive. It is squarely placed within the legislative competence of the Parliament. By virtue of Article 73 of the Constitution, however, the Executive power of the Union extends, in the absence of

parliamentary legislation, to the matters with respect to which the Parliament has power to make laws subject, of course, to constitutional limitations. It is well known that the Parliament has not so far made any law regulating the procedure concerning the entering into treaties and agreements nor with respect to their implementation. Equally clearly, no law has been made regulating the manner in which the Government shall sign or ratify the international conventions and covenants. The resulting situation, unfortunately, is that it is left totally to the Executive to not only enter into treaties and agreements but also to decide the manner in which they should be implemented, except where such implementation requires making of a law by Parliament. And the fact of the matter is that once the Executive Government enters into a treaty, it would be, ordinarily speaking, quite embarrassing for the Parliament to reject the treaty – more so in view of the provisions of the Vienna Convention on the making of Treaties which though not yet ratified by India (according to the information given by the concerned Ministries) indicates certain consequences flowing from the conclusion of a treaty. Theoretically speaking, however, it is always open to the Parliament to disapprove a treaty entered into by the Executive whereupon the treaty will have to effect whatever. Moreover, if any treaty or agreement violates any of the provisions of the Constitution, it would be totally incompetent and ineffective and even the Vienna Convention would not stand in the way, as explained hereinafter.

6. Now, let us turn to Article 253. Article 253 is one of those set of Articles, which provide certain exceptional situations in which the Parliament can legislate with respect to matters in the State List. Ordinarily speaking, Parliament cannot make a law with respect to a matter in State List, State Legislatures alone have the exclusive power to legislate with respect to those matters. Article 253 reads:-

> "Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

This Article empowers the Parliament to make any law, for the whole or any part of the territory of India, for implementing "any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body." Conferment of this power on the Parliament is evidently in line with the power conferred upon it by Entries 13 and 14 of List I. The opening words of the Article "Notwithstanding anything in the foregoing provisions of this Chapter" mean that this power is available to Parliament notwithstanding the division of power between the Centre and States effected by Article 246 read with the Seventh Schedule. In the light of this Article, it is evident, the situation similar to the one arising in Canada by virtue of the 1937 decision afore-mentioned, may not arise.

7. After the commencement of the Constitution, quite a few cases have arisen where the Supreme Court had to interpret Entries 14 and 15 of List I of the Seventh Schedule and Articles 73 and 253. While it would not be necessary to refer to all of them, it would be enough if we refer to the decision of the Constitution Bench in MAGANBHAI ISHWARBHAI PATEL Vs. UNION OF INDIA (1970) 3 SCC 400 = AIR 1969 SC 783). In view of a border dispute between India and Pakistan in the area of the Rann of Kutch, the matter was referred by both the countries to Arbitration. According to the award made by the Arbitrators, Kanjarkot and a few other villages fell to Pakistan. When this award was sought to be given effect to by the Government of India, certain persons approached the Gujarat High Court questioning the power of the Central Government to, what they called, ceding a portion of the territory of India to a foreign power. The matter was ultimately carried to the Supreme Court. The majority opinion was rendered by M. Hidayatullah, Chief Justice, on behalf of himself, V. Ramaswami, G.K.Mitter and Grover, JJ while J.C.Shah, J delivered a separate but concurring opinion. The Court held in the first instance that it was not a case of cession of territory, but a case of identifying the true border between two States. While agreeing that cession of territory cannot be effected without amending the Constitution, the Court held that such a course was not necessary in that case. In

the course of the Judgment, however, the court went into and discussed the treaty-making power in view of the fact that Government of India had entered into an agreement with Pakistan to refer the dispute to third party arbitration. (M. Hidayatullah, Chief Justice, prefaced his discussion (para - 24) thus:

> "A treaty really concerns the political rather than the judicial wing of the State. When a treaty or an award after arbitration comes into existence, it has to be implemented and this can only be if all the three branches of Government to wit the Legislature, the Executive and the Judiciary, or any of them, possess the power to implement it. If there is any deficiency in the constitutional system it has to be removed and the State must equip itself with the necessary power. In some jurisdictions, the treaty or the compromise read with the Award acquires full effect automatically in the Municipal Law, the other body of Municipal Law notwithstanding. Such treaties and awards are 'self-executing'. Legislation may nevertheless be passed in aid of implementation but is usually not necessary."

8. The learned Chief Justice then referred to the legal position in U.S.A., France (under 1958 Constitution), U.K. as also to Section 113 of the Indian Evidence Act, 11872 and observed:-

9. "The Constitution did not include any clear direction about treaties such as is to be found in the United States of America and the French Constitution.")

10. If I may say, with the greatest respect at my command, the above statement of law does not appear to take notice of the effect of placing the treaty-making power in the Union List which necessarily means that Parliament is competent to make a law laying down the manner and procedure according to which treaties and agreements shall be entered into by the Executive as also the manner in which they shall be implemented. It bears repetition to say that under our Constitution, treaty-making power is not vested in the Executive or the President – as has been done in some other Constitutions. It is squarely placed within the domain of the Parliament. Theoretically speaking, Parliament can by making a law prohibit the Executive to enter into a particular treaty or a particular kind of treaties; similarly, it can also direct the Executive to enter into a particular treaty or may disapprove or reject a treaty signed and/or ratified by the Executive. It is a different matter that Parliament has not chosen to make a law in that behalf, leaving the Executive totally free to exercise this power in an unfettered and, if I may say so, in an unguided fashion.

11. The learned Chief Justice then referred to Articles 1, 3, 73 and 253 as well as Entries 14 and 15 in List-I of the Seventh Schedule and to the earlier decision of the Court and observed:

> "The precedents of this Court are clear only on one point, namely, that no cession of Indian territory can take place without a constitutional amendment. Must a boundary dispute and its settlement by an arbitral tribunal be put on the same footing? An agreement to refer the dispute regarding boundary involves the ascertainment and representation on the surface of the earth a boundary line dividing two neighboring countries and the very fact of referring such a dispute implies that the Executive may do such acts as are necessary for permanently fixing the boundary. A settlement of a boundary dispute cannot, therefore, be held to be a cession of territory. It contemplates a line of demarcation on the surface of the earth. It only seeks to reproduce a line, a statutable boundary and it is so fixed. The case is one in which each contending State ex facie is uncertain of its own rights and therefore consents to the appointment of an arbitral machinery. Such a case is plainly distinguishable from a case of cession of territory known to be home territory."

12. Shah J. who delivered a separate but concurring judgment dealt specifically with Article 253 and made certain observations which are relevant and which constitute the basis for the

judgment of the Bombay High Court in P.B.Samant v. Union of India (1994 Bombay 323). The facts and the ratio of the judgment of the Bombay High Court deserve a closer look inasmuch as it deals directly with the issue discussed herein.

13. It was a petition filed by certain public-spirited individuals seeking the issuance of a writ of mandamus restraining the Union of India from entering into final treaty relating to Dunkel proposals [#] without obtaining sanction of the Parliament and State Legislatures. The contention was that in exercise of its executive power, the Union Government cannot trench upon the matters in the State list. It was submitted that Dunkel proposals dealt with subjects like agriculture, irrigation, cotton and other matters which are within the exclusive domain of the states. It was submitted that the said proposals will also affect the maintenance of roads, bridges, communication etc. which too are in the state list. It was therefore contended that unless the consent of the states is obtained, the Union Government cannot enter into any agreement on the said proposals which are being discussed as part of Uruguay Round of Trade Negotiations under the auspices of GATT. In reply to these submissions, the Union of India relied upon article 253 of the Constitution and the decision of the Supreme court in Maganbhai. It was submitted that not only the Union is entitled to enter into treaties by virtue of Entry 14 in list 1 of the seventh Scheduled to the Constitution, Parliament alone can alone make law to give effect to such treaties and international agreements. Reliance was placed particularly upon the following observations of Shah J. in his separate but concurrent opinion in Maganbhai: "The effect of Article 253 is that if a treaty, agreement or convention with a foreign State deals with a subject within the competence of the State Legislature, the Parliament alone has, notwithstanding Article 246(3), the power to make laws to implement the treaty, agreement or convention or any decision made at any international conference, association or other body. In terms, the Article deals with legislative power; thereby power is conferred upon the Parliament which it may not otherwise possess. But it does not seek to circumscribe the extent of the power conferred by Article 73. If, in consequence of the exercise of executive power, rights of the citizen or others are restriced or infringed, or laws are modified, the exercise of power must be supported by legislation : where there is no such restriction, infringement of the right or modification of the laws, the executive is competent to exercise the power."

14. The High Court agreed with the Respondents. Relying upon the observations of Shah J. quoted above, the High Court held : "The observations made by the learned Judge establish that the executive power conferred under Article 73 is to be read along with the power conferred under Article 253 of the Constitution of India. The observation leave no manner of doubt that in case the Government enters into treaty or agreement, then in respect of implementation thereof, it is open for the Parliament to pass a law which deals with the matters which are in the State list. In case the Parliament is entitled to pass laws in respect of matter in the State list in pursuance of the treaty or the agreement, then it is difficult to appreciate how it can be held that the Central Government is not entitled to enter into treaty or agreement which affects the matters included in the State list."

15. The Division Bench also dealt with the further submission of the learned counsel for the petitioners to the effect that the decision of the Supreme court in Maganbhai on Article 73 and 253 should be understood as limited only to those cases where the treaty or agreement covers matters which are in the Union List or in the Concurrent List. In particular they relied upon the proviso to Article 73 which says that the executive power referred to in sub-clause (a) of clause 1 of that article "shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any state to matters with respect to which the legislature of the state has also power to make laws." [#] The submission was that the executive power of the Union

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[#] Arthur Dunkel was the chairman of the Uruguay Round of GATTA negotiations until he was replaced in 1993-94.

Government cannot extend to matters in the State List. This argument of the learned counsel was rejected holding, "it is difficult to accede to the contention that though the Parliament has power to enact laws in respect of matters covered by the State list in pursuance of treaty or the agreement entered into with foreign countries, the executive power cannot be exercised by entering into treaty as it is likely to affect the matters in the State list."

16. The Division Bench noted the submission of the learned counsel for the Union of India that the treaty in question was not a self-executing treaty and that the provisions of the treaty can be given effect to only by making a law in terms of the agreement/treaty. The Court finally observed: "the issue as to whether the Government should enter into a treaty or agreement is a policy decision and it is not appropriate for the courts in exercise of jurisdiction under article 226 of the Constitution of India to disturb such decisions."

Part II

(i) Kinds of Treaties

17. Treaties are of two kinds: first category treaties are those which become binding as a result of signatures affixed at the completion of the negotiations. Examples of this kind of treaties are simple bilateral agreements. Then there are treaties which require a further step to be taken after the text has been established by signature before the treaty will take effect, whether by way of ratification or by legislation, as the case may be. Examples of this kind of treaties are the multi-lateral treaties which are generally far more important than the simple bilateral agreements. As has happened in the case of Uruguay Round of Trade negotiations held under the auspices of GATT, a Final Act is prepared, at the end of the negotiations, recording the result of the several multi-lateral treaty negotiations, which is signed by the delegations of the participating countries. The signature of the treaty, which is usually subject to subsequent ratifications, follows later. As a matter of fact, multi-lateral treaties routinely provide for ratification in case of those who have signed the treaty and for accession in case of those who have not signed the treaty.

18. Since 1980 – that is in the year in which the Vienna Convention on the Law of Treaties, 1969 entered into force, as contemplated by Article 84 thereof – all aspects of treaty-making are regulated by the said Convention. Of course, it is stated that India has not yet ratified the same. Even so, its provisions do deserve notice. Article 27 of the Convention stipulates that the States cannot be excused or be relieved from compliance with the treaty entered into by them on the basis of or by reference to inadequate national law. This rule is however subject to Article 46 which says that such a plea is available in case the violation of domestic law "was manifest and concerned a rule of its (State's) internal law of fundamental importance." This would mean that if the Union Executive signs any treaty which violates any of the provisions of our Constitution, it will be a good defence to the binding nature of that treaty. (Article 18 obliges the country which has signed the treaty from taking any action pending ratification of the treaty, which runs counter to the treaty.) It is thus evident that any treaty or international agreement entered into by the Union Executive beyond its power (i.e. power conferred by Article 73) or in violation of the constitutional limitation indicated hereinbefore, is only not binding on India, it is unconstitutional and inoperative. To be more specific, any treaty signed by the Union Executive concerning or affecting the entries in the State List or the Concurrent List in the Seventh Schedule to the Constitution would be incompetent and unenforceable since its executive power does not extend to matters in State or Concurrent List. Also because, no law has been made by the Parliament, as contemplated by the proviso to Article 73(1), extending the executive power to State or

[#] Indeed, the use of the word "also" in the said proviso indicates that the executive power of the Union may not be available even with respect to matters within the Concurrent List.

Concurrent List in the matter of treaty-making, assuming that Parliament can do so even in respect of matters in State List.

19. Do we know the number of treaties, conventions and covenants that have been entered into since Ward War II – leave aside the earlier period? According to former Australian Governor General, Sir. Ninian Stephen, it is not less than fifty thousand. True it is, this is an inescapable – if not an inevitable – process, as pointed out by the Prime Minister of New Zealand Mr. Bolger, who said on 6th June, 1997:

> "We live in a globalised world economy....Individual countries, no matter how large or powerful, cannot themselves deal with such transnational issues as climate change, capital flows, resource conservation and drug trafficking.... The role of Government in international relations is increasingly one of identifying and aligning self-interest with the values most of its electorate hold to be important, and then protecting and projecting those values into its dealings with other Governments and international organizations... In an inter-dependent world, pure sovereignty – the complete control of one's own affairs – is not possible."

20. It cannot be denied that these treaties are eating into the power of the nation/states to manage their own affairs and are correspondingly enhancing the power of the market and multi-national corporations. Those thousands of treaties and other international agreements and declarations have the effect of transferring partially, by the nations themselves, of their sovereignty in recognition of their inter-dependence on one another and their absolute need in today's world to relate to other nations and to do so in part through the medium of international treaties and conventions giving rise to new international law and a growth of common-form laws. One example is the TRIPs Agreement whereunder all the member countries are obliged to change their national laws to accord with the Agreement, which is largely patterned upon U.S. laws.

21. The core issue in our system of Government, as on today, is not whether the State Sovereignty is restricted by these treaties, but whether the exercise of State sovereignty (i.e. treaty-making) by the Executive Government restricts the parliamentary sovereignty to an unacceptable extent. It is my respectful submission that it does. Many of these treaties particularly multilateral treaties concerning trade, investment, patents, services and agriculture are bound to have pervasive and significant implications for our legal and administrative system, our economy and on the individual rights of the citizen – indeed for our constitutional ethos as such. This, no doubt, is happening in many other countries too. And it is precisely for this reason that there is concern all over the world that the practice whereunder the treaties are entered into by the Executive without significant Parliamentary or public involvement is not only undemocratic but also dangerous. It is being felt generally by jurists all over the world that the Parliament and the public must be involved more and more in the process of treaty-making because it is ultimately the people whose rights and entitlements are going to be affected by these treaties. Indeed, in New Zealand, a Bill called New Zealand International Legal Obligations Bill, 1997 was introduced which seeks to provide for parliamentary approval of treaties and requires the Ministry of Foreign Affairs and Trade further to inform the House on the progress of the treaty negotiations, particularly the multi-lateral treaties. But, then the question arises: is it possible for the Parliament, having regard to its manner of functioning, to look into and approve or ratify each of the treaties and agreements which the Executive has to enter into in the course of its international dealings. To elaborate the core issue, the several questions that arise in this behalf are: (1) Which treaties are deemed to be sufficiently important to be referred to the Parliament? (2) Who is to determine the importance of a particular treaty for being referred to the Parliament? (3) At what stage should the Parliament come into the picture – whether before entering into the treaty or after it is signed but before it is ratified or only when a legislation is required to be made to give effect to the treaty? (4) What form should the reference to Parliament be – should it be subjected to a positive resolution of approval or should it be provided that the treaty be laid before the House for a particular period, on the expiry of

which the Parliament must be deemed to have approved it by default and so on? Some jurists have suggested a middle ground which seeks to balance the power of Executive to freely make and execute an international agreement with other nation States and the requirement of an increasing Parliamentary involvement. An Australian Jurist, Naylor says:

> "The object of the reform process should be to ensure that the Parliament is able to participate in the process in a way that ensures that the commonwealth (Executive government) is not unduly hampered in its ability to participate in foreign affairs and meet its international obligations."

22. In this connection, we must take note of a practical problem – what I have referred to just now as the manner of functioning of Parliament – that the Members of Parliament are exceedingly busy – in any event, busy with matters of momentary or local concern and that it is extremely difficult to persuade them to read and absorb, let alone evaluate, the contents of all the treaties with which our country may be concerned. Do we not know that even such extremely important matters as the budget proposals are very often approved by applying the guillotine because most of the time of Parliament is consumed by less important and sometimes topics of no relevance to Parliament – apart from frequent shut-downs.

23. Before proceeding to examine the issue further, it would be appropriate to notice the practice obtaining under several country-jurisdictions in the world.

(ii) AUSTRALIA

24. It would be appropriate to begin with Australia since it is not only a common law country but also a federation. The Australian Constitution Act, 1900 provides for distribution of powers between the Federal Government and the States. Under Section 61 of the Constitution, the power to enter into treaties is an Executive power. Even so, the Prime Minister of Australia announced in the Parliament in the year 1961 that henceforward the Government will lay on the table of both Houses texts of the treaties signed for Australia, whether or not ratification is required, as well the texts of those treaties to which the Government is contemplating accession. It was stated that the Government would not, as a general rule, proceed to ratify or accede to a treaty until it has been laid on the table of both Houses for at least 12 sitting days. Be that as it may, a practice has developed in that country whereunder Australia would not ratify a treaty or accept an obligation under the treaty until appropriate domestic legislation is in place in respect of treaties where legislation is necessary to give effect to the treaty obligations. Several proposals have been made by groups of parliamentarians to provide for greater overview by Parliament of the treaty-making power and also to identify and consult the groups which may be affected by the treaty. All of them are strongly critical of the lack of transparency in the treaty-making process. One of the NGOs in that country, namely, National Farmers Federation has suggested that not only the treaties should be laid on the table of the House before they are finalized but the text of the treaty should be accompanied by a statement clearly setting out the important treaty obligations being undertaken by the country thereunder, what effect the treaty will have on the Australian national interests including economic, social and environmental and the extent of consultation already held by affected groups and so on – impact assessment statement, if one can call it, for short.

25. In May, 1996, the Foreign Minister made a statement to the House of Representatives outlining a new treaty-making process. According to this, the treaties will be tabled at least for 15 sitting days, after signature but before they are ratified, to allow for parliamentary scrutiny. This arrangement was to apply to both bilateral and multi-lateral treaties and to their amendments. Where however urgent action has to be taken, a special procedure was devised under which the Agreements will be tabled in the House as soon as possible with an explanation of reasons for urgent action. Further, the States will be consulted before entering into treaties and any particular information about the treaties will be placed before the Premiers and Chief

Ministers' Department. The Government has also agreed in principle to append a statement indicating the impact of the proposed treaty to the papers laid before the House. A joint Standing Committee on treaties was established comprising Members of both Houses and consisting of Federal and State Officers who shall meet twice every year and consider and report upon the treaties tabled before the House.

26. In the year 1997, a Bill was introduced in the Federal Legislature mainly with a view to partially affirm and partially supersede the decision of the Australian High Court in MINISTER FOR IMMIGRATION AND ETHNIC AFFAIRS V. TEOH (1995) 183 CLR 273. The said decision enunciated two propositions: (a) that under the Australian constitutional system, a treaty entered into by the Federal government does not become a part of domestic law and is not enforceable by courts until legislation is undertaken by competent legislature in that behalf and (b) a treaty or an international Convention/Covenant signed/ratified by the Federal government gives rise to a legitimate expectation at law that could form the basis for challenging an administrative decision. The Bill was intended to affirm (a) and to over-rule (b). It is not known whether it has been made into an Act.

(iii) FRANCE:

27. The power to conclude treaties is vested in the President of the Republic by virtue of Article 52 of the French Constitution. The President not only negotiates but also ratifies the treaties on his own. The role of the Parliament appears to be quite restricted. According to the said article, the Parliament comes into picture only in the case of certain types of treaties and that too after the terms of the treaty have been decided upon. Even then, the Parliament's power is only to approve or reject its ratification. The types of treaties contemplated in Article 52 include peace treaties, trade treaties, human rights treaties and treaties ceding, exchanging or adding territories. Article 55 of the French Constitution indeed provides that concluded treaties do not require implementing legislation in order to be enforceable. Once a treaty has come into force, it overrides any conflicting domestic legislation even if such legislation happens to be passed subsequent to the ratification of the treaty.

(iv) UNITED STATES OF AMERICA:

28. Article II, Section 2 of the U.S. Constitution, which deals with the powers of the President, states, inter alia, that the President is empowered "by and with the Advice and consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur ..." The President initiates and conducts negotiations of the treaties and after signing them, places them before Senate for its "Advice and Consent". The two famous instances in which Senate refused to ratify or approve the treaty signed by the President are (a) the Treaty of Versailles concluded at the end of World War I and (b) Comprehensive Test Ban treaty on nuclear tests. President Wilson, who was indeed the moving spirit behind the Versailles treaty, signed the treaty together with allied nations but when it was presented to the Senate, it rejected the same – effectively withdrawing U.S.A. from European affairs until the developments in Germany under Hitler brought it back into it. Even the Comprehensive Test Ban on nuclear tests (CTBT) was the handiwork of the President Clinton and his predecessors. In view of this constitutional position, a practice has developed in that country according to which, the Senators i.e. important persons among them, are associated with treaty making from the very beginning so that it may be easier for the President to get the treaty ratified later by the Senate.

29. A distinction is made in the U.S.A. between treaties and agreements. [It is interesting to note that the Vienna Convention on the Law of Treaties applies only to treaties and not to International Agreements (Article 2)]. So far as the treaties are concerned, they are required by the Constitution to be submitted to Senate for approval/ratification. But, so far as the agreements and particularly, those that are known as Executive agreements, are concerned,

they are entered into and signed by the President in exercise of his Executive power. Since such agreements are not considered treaties. The type of agreements so contemplated are those relating to foreign relations and military matters which do not affect the rights and obligations of the citizens. In so far as the trade agreements are concerned, a different procedure is evolved. Since the Congress has the constitutional authority to regulate commerce with foreign nations under Article 1 of the Constitution, such treaties are subject to ratification by both Houses but only by a simple majority.

30. With respect to the effect of the treaties, Article VI Section 2 of the Constitution expressly provides that "All treaties made or which shall be made with the authority of the United States, shall be the supreme law of the land and the judges in every state shall be bound thereby, anything in the Constitution or Laws of any state to the contrary notwithstanding." This is a fundamental departure from the British practice. The treaty not only overrides any federal law of the country but also overrides any provision in the Constitution of the State or the laws made by any State Congresses to the contrary.

31. Argentina and Mexico, it appears, follow the United States pattern.

(v) **SWITZERLAND:**

32. The legal position in Switzerland is disfinct altogether. The Executive authority in Switzerland is exercised by Federal Council headed by the President and the Federal Chancellor. The Federal Council has seven members elected at a joint meeting of the two Houses of Parliament. The Federal Council negotiates and signs the treaties. Once it is negotiated and signed, it is ratified/finalized in four different ways :

(a) In some cases Parliament authorises the Federal Council in advance not only to sign a treaty but also to bring it into force.

(b) There are treaties which require approval of the Parliament before they become enforceable:

(c) A treaty may be subjected to an optional referendum as provided for in Article 89(3) of the Constitution. The categories of treaties subjected to this procedure are treaties which are effective for an indefinite period, without the possibility of denunciation.

(d) In some cases, the agreement has to be approved by a compulsory referendum as provided for in Article 89(5). The agreements subjected to this procedure are those which provide for adherence to supra-national organizations and organizations for collective security.

33. Thus there are four different processes for concluding a treaty in Switzerland depending upon the nature of treaty. The advantage of this system is that it allow for adequate scrutiny of those agreements which have significant implications for the nation and affect the rights of the citizens. Of course, in the case of urgent and sensitive treaties, an alternative method is provided where the Parliament can only denounce the agreement if it does not agree with it, but there is no question of approval or ratification by the Parliament.

(vi) **CANADA**

34. The Canadian Constitution Act, 1982 (British North-American Act, 1867) does not contain a specific provision with reference to external affairs. However, following the British practice and particularly the decision of Privy Council in ATTORNEY GENERAL FOR CANADA

Vs. ATTORNEY GENERAL FOR ONTARIO referred hereinbefore, the Federal Government exercises the exclusive power to enter into treaties on behalf of Canada.

35. The peculiar feature of the Canadian Constitution is that even the Provinces have the power to enter into international agreements, which, it is said, are not binding in international law. The Government normally seeks the approval of the Parliament before ratifying an important Treaty though there is no such constitutional obligation. Approval is given in the form of resolution by both Houses of Federal Legislature. The Constitution also requires that any legislation required to implement a treaty can be enacted only by the provinces and it is because of this requirement that a good amount of consultation with the provinces is undertaken before concluding a treaty.

(vii) UNITED KINGDOM:

36. The legal position in U.K. has been succinctly set out in the decision of the Privy Council aforementioned. Indeed the ratio of the said decision has been recently affirmed by the House of Lords in J. H. RAYNER LIMITED Vs. DEPT. OF TRADE AND INDUSTRY (1990 (2) A.C. 418) wherein has been observed :

> "The Government may negotiate, conclude, construe, observe, breach, repudiate or terminate a treaty. Parliament may alter the laws of the United Kingdom. The courts must enforce those laws; judges have no power to grant specific performance of a treaty or to award damages against a sovereign state for breach of a treaty or to invent laws or misconstrue legislation in order to enforce a treaty."

37. So far as the effect of concluded treaties on the domestic law is concerned, the English law is at variance with the law in the United States. Generally accepted principle in English law is that in case of conflict between the British statutes and the provisions of a treaty, the former prevails. This is supposed to be a principle of constitutional law. Where, however, the Parliament undertakes legislation to give effect to an international convention, it has been held that the courts must presume that Parliament intended to fulfill the international obligations undertaken by the States. This Rule was qualified by the Court of Appeal in SALOMON Vs. COMMISSIONER OF CUSTOMS AND EXCISE (1967 (2) Q.B. 116) saying that such a course is permissible only where the terms of legislation are not clear and are capable of more than one meaning and further where there is cogent extrinsic evidence showing that the enactment was intended to fulfill obligations under a particular convention. As late as 1985, Lord Fraser of Tullyhelson said in CCSU v. Minister for Civil Service (1985 AC 374) "Conventions are not part of law in this country". Since 1974, the English courts have consistently taken the view that in so far as the provisions of International Conventions of Human Rights are concerned, they can be taken into account in the course of interpreting and applying British statutes. In several decisions, the courts have taken into account the treaty-based standards concerning Human Rights to resolve the issues of common law including legality of telephone tapping (MALONE Vs. METROPOLITAN POLICE COMMISSIONER – 1979 (1) Ch. 344), Contempt of Court (ATTORNEY GENERAL Vs. BBC –1981 A.C. 303 – House of Lords) and freedom of Association (CHEALL Vs. ASSOCIATION OF PROFESSIONAL EXECUTIVE, CLERICAL AND COMPUTER STAFF – 1983 (2) A.C. 180 – House of Lords).

(viii) OECD COUNTRIES

38. In a majority of 24 OECD countries, Parliamentary approval is required at least in case of certain categories of treaties, excluding of course the self-executing treaties.

Part III

(i) The effect of Treaties on Indian Domestic Law:

39. As would be evident from the decision of the Supreme Court in MAGANBHAI, India has been following, even after the advent of the Constitution, the British practice in the matter of treaty making. In other words, the law enunciated by the Privy Council in ATTORNEY GENREAL FOR CANADA is being followed here. According to these decisions, the treaties entered into by the Union of India do not become enforceable at the hands of our courts and they do not become part of our domestic law. This was so held by the Supreme Court in Jolly Verghese v. Bank of Cochin (1980 (2) SCC 360 = 1980 SC. 470 AIR). V.R. Krishna Iyer J speaking for the court held: *"India is now a signatory to this Covenant and Art. 51(c) of the Constitution obligates the States to "foster respect for international law and treaty obligations in the dealings of organized peoples with one another". Even so, until the municipal law is changed to accommodate the Government what binds the court is the former, not the latter. A.H.Robertson in "Human Rights - in National and International Law" rightly points out that international conventional law must go through the process of transformation into the municipal law before the international treaty can become an internal law. From the national point of view the national rules alone count.....with regard to interpretation, however, it is a principle generally recognized in national legal systems that, in the event of doubt, the national rule is to be interpreted in accordance with the State's international obligations."* The court quoted with approval the statement of law in Xavier v. Canara Bank Limited (1969 KLJ 927 at 931 and 933), a decision of the Kerala High Court, where it was held that until domestic legislation is undertaken to give effect to the letter or spirit of an international covenant or declaration, the covenant or declaration cannot be held to have the force of law and can not be enforced by the Courts in India.

40. At the same, we must take note of a recent decision of the Supreme Court, where a slightly different viewpoint was adopted. Reference is to the decision of the court in D.K Basu v. State of West Bengal (1997 (1) SCC 416). The Government of India had acceded to and ratified the International Convention on Civil and Political Rights, 1966. Article 9(5) of the said Convention declares that "anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation". The Government of India had, however, made a reservation to this clause while ratifying the said Convention saying that Indian law does not recognize any such right. The Supreme Court however opined that "That reservation, however, has now lost its relevance in view of the law laid down by this Court in a number of cases awarding compensation for the infringement of the fundamental right of a citizen. (See with advantage Rudul Sah v. State of Bihar; Sebastian M. Hongray v. Union of India; Bhim Singh v. State of J & K; Saheli, A Women's Resources Centre v. Commr. Of Police.) There is indeed no express provision in the Constitution of India for grant of compensation for violation of a fundamental right to life, nonetheless, this Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life. (See Nilabatai Behera v. State)." This decision indicates not only a recognition of an International Covenant ratified by India but also a readiness to ignore the reservations appended by our country while ratifying the Convention, in the light of the law developed by the Supreme Court.

41. In PEOPLE'S UNION FOR CIVIL LIBERTAIES v. UNION OF INDIA (1997) 3 SCC 433), the question to what extent the conventions and covenants signed by the Government of India can be enforced through courts was specifically gone into. After noticing the decision of the Australian High Court in MINISTER FOR IMMIGRATION AND ETHNIC AFFAIRS v. TOEH (1995) 69 Aus LJ 423), the court observed: "The main criticism against reading such conventions and conventions into national laws is one pointed out by Mason, C.J. himself, viz., the ratification of these conventions and covenants is done, in most of the countries by the Executive acting alone and that the prerogative of making the law is that of Parliament alone;

unless Parliament legislates, no law can come into existence. It is not clear whether our Parliament has approved the action of the Government of India ratifying the said 1966 Covenant. Indeed, it appears that at the time of ratification of the said Covenant in 1979, the Government of India had made a specific reservation to the effect that the Indian legal system does not recognize a right to compensation for victims of unlawful arrest or detention. This reservation has, of course, been held to be of little relevance now in view of the decision in Nilabati Behera [See page 313, para 43 (SCC p.438, para 42) in D.K.Basu]. Assuming that it has, the question may yet arise whether such approval can be equated to legislation and invests the Covenant with the sanctity of a law made by Parliament. As pointed out by this Court in S.R.Bommai v. Union of India, every action of Parliament cannot be equated to legislation. Legislation is no doubt the main function of Parliament but it also performs many other functions all of which do not amount to legislation. In our opinion, this aspect requires deeper scrutiny than has been possible in this case. For the present, it would suffice to state that the provisions of the covenant, which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can certainly be relied upon by courts as facets of those fundamental rights and hence, enforceable as such."

42. The court also referred to the position of multi-lateral treaties in United States and England with reference to certain decisions of those countries. (It may be remembered that so far as United States of America is concerned the United States Constitution itself says that a treaty signed by the President and approved by the senate becomes enforceable and overrides any US law to the contrary). Even in Britain a slightly different view is taken so far as Human Rights conventions are concerned and also in view of that country's accession to Rome treaty.

43. The question was again considered by the Supreme Court in Visakha vs. State of Rajasthan (1997) 6 SCC 241). The court was concerned in that case with the protection to be afforded to working women from sexual harassment at workplace so as to make their fundamental rights meaningful. Relying upon Articles 14, 15, 19(1)(g) of the Constitution, the court observed that "any international convention not inconsistent with the fundamental rights and in harmony with this spirit must be read into these provisions to enlarge the meaning and content thereof to promote the object of the constitutional guarantee. This is implicit from Article 51© and the enabling power of Parliament to enact law for implementing international conventions and norms by virtue of article 253 read with entry 14 of the Union List in the Seventh Schedule to the Constitution. Article 73 is also relevant. It provides that the executive power of the Union shall extend to matters with respect to which Parliament has power to make laws. The executive power of the Union, is therefore, available till Parliament enacts legislation to explicitly provide the measures needed to curb the evil." The Court relied upon the Convention on Elimination of all Forms of Discrimination Against Women (which Convention has been ratified by the Government of India on 25.06.1993 though with certain reservations) and upon the Beijing Statement of Principles of Independence of the Judiciary in the Law Asia Region.

44. With a view to obviate any controversy or ambiguity on this aspect, it may be necessary to amend Article 253. The existing article may be numbered as clause (1) and the following "clause (2)" may be inserted therein:-

> "(2) A treaty, agreement or convention concluded by the Government of India in exercise of the executive power vested in it by Article 73(1) of this Constitution read with clause (1) of this article, shall be treated or construed as an instrument having the force of law within the territory of India and no rights or entitlement shall be founded upon such treaty, agreement or convention."

(ii) Absence of consultation with Parliament in the matter of treaty-making – the Indian experience

45. Taking advantage of the fact that Parliament has chosen not to make any law regulating the treaty-making power, the Union Government has been, taking advantage of Article 73 of the Constitution, freely entering into treaties on its own without reference to the Parliament. Only where legislation is required to give effect to the terms of a treaty or a convention or a covenant has the Central Government been approaching the Parliament to make laws in those terms. By way of example, it would be instructive to notice what happened in the case of TRIPs agreement. The draft Agreement (on TRIPs) – which according to the HDR 1999, published by UNDP, was being pushed mainly by the multi-national drug companies – ran counter to almost each and every major premise of the "Background" paper submitted by India to the Negotiating Committee on July 27, 1989. India was evidently rattled by the draft Agreement on TRIPs produced by the Conference. The Government probably thought it would be appropriate to bring the matter to the notice of Parliament. Accordingly, the Standing Committee of Parliament attached to the Commerce Ministry consisting of forty Members of Parliament drawn from all political parties, considered the draft Agreement and submitted a Report on November 13, 1993. The Standing Committee opposed all the major stipulations and terms contained in the draft agreement. It opined that product patent system should not be imposed on India since it would result in steep increase in prices of medicines. It said that it should be left to the Indian state to determine whether it will go in for product patent or not. The Parliamentary Committee also opposed the 20-year period for the patents and the provision of the draft agreement which entitled the patent holder not to manufacture drugs and medicines within India while at the same time enjoying the benefits of patent in India. It also apposed the onerous conditions attached for permitting transition period to countries like India (which were not only developing countries but also did not recognize product patent till then). What is relevant to mention however is that the Government of India signed the TRIPs agreement in 1994, practically in the same shape as the draft agreement, without again approaching the Parliamentary Committee or the Parliament. The question that arises in such a situation is what was the relevance of consulting the Standing Committee of Parliament and then signing the agreement in total disregard of the Report and recommendations of the Parliamentary Committee. It is obvious that had there been a law regulating the treaty-making power of the Government and if such law had provided for either prior approval, ratification, consideration or discussion of the treaty before it comes into force, such a thing could not have happened. It needs to be emphasized that TRIPs agreement is not the only agreement signed by the Government of India in the course of Final Round of Uruguay negotiations. We have signed several agreements concerning trade, services, agriculture and so on - all of which seriously impinge upon our economy, upon our agriculturists, businessmen and industrialists. The results of these agreements are already becoming evident to us. Cheap agricultural, industrial and engineering goods from South-east Asia and China are flooding our markets driving out local producers. We do not know what is going to happen after 1.4.2001 when the existing quota and other restrictions will disappear, leaving the field free for free trade in goods, services, agricultural products and what not. It is a matter of common knowledge that neither the Parliament nor the people of this country were taken into confidence before signing these agreements having such serious repercussions upon the life and the lives of the citizens of this country. It therefore becomes essential to think of subjecting the treaty-making power of the Central Government to appropriate checks and controls, as is sought to be done in several countries all over the world.

(iii) Attempts at amending the Constitution to provide for Parliamentary scrutiny of the treaty-making power of the Union Executive:

(a) On 5th March, 1993, Shri George Fernandes, Member of Parliament, Lok Sabha gave notice of intention to introduce the Constitution (Amendment) Bill, 1993 for amending article 253 to provide that treaties and conventions be ratified by each House of Parliament by not less than one half of the

membership of each House and by a majority of the legislatures of not less than half the States.

The Bill was not listed for consideration during the life of that Lok Sabha.

(b) Shri Satyaprakash Malviya, Member, Rajya Sabha tabled a question (No.6856) enquiring whether the Government proposes to introduce any legislation to amend the Constitution to provide for parliamentary approval of international treaties.

The question was answered on 12.05.1994 in the negative.

(c) In February, 1992, Shri M.A. Baby, Member of Parliament, Rajya Sabha gave a notice of his intention to introduce the Constitution (Amendment) Bill, 1992 to amend Article 77 of the Constitution of India providing that "every agreement, treaty, memorandum of understanding contract or deal entered into by the Government of India including borrowing under article 292 of the Constitution with any foreign country or international organization of social, economic, political, financial or cultural nature and settlements relating to trade, tariff and patents shall be laid before each House of Parliament prior to the implementation of such agreement, treaty, memorandum of understanding, contract or deal and shall operate only after it has been approved by resolutions of both Houses of Parliament".

[On 17th July, 1994, Shri Chitta Basu, Member of Parliament, Lok Sabha gave notice of his intention to introduce a Constitution (Amendment) Bill, 1994 on the same lines as suggested by Shri M.A. Baby. This Bill, however, had not been taken up for consideration during the life of that Lok Sabha.]

46. The Private Member's Bill to amend the Constitution introduced by Shri M.A. Baby, M.P. in February 1992 came up for discussion in the Rajya Sabha only in March, 1997. Shri Baby spoke passionately in support of the said Bill pointing out in particular the adverse consequences flowing from the several WTO Agreements signed and ratified by the Government in 1994 [Uruguay Round of GATT Negotiations] without reference to the Parliament. Shri Pranab Mukherjee, M.P. spoke at length on the said Bill. He pointed out that there are two sides of the picture. He pointed out that where parliamentary approval is required, it has led to certain complications. He gave the example of the United State's Senate refusing to ratify the treaty of Versailles concluded at the end of the World War in spite of the fact that President Wilson had played a crucial role in bringing about the said treaty. The Senate yet rejected the treaty. He then referred to the two treaties signed between India and Nepal on harnessing water resources of Mahakali and other rivers and the other with Bangladesh on sharing of the Ganga waters. He submitted that had these agreements been submitted to Parliament for ratification/approval – particularly the treaty with Bengla Desh – it would have been extremely difficult to obtain such approval or ratification in the prevailing circumstances. At the same time, he agreed that his intention was not to say that the Parliament should be kept in dark or that the authority of the Parliament in this behalf should be denied. He pointed out that any GATT/WTO Agreements, signed and ratified by the Government of India, can be implemented only by Parliament by making a law in terms of the agreement as provided by Entry 14 of List I of the Seventh Schedule to the Constitution read with article 253. [He then pointed out the impracticality of bringing the borrowing power of the Centre also under the control of Parliament, with which aspect we are not concerned herein]. He pointed out further that the Parliament is not so constituted as to discuss the international treaties and agreements in an effective manner. He pointed out that even votes on account and budget demands involving thousands of crores of rupees are being passed without any discussion. In such a situation, he pointed out, entrusting the Parliament with the power to oversee any and every treaty and agreement and convention being entered into or signed by the Government of India would not

be practicable and would also not lead to desirable consequences. He also pointed out that one of the reasons for the success of European Union and ASEAN as 'economic blocs' is that the decision makers of the constituent countries, i.e. their executive, is by and large free to take decisions in matters of common interest. Ultimately, he suggested that there should be informed debate and discussion on the issue and that one should not rush with such measures. He also pointed out that under our present system of Parliamentary Government, executive has to render continuous accountability to Parliament and that the Parliament can always question the acts and steps taken by the Government. He finally opined than more debate should go into the matter before effecting such an amendment.

47. It is also brought to our notice by certain experts in the field that the present method has worked well in India for the last 50 years except perhaps in the case of WTO treaties (agreements entered into in the course of Uruguay Round of GATT Negotiations). It is pointed out that as a matter of fact:-

(1) The views of all concerned ministries are taken into consideration and different interests are identified and reconciled before the Cabinet is requested to approve a treaty. As part of this consideration, the administrative ministry is also required in consultation with and approval from the Department of Legal Affairs of the Ministry of Law to identify the need for any implementing legislation either by way of amendments to the existing law or by the enactment of a new legislation.

(2) Treaties of importance are first brought to the attention of the Parliament and decision of ratification is kept pending in the absence of a clear decision, approval by Parliament. The comprehensive Treaty on banning the Nuclear Tests (CTBT) is an example.

(3) Important treaties are placed before the Parliament. In some of the cases, discussion was also held and resolutions were passed approving such treaties. The Tashkent Declaration 1966, the Treaty of Peace, Friendship and Cooperation between India and USSR 1971 and the Shimla Agreement 1972 are the examples.

(4) Treaties ceding territory of India are subject to constitutional amendment.

48. Reliance is based upon the following statement of Shri K. Narayan Rao contained in his article "Parliamentary Approval of Treaties in India" published in the Indian Year Book of International Affairs in 1960-61 at pages 22/38-39):

> "Generally, in no country do all treaties require approval by the legislature. The executive still maintains its hold on certain types of treaties such as, for instance, agreements relating to technical matters. But ... the following matters at least require legislative approval. Treaties of cession, treaties requiring legislation for implementation, treaties involving financial burdens on the State, treaties of alliance and treaties entailing far-reaching political consequences"

49. The speech of Shri Pranab Mukherjee in Rajya Sabha and the opinion of jurists set out hereinabove bring out the opposing view to the one suggested by us hereinabove. We are, however, not satisfied that the circumstances pointed out by Shri Mukherjee and the experts, induce us to revise our views expressed here-in-before. We have already taken note of the fact that the parliament, as it is now constituted, is not in a position to consider debate or take a decision on each and every treaty, agreement and convention proposed to be entered into or signed by the Government of India. We have ourselves recognized this fact. This fact has also been taken note of in other countries as well which too has been pointed out here-in-before at the appropriate place. We have indeed suggested for a small parliamentary committee, which

will examine and determine which treaties/agreements/conventions should go before Parliament for fuller consideration and which need not go for such consideration. The latter category of treaties can be entered into by the government of its own. In fact, it may also be possible to say that broadly speaking, treaties of extradition, treaties establishing diplomatic relations, to give an illustration, can be kept out of the purview of the proposed parliamentary committee as well. But it is not possible to lay down any such general categorization. The matter is better left to the parliamentary committee as suggested by us. We must also mention that the difficulty pointed out by Shri Pranab Mukherjee in case certain treaties are referred to Parliament for approval, cannot be made the basis for denying the parliamentary scrutiny of such treaties, as pointed out by the learned Member himself. Even if such treaties are concluded by the Government without reference to the Parliament, the Parliament is entitled to discuss those treaties and reject them if they so choose. We must also point out the very few examples given by experts where certain treaties were referred to Parliament before ratification are more political in nature, which have attracted national and international attention and do not establish a practice of the executive obtaining parliamentary approval. Indeed it is conceded by the said experts that WTO treaties signed in 1994 without obtaining Parliamentary approval [indeed, in case of one agreement TRIPS contrary to the recommendations of the parliamentary committee attached to the Ministry of Commerce] have very grave impact upon the nation's economy, namely, its agriculture, its industry and its business – which are already being felt by the people of this country as mentioned here-in-before.

(iv) Role of Judiciary in Treaty-making:

50. Judiciary has no specific role in treaty-making, as such but if and when a question arises whether a treaty concluded by the Union violates any of the Constitutional provisions, judiciary come into the picture. It needs no emphasis that whether it is the Union Executive or the Parliament, they cannot enter into any treaty or take any action towards its implementation which transgresses any of the constitutional limitations. I have already recorded my views on the judgment of the Bombay High Court in P.B. Samant. I am sure that if and when any such question is considered by the Supreme Court, it will be considered in greater depth.

Part-IV

Recommendations:

51. The first thing that should be done by Parliament is to make a law on the subject of "entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries" as contemplated by Entry 14 of List 1 of the seventh Schedule to the constitution. The law should regulate the 'treaty-making power' (which expression shall, for the purpose of this discussion, include the power to enter into agreements and the implementation of treaties, agreements and conventions). There is an urgent and real need to democratize the process of treaty making. Under our constitutional system, it is not the prerogative (if we can use that expression) of the Executive. It is a matter within the competence of Parliament and it should exercise that power in the interest of the State and its citizens. In a democracy like ours, there is no room for non-accountability . The power of treaty-making is so important and has such far-reaching consequences to the people and to our polity that the element of accountability should be introduced into the process. Besides accountability, the exercise of power must be open and transparent (except where secrecy is called for in national interest) – what was called by President Wilson of USA, "open covenants openly arrived at". We may have already suffered enough by entrusting that power exclusively to the Executive. They do not appear to have been vigilant in safeguarding our interests, at least in some instances. The said power can no doubt be given only to the Union Executive and none else but then the law must clearly delineate the exercise of the power. In particular it must

provide for clear and meaningful involvement of Parliament in treaty-making. As has been done in some countries, there must be constituted a committee of Parliament to whom every treaty/agreement/convention proposed to be signed and/or proposed to be ratified shall be referred. While placing the draft/signed treaty before such committee, a statement setting out the important features of the treaty/agreement, reasons for which such treaty/agreement is proposed to be entered into, the impact of the treaty/agreement upon our country and upon our citizens, should be clearly and fully set out. The committee must decide within four weeks of such reference whether the treaty should be allowed to be signed by the Union Executive without referring the matter for consideration to Parliament or whether it should be referred to Parliament for consideration. It is obvious that such a decision shall have to be taken having regard to the nature of the particular treaty/agreement and its impact upon our country or on the rights of our citizens. The committee should not have too many members. About 10 to 15 would be adequate but they must be drawn from all political parties in Parliament. They must be elected by both the Houses separately, or jointly, as the case may be. The members once elected shall continue in the committee for the duration of the life of the House or the cessation of their membership, as the case may be. The committee would be a statutory committee clothed, of course, with all the powers of a Parliamentary Committee.

52. As a matter of fact, it would equally be desirable if the law made by the Parliament categories the treaties/agreements/conventions/covenants viz., (a) those that the executive can negotiate and conclude on its own and then place the same before both Houses of Parliament by way of information. In this category may be included simple bilateral treaties and agreements which do not affect the economy or the rights of the citizens; (b) those treaties etc. which the executive can negotiate and sign but shall not ratify until they are approved by the Parliament. Here again, a sub-categorisation can be attempted: Some treaties may be made subject to approval by default (laying on the table of the House for a particular period) and others which must be made subject to a positive approval by way of a resolution; (c) important, multi-lateral treaties concerning trade, services, investment, etc. (e.g. recent Uruguay round of treaties/agreements signed in 1994 at Marrakesh), where the Parliament must be involved even at the stage of negotiation. Of course, where a treaty etc. calls for secrecy, or has to be concluded urgently, a special procedure may be provided, subject to subsequent Parliamentary approval consistent with the requirements of secrecy.

53. The law made by Parliament must also provide for consultation with affected group of persons, organizations and stake-holders, in general. This would go to democratize further the process of treaty making.

QUESTIONNAIRE
ON
TREATY-MAKING POWER UNDER OUR CONSTITUTION

(a) Do you agree with the proposition that entry 14 of List I of the Seventh Schedule to the Constitution read with Article 253 marks a departure from the Law obtaining in U.K. on the question of Executive's power to enter into treaties and agreements with foreign powers and its power to sign/ratify international conventions and covenants;

(b) Is the Union Executive entitled to enter into a treaty affecting the matters mentioned in the State List (List II) and Concurrent List (List III) in the Seventh Schedule to the Constitution without being empowered by Parliament by making a law as contemplated by the proviso to clause (1) of Article 73 and/or without the consent of the concerned State Legislatures?

(c) Whether the present position should remain unchanged?

2. (a) Do you support the proposal that the Parliament should enact a law clearly laying down the powers of the Executive in the matter of treaty-making? (The expression "treaty-making" includes entering into agreements with foreign powers as well as ratifying international conventions and covenants.)

(b) Or whether it is not advisable to enact any such law taking into consideration the possibility of problems being created by one or more States if their consent/concurrence is made necessary?

(c) Whether the control of Parliament be restricted only to treaties/agreements affecting the national economy?

3. Do you support the proposal to amend Article 253 by inserting a new clause – clause (2) – providing expressly that no treaty etc. concluded by the Executive shall have any force of law within the territory of India and that no rights or entitlements can be founded upon such treaty by any one?

4. Do you agree with the 'Recommendations' at pages 42 to 44 of the Consultation Paper? If not, in what respects?

5. Should a consultation process be made obligatory with both governmental and non-governmental experts in the field, before the Government signs/ratifies a treaty/agreement?

6. Have you any suggestions to make on any of the issues dealt with in the Consultation Paper particularly with respect to the question how to make the treaty-making power subserve and promote the nation's interest? If so, please state them.

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NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

THE INSTITUTION OF GOVERNOR UNDER THE CONSTITUTION

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating a public debate and eliciting public response.

May 11, 2001

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CONTENTS

		Pages
I.	Introduction	897
	A. Governor	898
	B. Article 200 and 201	900
	C. Article 200	900
	D. Article 201	904
II.	Recommendations of Sarkaria Commission	905
III.	Sarkaria Commission on Articles 200 and 201	908
IV.	Recommendations proposed	909
	Annexure – I	913
	Annexure – II	918
	Questionnaire	922

Introduction

This Paper deals with the appointment and functioning of the institution of Governor as well as the anomalies and problems surrounding the powers vested in them in the matter of granting assent to the Bills passed by the State Legislatures.

2. Article 153 of the Constitution requires that there shall be a Governor for each State. One person can be appointed as Governor for two or more States. Article 154 vests the executive power of the State in the Governor. Article 155 says that "The Governor of a State shall be appointed by the President by warrant under his hand and seal". Article 156 provides that "The Governor shall hold office during the pleasure of the President". The term of the Governor is prescribed as five years. The only qualifications for appointment as Governor are that he should be a citizen of India and must have completed the age of thirty-five years. Article 159 prescribes the oath, which a Governor has to take before entering upon his office. He has to swear in the name of God/solemnly affirm that he "will faithfully execute the office of Governor (or discharge the functions of the Governor) of.....(name of the State) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people.....(name of the State).".

3. According to Article 168, the Legislature of a State shall consist of the Governor and the Legislative Assembly. Where, however, the Legislature consists of two Houses, the upper House too is naturally a part of the Legislature.

4. Article 161 vests in the Governor the power to grant pardons, reprieves, etc. Article 164(1) says "The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister and shall hold office during the pleasure of the Governor". All these provisions occur in Chapter II of Part VI of the Constitution dealing with "The Executive". It is relevant to mention that the grant or withholding assent is not dealt with in Chapter II but in Chapter III, which deals with "The State Legislature". We shall now turn to Chapter III.

5. Chapter III in Part VI is divided into several sub-headings. The one with which we are concerned here is "Legislative Procedure" comprising Articles 196 to 201. Coming to Articles 196 to 201, Article 196 describes the manner in which Bills are introduced and passed in the State Legislature. Article 197 specifies the restrictions on the powers of Legislative Council as to Bills other than Money Bills while Article 198 sets out special procedure in respect of Money Bills. The expression "Money Bills" is defined in Article 199. The next two relevant Articles, namely, Articles 200 and 201, may be set out in full having regard to their relevance to the issues raised herein.

> "200. **Assent to Bills** – When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:
>
> Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and

presented to the Governor for assent, the Governor shall not withhold assent therefrom:

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.

201. **Bills reserved for consideration** – When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom:

Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as is mentioned in the first proviso to article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration.".

6. The following features of the aforementioned Articles need to be noted:

A. <u>Governor</u>:

6.1 Though the Governor is the executive head of the State and a part of the State Legislature and the administration of the State is carried on in his name, the people of the State or their representatives have no say in the matter of his appointment. While the President is elected by the representatives of the people, namely, the Members of Parliament and the Members of the State Legislatures, the Governor is merely appointed by the President which really means, by the Union Council of Ministers. In as much as the Governor holds office during the pleasure of the President, there is no security of his tenure. He can be removed by the President at any time. There is no provision for impeaching the Governor by the State Legislature. Indeed, if the Governor misbehaves or acts in a manner against the interests of the people of the State, as perceived by the State Legislature they cannot do anything except perhaps complain to the President. It may also be noticed that the Chief Minister is appointed by the Governor. Where one party gets a clear majority, the Governor may have no discretion or choice in the matter but where no single party or a pre-election group/coalition gets a clear majority, the Governor has to exercise his judgment in the matter of whom he should invite.

While the President is elected by the representatives of the people, namely, the Members of Parliament and the Members of the State Legislatures, the Governor is merely appointed by the President which really means, by the Union Council of Ministers. Inasmuch as the Governor holds office during the pleasure of the President, there is no security of his tenure. He can be removed by the President at any time.

6.2 Today the situation is that different political parties are in power in different States. In other words, the situation obtaining between 1952 and 1967, when one party controlled both the Parliament and State Legislatures no longer continues. In such a situation and because the Governor owes his appointment and his continuation in the office to the Union Council of Ministers, in matters where the Central Government and the State Government do not see eye to eye, there is the apprehension that he is likely to act in accordance with the instructions, if any, received from the Union Council of Ministers rather than act on the advice of his Council of Ministers. Indeed, the Governors today are being pejoratively called the **'agents of the Centre'**.

It is true that the Central Government is not expected to give any instructions which compromise the status and position of the Governor nor is it expected to remove him for not implementing the instructions given by it, the experience for the last several years belies this hope. As Seervai has pointed out in his commentary: "As the President acts on the advice of his Ministry, it may be contended that if the Governor takes action contrary to the policy of the Union Ministry, he would risk being removed from his post as Governor and therefore he is likely to follow the advice of the Union Ministry. It is submitted that a responsible Union Ministry would not advise, and would not be justified in advising, the removal of a Governor because, in the honest discharge of his duty, the Governor takes action which does not fall in line with the policy of the Union Ministry. The removal of the Governor under such circumstances would otherwise mean that the Union executive would effectively control the State executive, which is opposed to the basic scheme of our federal Constitution. Article 156(1) was designed to secure that if the Governor was pursuing policies which were detrimental to the State or to India, the President would remove the Governor from his office and appoint another Governor. This power takes the place of an impeachment which clearly is a power to be exercised in rare and exceptional circumstances". (page 3103, para 14, in Vol. III; Constitutional Law of India; Fourth Edition).

6.3 The role of Governors has come in for severe criticism – sometimes, bordering on condemnation – in the context of reports they submit under and within the meaning of Article 356. Many a Governor has not covered himself with glory in that behalf. Notwithstanding the recommendations guiding the discharge of their functions in the Sarkaria Commission Report (to which we shall presently refer) and the decisions of the Conference of Governors, many Governors continue to behave in a manner not consistent with true spirit of the Constitution. This would be evident from the decision of the Supreme Court in S.R.Bommai V. Union of India (AIR 1994 SC 1918). A few observations from the said judgment may be apposite. In his judgment delivered for himself and Kuldip Singh J., Sawant J. commented thus upon the conduct of the then Governor of Karnataka:

> "it was improper on the part of the Governor to have arrogated to himself the task of holding, firstly, that the earlier 19 letters were genuine and were written by the said legislators of their free will and volition. He had not even cared to interview the said legislators but had merely got the authenticity of the signatures verified through the legislature secretariat.... We are of the view that this is a case where all canons of propriety were thrown to winds and the undue haste made by the Governor in inviting the President to issue the proclamation under Article 356(1) smacked of mala fides.... The action of the Governor was more objectionable since as a high constitutional functionary, he was expected to conduct himself more fairly, cautiously and circumspectly. Indeed it appears that the Governor was in a hurry to dismiss the Ministry and dissolve the Assembly" (para 76).

While dealing with the conduct of then Governor of Meghalaya, the learned judge made similar observations and observed finally :

> "the unflattering episode shows in unmistakable terms the Governor's unnecessary anxiety to dismiss the Ministry and dissolve the Assembly and also his failure as a constitutional functionary to realize the binding, legal consequences of and give effect to the orders of the court".

6.4 Similar observations were made by B.P. Jeevan Reddy J. in the judgment delivered by him for himself and S.C. Agarwal J. and with whose judgment S.R. Pandian J. agreed fully. (The

opinions of Sawant, Jeevan Reddy and Pandian JJ. constitute the majority opinions in the said decision.)

B. **Articles 200 and 201:**

6.5 Now coming to Articles 200 and 201, the first thing to remind ourselves is that the power to grant assent or to withhold assent or to reserve a Bill for the consideration of the President is not dealt with under the heading "The Governor" in Chapter II of Part VI (i.e. as a power or as a function of the Governor) but in Chapter III dealing with State Legislature and under the sub-heading "Legislative Procedure".

C. **Article 200:**

6.6 According to Article 200, when a Bill passed by the Legislature of a State is presented to the Governor, he has four options, namely, (a) he assents to the Bill; (b) he withholds assent; (c) he reserves the Bill for the consideration of the President; or (d) he returns the Bill to the Legislature for reconsideration. The first proviso says that as soon as the Bill is presented to him, he may return the Bill to the Legislature (if it is not a Money Bill) together with a message requesting the Legislature to reconsider the Bill. He can also suggest the desirability of introducing such amendments or changes as he thinks appropriate. If, on such reconsideration, the Bill is passed again, with or without amendments, and is presented to the Governor for assent, he has to accord his assent. The second proviso says that if the Bill presented to him derogates, in the opinion of Governor, from the powers of the High Court so as to endanger the position which the High court is designed to fill by the Constitution, he is bound to reserve the Bill for the consideration of the President (also see para 88 in AIR 1983 SC 1019 at 1048, Hoechst Pharmaceuticals v. State of Bihar).

6.7 **The following aspects of the Article need attention:**

1) Article 200 (which is a reproduction of section 75 of the Government of India Act, 1935 with two small modifications) does not fix any time limit for granting the assent or for declaring that he is withholding his assent or for declaring that he is reserving it for the assent of the President. It has been held in Purshothaman v. State of Kerala (AIR 1962 SC 694) that there is no time limit for granting the assent. This decision lays down the following further propositions: (a) A Bill pending in the Legislature (either House) does not lapse on proroguing of Assembly, (b) A Bill pending before the Governor or the President for his assent does not lapse on dissolution of the Assembly and (c) Only the Legislative Assembly can be dissolved but not the Legislative Council.

2) The Constitution does not furnish any guidance to the Governor - in which matters he should accord his assent and in which matters he should withhold assent.

3) Except in matters governed by the second proviso to Article 200, that Article does not also lay down any guidelines in which matters should the Governor reserve the Bill for the consideration of the President. It has been held by the Supreme Court in Hoechst Pharmaceuticals v. State of Bihar (1983 SC 1019) that the Governor's power to reserve for the consideration of the President cannot be questioned in court. The following observations in the judgment, though made while dealing with a question posed from a different angle, are relevant:

> "A Bill which attracts Art.254(2) or Art.304(b) where it is introduced or moved in the Legislative Assembly of a State without the previous sanction of the President or which attracted Art.31(3) as it was then in force, or falling under the

second proviso to Art.200 has necessarily to be reserved for the consideration of the President. There may also be a Bill passed by the State Legislature where there may be a genuine doubt about the applicability of any of the provisions of the Constitution which require the assent of the President to be given to it in order that it may be effective as an Act. In such a case, it is for the Governor to exercise his discretion and to decide whether he should assent to the Bill or should reserve it for consideration of the President to avoid any future complication. Even if it ultimately turns out that there was no necessity for the Governor to have reserved a Bill for the consideration of the President, still he having done so and obtained the assent of the President, the Act so passed cannot be held to be unconstitutional on the ground of want of proper assent. This aspect of the matter, as the law now stands, is not open to scrutiny by the courts."

6.8 May be, this matter can also be deemed to be one covered by the prohibition contained in Article 212. (Article 212 declares that the validity of any proceedings in the Legislature of a State shall not be called in question on the ground of irregularity of procedure. It is significant that the question of assent is not dealt with as a power or function of the Governor in Chapter II dealing with "The Executive – The Governor" but in Chapter III which deals with "The State Legislature", under the sub-heading "Legislative Procedure". It should also be remembered that according to Article 168, Governor is a part of the State Legislature.)

6.9 The power to withhold assent appears to be wide and unguided power. The Governor is an appointee of the President (Central Government). He is not elected by the people of the State or by their representatives. In such a situation, the legitimacy of this power, which empowers him to undo the will of the Legislature by just declaring that he is withholding his assent, is open to question. Even if we proceed on the basis that this power has to be exercised by the Governor on the advice of his Council of Ministers - as it ought to be - no Council of Ministers, ordinarily speaking, would tender such an advice except where it is a successor government formed by a party which was in opposition when the Bill was passed and which has since come to power (of course, one cannot envisage all the situations wherein such an advice may be tendered by the Council of Ministers). Be that as it may, wherever such advice is tendered, it would be a suspect one; the Council of Ministers cannot overturn the will of the Legislature. What can happen in such a situation is that the Governor may simply sit over the Bill and if he finds that a different party has come to power meanwhile, he may seek their advice. Such a course will not be conducive with the decorous regard a Governor is expected to the rules of the Constitutional game. Indeed, any such advice to withhold assent by the Council of Ministers to a Bill passed by the Legislature might amount to an act of impropriety. If, on the other hand, for any reason, the power to withhold assent is treated as a matter within the discretion of the Governor, the position would be

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If, on the other hand, for any reason, the power to withhold assent is treated as a matter within the discretion of the Governor, the position would be a totally unedifying one. In the absence of any guidance provided by the Constitution in which cases this power can be exercised and in view of the further fact that no court is entitled to go into the justification of such withholding, conferment of such power is bound to be inherently arbitrary and discriminatory.

a totally unedifying one. In the absence of any guidance provided by the Constitution in which cases this power can be exercised and in view of the further fact that no court is entitled to go into the justification of such withholding, conferment of such power is bound to be inherently arbitrary and discriminatory.

6.10 A reading of Article 201 shows that even a Money Bill can be reserved for the assent of the President. This would be evident from the following words in the proviso to Article 201: "Provided that where the Bill is not a Money Bill, the President may direct the Governor to return the Bill...." From the language employed in Articles 200 and 201, it cannot be said that a Money Bill cannot be reserved for the assent of the President. Such a course, if adopted by a Governor, can lead to serious dislocation of administrative business.

7 In support of the proposition that the power to accord or withhold assent and the power to return the Bill to the Legislature for reconsideration (with or without suggestions) as well as the power to reserve the Bill for the consideration of the President (except perhaps in situations where such reserving is obligatory by virtue of the provisions of the Constitution) has to be exercised by the Governor on the advice of his Council of Ministers and not in accordance with the instructions received by him from the Government of India and also to establish that these are not his discretionary powers, reference may be made to the law declared by the Supreme Court in Shamsher Singh v. State of Punjab (AIR 1974 SC 2192). The decision lays down the following propositions:

(a) "We have extensively excerpted from various sources not for adopting 'quotational jurisprudence' but to establish that the only correct construction can be that in constitutional law the 'functions' of the President and Governor and the 'business' of Government belong to the Ministers and not to the head of State, that 'aid and advice' of ministers are terms of art which, in law mean, in the Cabinet context of our constitutional scheme, that the aider acts and the adviser decides in his own authority and not subject to the power of President to accept or reject such action or decision, except, in the case of Governors, to the limited extent that Article 163 permits and his discretion, remote controlled by the Centre, has play".

(b) As rightly pointed out by Sri M.C. Setalvad, the first Attorney General of India, when consulted by Dr. Rajendra Prasad (in connection with the Hindu Code Bill controversy): "It (Art.74) applies to every function and power vested in the President, whether it relates to addressing the House or returning a Bill for reconsideration or assenting or withholding assent to the Bill".

(c) "Of course, there is some qualitative difference between the position of the President and the Governor. The former, under Article 74 has no discretionary powers; the latter too has none, save in the tiny strips covered by Articles 163(2), 371-A(1)(b) and (d), 371-A(2)(b) and (f), VI Schedule para 9(2) (and VI Schedule para 18(3), until omitted recently with effect from 21.1.1972). These discretionary powers exist only where expressly spelt out and even these are not left to the sweet will of the Governor but are remote-controlled by the Union Ministry which is answerable to Parliament for those actions. Again, a minimal area centering round reports to be despatched under Article 356 may not, in the nature of things, be amenable to ministerial advice. The practice of sending periodical reports to the Union Government is a pre-constitutional one and it is doubtful if a Governor could or should report behind the back of his Ministers. For a centrally appointed constitutional functionary to keep a dossier on his Ministers or to report against them or to take up public stances critical of Government policy settled by the Cabinet or to interfere in the administration directly – these are unconstitutional faux pas and run counter to parliamentary system. In all his

constitutional 'functions' it is the Ministers who act; only in the narrow area specifically marked out for discretionary exercise by the Constitution, he is untrammeled by the State Ministers' acts and advice. Of course, a limited free-wheeling is available regarding choice of Chief Minister and dismissal of the Ministry, as in the English practice adapted to Indian conditions".

(d) When deciding a dispute under Article 192(1), the Governor acts on the advice of the Election Commission and not on the advice of the Council of Ministers.

(e) "The omnipotence of the President and of the Governor at State level is euphemistically inscribed in the pages of our Fundamental Law with the obvious intent that even where express conferment of power or functions is written into the Articles, such business has to be disposed of decisively by the Ministry answerable to the Legislature and through it vicariously to the people, thus vindicating our democracy instead of surrendering it to a single summit soul whose deification is incompatible with the basics of our political architecture".

In this connection, reference may also be made to the Constituent Assembly Debates, Vol.9. At page 61, the following extract from the speech of T.T. Krishnamachari may be noticed: "I would ask him (Dr. Shibanlal Saxena, a member of C.A.) to remember one particular point to which Dr. Ambedkar drew pointed attention, viz., that the Governor will not be exercising his discretion in the matter of referring a Bill back to the House with a message. That provision has gone out of the picture. The Governor is no longer with any discretion. If ... the Governor sends a Bill back for further consideration, he does so expressly on the advice of his Council of Ministers". (The speech of Dr. Ambedkar referred to by T.T. Krishnamachari is at page 41 of the same volume.)

8. What has been happening in fact all these years is that Governors generally act according to the instructions of the Home Ministry at the Centre. If the party/group in power at the Centre is a different from the one in the State (whose Legislature has passed the particular Bill) and more particularly where the party in power at the Centre is in opposition in the State Legislature and had opposed the said Bill, or for any other reason, the Home Ministry may instruct the Governor either to withhold his assent or reserve it for the consideration of the President – or return the Bill in case the party position in the Legislature has, in the meanwhile, undergone a change. If any such instructions are received by the Governor, most likely, he would act according to them, notwithstanding the advice of his Council of Ministers to the contrary. This is clearly an undemocratic exercise of power by the Governor. To wit, the Governor is a part of the State Legislature and the Council of Ministers is to advise him in the matter of exercise of his powers. *The people or the Legislature have no, absolutely no, remedy against any arbitrary withholding of assent, inordinate delay in granting assent or unwarranted and unjustified reservation of a Bill for the consideration of the President.* Whenever the Governor acts according to the instructions of the Central Government and contrary to the advice tendered by the Council of Ministers of the State, friction arises between the Centre and the State which is not conducive to a fruitful cooperation between them. The Legislature can't even impeach the Governor since there is no such provision in the Constitution. May be the power to withhold assent is understandable in the case of the President (Article 111) who is elected by the Members of the Parliament and the State Legislatures and can therefore claim a certain amount of legitimacy but not in the case of the Governor who is a mere appointee.

9. One way of reducing the rigor, and arbitrariness inherent in this clause, may be to read the powers in the main limb of clause (1) of Article 200 consistent with and subject to the first proviso. The first proviso requires the Governor to return the Bill for reconsideration "as soon as

possible after the presentation to him of the Bill for assent". If this provision is taken as a guide, as an indicator, the element of urgency in it may govern not only the case of return of Bill, but also grant or withholding of assent as well as to reservation of the Bill for the consideration of the President. But so far no court has taken this view; it is only a possible interpretation. The fact remains that there are no express words in the Constitution to support such a view. On the contrary, the use of expression "as soon as possible" only in the case of return of the Bill and not in other cases (assenting, withholding of assent and reserving for the consideration of the President) can be said to be indicative of the fact that the element of urgency was not intended to be infused in these other matters. On a literal interpretation, the first proviso applies only to a case of return of the Bill and not to other three situations and this is precisely the view expressed by the Supreme Court in Purushothaman's case, referred to hereinbefore. This is not a happy situation.

D. Article 201:

10. Coming to Article 201, it says that where a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom. The President is also empowered to "direct the Governor to return the Bill to the House ... together with such a message as is mentioned in the first proviso to Article 200:..." Here again no time limit is fixed within which the President should take a decision. There have been instances where Bills have been pending with the President for periods up to six years or more. (See the Table appended to Chapter V of Sarkaria Commission Report position up to 1987). In the matter of return of Bill for reconsideration to the Legislature, it is relevant to notice, the words "as soon as possible after the presentation to him of the Bill for assent" occurring in the first proviso to Article 200, do not find place in the proviso to Article 201 though both the provisos are of cognate nature.

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11. Yet another feature of Article 201 is that where the President directs the Governor to return the Bill to the Legislature and the Legislature passes the Bill again (with or without amendments) and when it is presented to the President again for consideration, the Article does not say that the President is bound to grant his assent, as it is said in the case of the Governor by the first proviso to Article 200. It is rather surprising that even after the Legislature reconsiders the Bill, passes it again and presents it to the President for consideration, it can be stalled, if he so chooses, by not assenting to it and by 'cold storaging' it, if we can use that expression. Inasmuch as the President would be guided by the Union Council of Ministers in this behalf, it may quite happen (indeed, as it has already happened) that where a different party or group is in power at the Centre, it can easily neutralize and nullify the will of the State Legislature by advising the President to withhold his assent or cold-storage it even after the Bill is presented to the President after reconsideration of the Bill.

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12. Before we proceed further, it would not be out of place to quote certain observations of Dr. Ambedkar, though made in the context of Article 355. He said:

> "I think it is agreed that our Constitution, notwithstanding the many provisions which are contained in it, whereby the Centre has been given powers to override the Provinces, none-the-less is a Federal Constitution and when we say that Constitution is a Federal Constitution, it means this, that the Provinces are as sovereign in their field which is left to them by the Constitution as the Centre is in the field which is assigned to it. In other words, barring the provisions which permit the Centre to override any legislation that may be passed by the Provinces, the Provinces have a plenary authority to make any law for the peace, order and good Government of that Province. Now, when once the Constitution makes the Province sovereign and gives them plenary powers to make any law for the peace, order and good Government of the Province, really speaking, the intervention of the Centre or any other authority must be deemed to be barred, because that would be an invasion of the sovereign authority of the Province. That is a fundamental proposition which, I think, we must accept by reason of the fact that we have a Federal Constitution."

Recommendations of Sarkaria Commission:

13. A Commission headed by Justice R.S. Sarkaria, a former Judge of the Supreme Court (and who is now a Member of the present Commission), was constituted to "examine and review the working of the existing arrangements between the Union and States in regard to powers, functions and responsibilities in all spheres and recommend such changes or other measures as may be appropriate". The notification dated June 9, 1983 appointing the Commission stated further that "In examining and reviewing the working of the existing arrangements between the Union and States and making recommendations as to the changes and measures needed, the Commission will keep in view the social and economic developments that have taken place over the years and have due regard to the scheme and framework of the Constitution which the founding fathers have so sedulously designed to protect the independence and ensure the unity and integrity of the country which is of paramount importance for promoting the welfare of the people". In their report submitted in the year 1987-88, the Commission have dealt with the "Role of the Governor" in Chapter IV and "Reservation of Bills by Governors for President's Consideration and Promulgation of Ordinances" in Chapter V.

14. In Chapter IV, the Commission first examined the historical background to the institution of Governor, the constitutional provisions concerning the Governor and the scope of these provisions and then pointed out the three main facets of Governor's role. The three facets so pointed out are: (a) as the constitutional head of the State operating normally under a system of Parliamentary democracy; (b) as a vital link between the Union Government and the State

Government; and (c) as an agent of the Union Government in a few specific areas during normal times [e.g. Article 239(2)] and in a number of areas during abnormal situations [e.g. Article 356(1)]. Pausing here, we must say that really speaking, the Constitution did not envisage the Governor as an agent of the Centre. By making reports under Article 356, the Governor does not become an agent of the Central Government. Such a report has to be made by the Governor as required by his oath which obliges him to "preserve, protect and defend the Constitution" and to devote himself "to the service of well-being of the people" of that State. If he is honestly satisfied, in a given situation that the government of that State cannot be carried on in accordance with the provisions of the Constitution, it becomes his duty to make a report to that effect to the President. This he does as the Governor of the State and in the interest of the State and not as "the agent of the Centre". It is another matter that because of the conduct and actions of some over the last several decades, they have earned this notoriety and the pejorative appellation of an agent.

15. Coming back to the Sarkaria Commission, it took note of the criticism with respect to the role of the Governor and also set out the matters in which the Governor has to act in his discretion. The matters in which the Governor, according to the Commission, is expected to use his discretion are:-

(i) In Choosing the Chief Minister
(ii) In testing majority of the government in office
(iii) In the matter of dismissal of a Chief Minister
(iv) In dissolving the Legislative Assembly
(v) In recommending President's rule
(vi) In reserving Bills for President's Consideration.

16. The Commission then referred to the suggestions received by it with respect to the institution and role of Governor which *inter alia* established out that this office is of vital importance having multi-faceted role, that Governor is linchpin of constitutional apparatus, that Governor's office assures continuity of Government and that it should not be dispensed with. The Commission proceeded to discuss the manner of selection of Governors, the term of their office, their eligibility for further offices after the expiry of their term and the retirement benefits available to them. The Commission then discussed the areas in which the Governor has to act in his discretion and the need for such discretionary powers. Finally, the Commission set out its recommendations in paragraphs 4.16.01 to 4.16.24.

17. The Commission also discussed the issue of laying down guidelines for the Governors in Paras 4.15.01 to 4.15.06 under the heading "Guidelines for Governors". The Commission observed that laying down such guidelines is a difficult task and that they should be evolved in course of time embodying accepted conventions. It pointed out that the draft Constitution had provided that in choosing Chief Ministers and in his relations with them, the Governor would be guided by the Instructions set out in the Schedule (viz. the Fourth Schedule). However, this Schedule was subsequently deleted by the Constituent Assembly on the reasoning that inasmuch as the Governor has to act on the advice of his Ministers and further because the areas in which he has to act in his discretion are very meagre, the matter be left to be governed by conventions. The Commission pointed out that the Administrative Reforms Commission Study Team on Central State Relationships (1967) had emphasized the need for the formulation of a national policy to which the Union and States subscribed, which gave recognition to the role of the Governor and guided the responses of the Union, the States and the Opposition parties to any actions taken in discharge of it. The Commission opined that such a national policy should spell out the implications of the Governor's role in the form of conventions and practices, keeping in view the national objectives of defending the Constitution and the protection of democracy. The Commission referred to the fact that the Administrative Reforms Commission had also recommended in 1969 that the Inter State Council should formulate the guidelines governing the discretionary powers by the Governors and that after their acceptance by the Union Government such guidelines should be issued in the name of the President. The Government of India, however, did not accept this recommendation saying that the matter should best be left to the

conventions which may be established or which may be evolved in that behalf. In this state of affairs, the Sarkaria Commission concluded that it is not possible to lay down any guidelines governing the functions and duties of the Governors, partly because it is not possible to foresee all the situations which may develop calling for the exercise of discretion by the Governor. Now, coming to the recommendations of the Sarkaria Commission in regard to the institution of Governor, they are briefly the following:-

The person to be appointed as a Governor –

(i) should be an eminent person;
(ii) must be a person from outside the State;
(iii) must not have participated in active politics at least for some time before his appointment;
(iv) he should be a detached person and not too intimately connected with the local politics of the State;
(v) he should be appointed in consultation with the Chief Minister of the State, Vice-President of India and the Speaker of the Lok Sabha;
(vi) His tenure of office must be guaranteed and should not be disturbed except for extremely compelling reasons and if any action is to be taken against him he must be given a reasonable opportunity for showing cause against the grounds on which he is sought to be removed. In case of such termination or resignation by the Governor, the Government should lay before both the Houses of Parliament a statement explaining the circumstances leading to such removal or resignation, as the case may be;
(vii) After demitting his office, the person appointed as Governor should not be eligible for any other appointment or office of profit under the Union or a State Government except for a second term as Governor or election as Vice-President or President of India, as the case may be; and
(viii) At the end of his tenure, reasonable post-retirement benefits should be provided.

18. Sarkaria Commission further recommended that in choosing a Chief Minister, the Governor should be guided by the following principles, viz.:

(i) The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the government.
(ii) The Governor's task is to see that a government is formed and not to try to form a government which pursue policies which he approves.
(iii) If there is a single party having an absolute majority in the Assembly, the leader of the party should automatically be asked to become the Chief Minster.
(iv) If there is no such party, the Governor should select a Chief Minister from among the following parties or groups of parties by sounding them, in turn, in the order of preference indicated below:

  (i) an alliance of parties that was formed prior to the Elections.
  (ii) the largest single party staking a claim to form the government with the support of others, including 'independents'.
  (iii) a post-electoral coalition of parties, with all the partners in the coalition joining the government.
  (iv) a post-electoral alliance of parties, with some of the parties in the alliance forming a Government and the remaining parties, including 'independents' supporting the government from outside.
  (v) The Governor while going through the process described above should select a leader who in his (Governor's) judgment is most likely to command a majority in the Assembly.

19. It was also recommended that a Chief Minister, unless he is the leader of a party which has absolute majority in the Assembly, should seek a vote of confidence in the Assembly within 30 days of taking over. This practice should be religiously adhered to with the sanctity of a rule of law.

20. The other recommendations made by the Sarkaria Commission are that the issue of majority support should be allowed/directed to be tested only on the floor of the House and nowhere else and that in the matter of summoning and proroguing the Legislative Assembly, he must normally go by the advice of Council of Ministers but where a no confidence motion is moved and the Chief Minister advises proroguing the Assembly, he should not accept it straightaway and advise him to face the House.

21. The Report also recommended certain measures in the matter of dissolution of the Assembly. The Report recommended that while sending *ad hoc* or fortnightly reports to the President, the Governor should normally take his Chief Minister into confidence, unless there are overriding reasons to the contrary. The discretionary power of the Governor as provided in Article 163, it was recommended, should be left untouched. The recommendations towards the end of Chapter IV are set out Annexure I to this paper.

Sarkaria Commission on Articles 200 and 201 :

22. The Sarkaria Commission examined these articles in Chapter V of its Report. We may briefly note the contents of this chapter. In the first instance, the criticisms and suggestions by the State Governments and certain other persons with respect to the said Articles were noticed and thereafter the legislative history of Articles 200, 201 and 254. The Commission opined that amendment of Articles 200 and 201 is not called for. The Commission examined the scope of Governor's discretion under Article 200 (in the matter of granting or withholding assent and in the matter of reserving the Bills for the consideration of the President) and then pointed out the provisions of the Constitution whereunder reservation for President's consideration is obligatory upon the Governor viz., (i) second proviso to Article 200; (ii) Clause (2) of Article 288; (iii) Clause (4)(a)(ii) of Article 360 and (iv) Article 360 (4)(a)(ii). The Commission also pointed out the matters in which the Bills may be reserved for the President's consideration and assent for specific purposes. They are:

(i) To secure immunity from the operation of Articles 14 and 19, namely, Bills for acquisition of estates, etc and for giving effect to Directive Principles of State Policy (Proviso to Article 31C).

(ii) a Bill relating to the subjects enumerated in the Concurrent List, to ensure operation of its provisions despite their repugnancy to a Union law or existing law, by securing President's assent in terms of Article 254(2).

(iii) Legislation imposing restrictions on trade and commerce requiring Presidential sanction under the proviso to Article 304 (b) read with Article 255.

23. The Commission pointed out specifically that the above situations do not exhaust the situations in which the Bill may be reserved for the consideration of the President that there may be other matters as well in which the Governor may in his discretion think it proper to reserve a Bill for the consideration of the President.

24. Dealing with the rationale of system of reserving Bills, the following statement occurs in para 5.13.01 of the Report:-

> "In the light of the foregoing discussion, we are of the opinion that the scheme of the Constitution and the various Articles,

providing for reservation of State legislations for the consideration and assent of the President are intended to subserve the broad purpose of co-operative federalism in the realm of Union-State legislative relations. They are designed to make our system strong, viable, effective and responsive to the challenges of a changing social order. They are necessary means and tools for evolving cohesive, integrated policies on basic issues of national significance. Even from the federal stand point, the reservation of State Bills, if made sparingly in proper cases, e.g. where the Bill relates to a matter falling clearly within the Union List, serves a useful purpose. But, as aptly cautioned by D.D.Basu, "its use cannot be extended to such an extent as to install the Union Executive over the head of the State Legislature in matters legislative".

25. After considering the relevant matters, final recommendations of the Commission are set out in paragraphs 5.19.01 to 5.19.17 which are appended to this paper as Annexure II. Broadly speaking, the recommendations are to the following effect:

In the matter of granting or withholding his assent or in the matter of reserving a Bill for the consideration of the President, the Governor must act according to the advice tendered by his Council of Ministers except in rare and exceptional cases, for example, where the provisions of the Bill are patently unconstitutional or are beyond the legislative competence of the State Legislature or where they derogate from the scheme and framework of the Constitution so as to endanger the sovereignty, unity and integrity of the nation or where they clearly violate Fundamental Rights or other constitutional limitations. The practice of reserving Bills for the consideration of the President may be stopped except where it is required by one or the other provisions of the Constitution or to meet some other constitutional purpose. A reference of the Bill to the President must also contain the material facts, the points for consideration and the grounds upon which the reference has been made. A convention must be established whereunder the President should dispose of a Bill sent to him for his consideration within four months. The President should not withhold his assent except on the ground of patent unconstitutionality, etc. as pointed out hereinabove. In matters where his assent is required by the constitutional provisions, he shall keep in mind the constitutional provisions and the interests of the nation and the State for granting or refusing his assent. The Commission, however, recommended that the Constitution itself should not prescribe any time limit either for the Governor or the President and that the matter should be allowed to be governed by conventions and good sense of the relevant persons.

Recommendations proposed :

26. We respectfully agree with all the recommendations contained in Chapter IV (relating to Governors) in the Sarkaria Commission Report subject to the following:

(1) We agree that Article 155 of the Constitution requires to be amended. The Sarkaria Commission recommends that Article 155 should be amended to include consultation with the Chief Minister of the State for which the Governor is to be selected and appointed. But so far as consultation with the Vice-President of India and Speaker of the Lok Sabha is concerned, the Sarkaria Commission does not say that such consultation should be provided for expressly in amended Article 155. On the contrary, it says that such consultation should be "confidential and informal and should not be a matter of constitutional obligation". It is suggested that this consultation may be made by the Prime Minister while

selecting a Governor. We, however, think that the experience gained over the last 14 years since the Sarkaria Commission Report may call for a more specific amendment in Article 155. It would be appropriate to suggest a committee comprising the Prime Minister of India, the Home Minister of India, the Speaker of the Lok Sabha and the Chief Minister of the State concerned to select a Governor. (This committee may also include the Vice President of India if it is thought appropriate.) Instead of 'confidential and informal consultations', it is better that the process of selection is transparent and unambiguous.

(2) Another suggestion which we wish to make in this behalf is to provide that where a pre-election coalition enters the general-elections' fray as such, it should be treated as one political party/grouping and if one such coalition /grouping obtains a majority, the leader of such coalition/grouping (elected or indicated, as the case may be) shall be called to form the Ministry. Indeed, recommendations to this effect have already been made by the present Commission in another context. It has been recommended that such pre-poll alliance/coalition should be treated as one political party for the purpose of the Tenth Schedule to the Constitution of India (law relating to defections). So far as post-electoral coalition of parties is concerned, the recommendations made by the Sarkaria Commission are quite appropriate. We endorse them.

(3) We are of the opinion that the practice of sending "*ad hoc* or fortnightly reports to the President" is not a healthy one. Instead of recommending the stoppage of such practice, the Sarkaria Commission has recommended that while sending such reports, the Governor should take the Chief Minister into confidence unless there are overriding reasons to the contrary. But this suggestion has evidently fallen on deaf ears. Having regard to the manner in which the Governors are appointed and the constant control exercised at present by the Central Government over them, it perhaps appears more appropriate that this practice should altogether be stopped except where the Governor feels that consistent with his oath and in the interest of the people of the State, a report should be made to the President as contemplated by and within the meaning of Article 356 of the Constitution. Since the Governor has taken oath 'to preserve, protect and defend the Constitution and the law' and also 'to devote himself to the service and well-being of the people' of that State, it becomes incumbent upon him, wherever he is honestly satisfied that a situation has arisen where it is not possible to carry on the government of the State in accordance with the provisions of the Constitution (as adumbrated in the decisions of the Supreme Court [in particular in the latest decision in S.R. Bommai v. Union of India (AIR 1994 SC 1918), he should make a report to the President. Such a report should not be made either because he has been instructed by the Central Government to do so or for any other reason. It should also not be with an eye upon exercising real power in the sense that once the Ministry is dismissed, the governance of the State effectively passes into his hands, no doubt assisted by the advisers who are normally appointed by the Central Government.

Accordingly, we recommend that Articles 155 and 156 of the Constitution be amended to provide for the following: -

(a) the appointment of the Governor should be entrusted to a committee comprising the Prime Minister of India, Union Minister for Home Affairs, the Speaker of the Lok Sabha and the Chief Minister of the concerned State. (Of course, the composition of the committee is a matter of detail which can always be settled once the principal idea is accepted);

(b) the term of office, viz., five years, should be made a fixed tenure;

(c) the provision that the Governor holds office "during the pleasure of the President" be deleted;

(d) provision be made for the impeachment of the Governor by the State Legislature on the same lines as the impeachment of the President by the Parliament. (The procedure for impeachment of the President is set out in Article 61.) Of course, where there is no Upper House of Legislature in any State, appropriate changes may have to be made in the proposed Article since Article 61 is premised upon the existence of two Houses of Parliament; and

(e) In the matter of selection, the matters mentioned in paras 4.16.01 and 4.16.02 of the Sarkaria Commission Report (Annexure - I) should be kept in mind.

27. If the above changes are brought about, not only the oath taken by the Governor would not remain a mere formality, but the office of the Governor would be invested with requisite dignity and integrity. We may point out that this change would in no way reflect upon the duties and functions of the Governor even in the matter of making a report under Article 356. To reiterate, having taken an oath to "preserve, protect and defend the Constitution and the law", the Governor is bound, wherever he finds that "a situation has arisen in which government of the State cannot be carried out in accordance with the provisions of (this) Constitution", to send a report to the President to that effect. The ultimate loyalty of the Governor should be to the Constitution.

28. We are equally of the opinion that the changes suggested above would make the Governor an independent and fair arbiter whenever a dispute arises whether the Chief Minister/Council of Ministers has lost the confidence of the House – an area where many a Governor has not covered himself with glory. He would rather insist upon a floor test or allow the matter to be fought out on the floor of the Assembly. He would not resort to counting of heads in the Raj Bhavan. Even in the matter of selection of Chief Minister, where no single party had obtained a clear majority, he would fairly follow the conventions established in this behalf and not be led away by any instructions from the Centre. It has become essential, in the interest of our constitutional system, to retrieve and restore the glory and dignity of this office.

29. In so far as the recommendations contained in Chapter V of the Sarkaria Commission Report are concerned, we are of the opinion that in the light of the experience gained, we should go beyond the recommendations of the Sarkaria Commission. As we have mentioned hereinbefore, the Governor is not elected by the people of the State nor by their representatives. He is merely a nominee of the Central Government and even if Article 155 is amended as recommended in the preceding paragraph, even then he remains and continues to be a nominee. We have already pointed out hereinbefore that the legitimacy which attaches to the President (because the President is elected by the representatives of the People in the Centre and the States) does not attach to the Governor. Hence the legitimacy of the Governor to participate in the governance of the State is very much suspect except perhaps in matters mentioned in the Fifth and Sixth Schedules to the Constitution. This comment and approach apply equally to his powers under Article 200. We have hereinbefore pointed out the main features of Articles 200 and 201. We are of the opinion that Articles 200 and 201 be amended to provide for the following matters:

(a) prescribe a time-limit - say a period of four months - within which the Governor should take a decision whether to grant assent or to reserve it for the consideration of the President;

(b) delete the words "or that he withholds assent therefrom". In other words, the power to withhold assent, conferred upon the Governor, by Article 200 should be done away with;

(c) if the Bill is reserved for the consideration of the President, there should be a time-limit, say of three months, within which the President should take a decision whether to accord his assent or to direct the Governor to return it to the State Legislature or to seek the opinion of the Supreme

Court regarding the constitutionality of the Act under Article 143 (as it happened in the case of Kerala Education Bill in 1958);

(d) when the State Legislature reconsiders and passes the Bill (with or without amendments) after it is returned by the Governor pursuant to the direction of the President, the President should be bound to grant his assent;

(e) to provide that a "Money Bill" cannot be reserved by the Governor for the consideration of the President;

(f) or perhaps it may be more advisable to delete altogether the words in Article 200 empowering the Governor to reserve a Bill for the consideration of the President except in the case contemplated by the second proviso to Article 200 and in cases where the Constitution requires him to do so. Such a course would not only strengthen the federal principle but would also do away with the anomalous situation, whereunder a Bill passed by the State Legislature can be 'killed' by the Union Council of Ministers by advising the President to withhold his assent thereto or just by 'cold-storaging it.

These suggestions need to be examined carefully.

30. We must however hasten to add that in suggesting the aforementioned changes in Articles 200 and 201, we should not be understood as belittling the institution of Governor. We recognize that among Governors there have been many fair and independent persons – persons of great standing, reputation and learning. But, by and large, the picture has not been an inspiring one. This is because very often active politicians, politicians defeated at the polls and men lacking in integrity and fairness and individuals not possessing an understanding of the constitutional system – persons who were more interested in their personal career rather than public good – were chosen for this office. It is their conduct, by and large, which has induced us to make the aforementioned suggestions; it is not that we take any pleasure in running down the institution of Governors. As we have said earlier, there have been and there are certain very remarkable and excellent individuals holding this office and whose fairness, independence and commitment to public good has been, and is, beyond question.

31. The changes suggested by us in Articles 200 and 201 seem essential if the arbitrary action on the part of the Governors is to be checked. It is necessary to invest the office of the Governor with the requisite independence of action and to rid them of the bane of 'instructions' from the Central Government. It is necessary to make him the Governor of the State in its full and proper sense and to enable him to live up to his oath truthfully. His loyalty must be to the Constitution and to none else and his commitment to the well-being of the people of his State. He must command respect by his conduct. Only then any advice given by him will be respected by the Council of Ministers and the Legislature. Where he finds that a situation has arisen where the government of the State cannot be carried on in accordance with the provisions of the Constitution, he must report the same to the President as contemplated by Article 356. This is also a requirement of the oath taken by him viz., to "preserve, protect and defend the Constitution". The Central Government should also desist from undue interference with the State Governments and should indeed respect the powers of the States. The State's powers, few they are, should not be whittled down further. On the contrary, the effort should be to preserve the federal nature of our Constitution. The interest of our nation is in "cooperative federalism" and not in confrontational politics or politics of domination.

It is necessary to invest the office of the Governor with the requisite independence of action and to rid them of the bane of 'instructions' from the Central Government. It is necessary to make him the Governor of the State in its full and proper sense and to enable him to live up to his oath truthfully. His loyalty must be to the Constitution and to none else and his commitment to the well-being of the people of his State. He must command respect by his conduct.

ANNEXURE – I

EXTRACTS FROM CHAPTER IV OF THE REPORT OF THE COMMISSION ON CENTRE-STATE RELATIONS (SARKARIA COMMISSION REPORT PART – I)

RECOMMENDATONS

4.16.01 A person to be appointed as a Governor should satisfy the following criteria :

(i) He should be eminent in some walk of life.
(ii) He should be a person from outside the State.
(iii) He should be detached figure and not too intimately connected with the local politics of the State; and
(iv) He should be a person who has not taken too great a part in politics generally, and particularly in the recent past.

In selecting a Governor in accordance with the above criteria, persons belonging to the minority groups should continue to be given a chance as hitherto.

(Para 4.6.09)

4.16.02 It is desirable that a politician from the ruling party at the Union is not appointed as Governor of a State which is being run by some other party or a combination of other parties.

(Para 4.6.19)

4.16.03 In order to ensure effective consultation with the State Chief Minister in the selection of a person to be appointed as Governor, the procedure of consultation should be prescribed in the Constitution itself by suitably amending Article 155.

(Para 4.6.25)

4.16.04 The Vice-President of India and the Speaker of the Lok Sabha may be consulted by the Prime Minister in selecting a Governor. The consultation should be confidential and informal and should not be a matter of constitutional obligation.

(Para 4.6.33)

4.16.05 The Governor's tenure of office of five years in a State should not be disturbed except very rarely and that too, for some extremely compelling reason.

(Para 4.7.08)

4.16.06 Save where the President is satisfied that in the interest of the security of the State, it is not expedient to do so, the Governor whose tenure is proposed to be terminated before the expiry of the normal term of five years, should be informally apprised of the grounds of the proposed action and afforded a reasonable opportunity for showing cause against it. It is desirable that the President (in effect, the Union Council of Ministers) should get the explanation, if any, submitted by the Governor against his proposed removal from office, examined by an Advisory Group consisting of the Vice-President of India and the Speaker of the Lok Sabha or a retired Chief Justice of India. After receiving the recommendation of this Group, the President may pass such orders in the case as he may deem fit.

(Para 4.8.08)

4.16.07 When, before expiry of the normal terms of five years, a Governor resigns or is appointed Governor in another State, or has his tenure terminated, the Union Government may lay a statement before both Houses of Parliament explaining the

circumstances leading to the ending of the tenure. Where a Governor has been given an opportunity to show cause against the premature termination of his tenure, the Statement may also include the explanation given by him, in reply.

(Para 4.8.09)

4.16.08 As a matter of convention, the Governor should not, on demitting his office, be eligible for any other appointment or office of profit under the Union or a State Government except for a second term as Governor or election as Vice-President or President of India. Such a convention should also require that, after quitting or laying down his office, the Governor shall not return to active partisan politics.

(Para 4.9.04)

4.16.09 A Governor should, at the end of his tenure, irrespective of its duration, be provided reasonable post-retirement benefits for himself and for his surviving spouse.

(Para 4.10.02)

4.16.10 (a) In choosing a Chief Minister, the Governor should be guided by the following principles, viz. :

(i) The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the government.

(ii) The Governor's task is to see that a government is formed and not to try to form a government which will pursue policies which he approves.

(b) If there is a single party having an absolute majority in the Assembly, the leader of the party should automatically be asked to become the Chief Minister.

If there is no such party, the Governor should select a Chief Minister from among the following parties or groups of parties by sounding them, in turn, in the order of preference indicated below:

(i) An alliance of parties that was formed prior to the Elections.

(ii) The largest single party staking a claim to form the government with the support of others, including 'independents'.

(iii) A post-electoral coalition of parties, with all the partners in the coalition joining government.

(iv) A post-electoral alliance of parties, with some of the parties in the alliance forming a Government and the remaining parties, including 'independents', supporting the government from outside.

The Governor while going through the process described above should select a leader who in his (Governor's) judgement is most likely to command a majority in the Assembly.

(c) A Chief Minister, unless he is the leader of a party which has absolute majority in the Assembly, should seek a vote of confidence in the Assembly within 30 days of taking over. This practice should be religiously adhered to with the sanctity of a rule of law.

(Paras 4.11.03 to 4.11.06)

4.16.11 The Governor should not risk determining the issue of majority support, on his own, outside the Assembly. The prudent course for him would be to cause the rival claims to be tested on the floor of the House.

(Para 4.11.07)

4.16.12 The Governor cannot dismiss his Council of Ministers so long as they continue to command a majority in the Legislative Assembly. Conversely, he is bound to dismiss them if they lose the majority but do not resign.

(Para 4.11.09)

4.16.13 (a) When the Legislative Assembly is in session, the question of majority should be tested on the floor of the House.

(b) If during the period when the Assembly remains prorogued, the Governor receives reliable evidence that the Council of Ministers has lost 'majority', he should not, as a matter of constitutional propriety, dismiss the Council unless the Assembly has expressed on the floor of the House its want of confidence in it. He should advise the Chief Minister to summon the Assembly as early as possible so that the 'majority' may be tested.

(c) Generally, it will be reasonable to allow the Chief Minister a period of 30 days for the summoning of the Assembly unless there is very urgent business to be transacted like passing the Budget, in which case, a shorter period may be allowed. In special circumstances, the period may go up to 60 days.

(Paras 4.11.10, 4.11.11 and 4.11.13)

4.16.14 So long as the Council of Ministers enjoys the confidence of the Legislative Assembly, the advice of the Council of Ministers in regard to summoning and proroguing a House of the Legislature and in dissolving the Legislative Assembly, if such advice is not patently unconstitutional, should be deemed as binding on the Governor.

(Para 4.11.17)

4.16.15 (a) The Governor may in the exigencies of certain situations, exercise his discretion to summon the Assembly only in order to ensure that the system of responsible government in the State works in accordance with the norms envisaged in the Constitution.

(b) When the Chief Minister designedly fails to advise the summoning of the Assembly within six months of its last sitting, or advises its summoning for a date falling beyond this period, the Governor can summon the Assembly within the period of six months specified in Article 174(1)

(c) When the Chief Minister (who is not the leader of the party which has absolute majority in the Assembly), is not prepared to summon the Legislative Assembly within 30 days of the taking over [*vide* recommendation 4.16.10(c) above] or within 30 days or 60 days as the case may be, when the Governor finds that the Chief Minister no longer enjoys the confidence of the Assembly [*vide* recommendation 4.16.13 (c) above], the Governor would be within his constitutional right to summon the Assembly for holding the "Floor Test".

(Paras 4.11.19 and 4.11.20)

4.16.16 If a notice of a no-confidence motion against a Ministry is pending in a House of the Legislature and the motion represents a legitimate challenge from the Opposition, but the Chief Minister advises that the House should be prorogued, the Governor should not straightaway accept the advice. He should advise the Chief Minister to postpone the prorogation and face the motion.

(Para 4.11.22)

4.16.17 (a) When the advice for dissolving the Assembly is made by a Ministry which has lost or is likely to have lost majority support, the Governor should adopt the course of action as recommended in paras 4.16.12, 4.16.13 and 4.16.15 (c) above.

(b) If ultimately a viable Ministry fails to emerge, the Governor should first consider dissolving the Assembly and arranging for fresh elections after consulting the leaders of the political parties concerned and the Chief Election Commissioner.

(c) If the Assembly is to be dissolved and an election can be held early, the Governor should normally ask the outgoing Ministry to continue as a caretaker Government. However, this step would not be proper if the outgoing Ministry has been responsible for serious mal-administration or corruption.

(d) A convention should be adopted that a caretaker Government should not take any major policy decisions.

(e) If the outgoing Ministry cannot be installed as a caretaker Government for the reason indicated in (c) above or if the outgoing Ministry is not prepared to function as a caretaker Government, the Governor, without dissolving the Assembly, should recommend President's rule in the State.

(f) If fresh election cannot be held immediately on account of a national calamity or State-wide disturbances, it should not be proper for the Governor to install a caretaker Government for the long period that must elapse before the next election is held. He should recommend proclamation of President's rule under Article 356 without dissolving the Assembly.

(g) If it is too early to hold fresh election, the Assembly not having run even half its normal duration of five years, the Governor should recommend President's rule under Article 356 without dissolving the Assembly.

(Paras 4.11.25 to 4.1130)

4.16.18 The Governor has no discretionary power in the matter of nominations to the Legislative Council or to the Legislative Assembly. If at the time of making a nomination, a Ministry has either not been formed or has resigned or lost majority in the Assembly, the Governor should await the formation of a new Ministry.

(Para 4.11.31)

4.16.19 Where a State University Act provides that the Governor, by virtue of this office, shall be the Chancellor of the University and confers powers and duties on him not as Governor of the State but as Chancellor, there is no obligation on the

Governor, in his capacity as Chancellor, always to act on Ministerial advice under Article 163(1). However, there is an obvious advantage in the Governor consulting the Chief Minister or other Ministers concerned, but he would have to form his own individual judgement. In his capacity as Chancellor of University, the Governor may be required by the University's statute to consult a Minister mentioned in the statute on specified matters. In such cases, the Governor may be well advised to consult the Minister on other important matters, also. In either case, there is no legal obligation for him to necessarily act on any advice received by him.

(Paras 4.11.37 to 4.11.39)

4.16.20 The Governor, while sending *ad hoc* or fortnightly reports to the President, should normally take his Chief Minister into confidence, unless there are overriding reasons to the contrary.

(Para 4.12.06)

4.16.21 The discretionary power of the Governor as provided in Article 163 should be left untouched.

(Para 4.13.03)

4.16.22 When a Governor finds that it will be constitutionally improper for him to accept the advice of his Council of Ministers, he should make every effort to persuade his Ministers to adopt the correct course. He should exercise his discretionary power only in the last resort.

(Para 4.13.04)

4.16.23 Certain specific functions have been conferred (or are conferrable) on the Governors of Maharashtra and Gujarat [Article 371(2), Nagaland [First Proviso to Article 371A(1)(b), Article 371A(1)(d) and article 371A(2)(b) and (f)], Manipur [Article 371C(1)], Sikkim [Article 371F(g)] and Arunachal Pradesh [First Proviso to Article 371H(a)] to be exercised by them in their discretion. In the discharge of these functions, the Governor concerned is not bound to seek or accept the advice of his Council of Ministers. However, before taking a final decision in the exercise of his discretion, it is advisable that the Governor should, if feasible, consult his Ministers even in such matters, which relate essentially to the administration of a State.

(Para 4.14.05)

4.16.24 It would be neither feasible nor desirable to formulate a comprehensive set of guidelines for the exercise of the discretionary powers of the Governor. A Governor should be free to deal with a situation according to his best judgement, keeping in view the Constitution and the law and the conventions of the Parliamentary system outlined in this Chapter as well as in Chapter V "Reservation of Bills by Governors for President's consideration" and Chapter VI "Emergency Provisions".

(Para 4.15.06)

ANNEXURE II

EXTRACTS FROM CHAPTER V OF THE REPORT OF THE COMMISSION ON CENTRE STATE RELATIONS (SARKARIA COMMISSION REPORT PART - I)

RECOMMENDATIONS

5.19.01 Normally, in the discharge of the functions under Article 200, the Governor must abide by the advice of his Council of Ministers. Article 200 does not invest in the Governor, expressly or by necessary implication, with a general discretion in the performance of his functions thereunder, including reservation of a Bill for the consideration of the President. However, *in rare and exceptional* cases, he may act in the exercise of his discretion, where he is of opinion that the provisions of the Bill are *patently* unconstitutional, such as, where the subject-matter of the Bill is *ex-facie* beyond the legislative competence of the State Legislature, or where its provisions *manifestly* derogate from the scheme and framework of the Constitution so as to endanger the sovereignty, unity and integrity of the nation, or *clearly* violate Fundamental Rights or transgress other constitutional limitations and provisions.

(Paras 5.6.06 & 5.6.13(i))

5.19.02 In dealing with a State Bill presented to him under Article 200, the Governor should not act contrary to the advice of his Council of Ministers merely because, personally, he does not like the policy embodied in the Bill.

(Paras 5.6.09 & 5.6.13(ii))

5.19.03 Needless reservation of Bills for President's consideration should be avoided. Bills should be reserved only if required for specific purposes, such as:-

(a) to secure immunity from the operation of Articles 14 and 19 *vide* the First Proviso to Article 31A(1) and the Proviso to Article 31C;

(b) to save a Bill on a Concurrent List subject from being invalidated on the ground of repugnancy to the provisions of a law made by Parliament or an existing law *vide* Article 254(2);

(c) to ensure validity and effect for a State legislation imposing tax on water or electricity stored, generated, consumed, distributed or sold by an authority established under a Union law, *vide* Article 288(2);

(d) a Bill imposing restrictions on trade or commerce, in respect of which previous sanction of the President had not been obtained, *vide* Article 304(b) read with Article 255.

(Para 5.14.05)

5.19.04 Normally, when a Bill passed by the State Legislature is presented to the Governor with the advice of the Council of Ministers that it be reserved for the consideration of the President, then the Governor should do so forthwith. If, in exceptional circumstances, as indicated in para 5.19.01 above, the Governor thinks it necessary to act and adopt, in the exercise of his discretion, any other

course open to him under Article 200, he should do so within a period not exceeding one month from the date on which the Bill is presented to him.

(Para 5.16.04)

5.19.05 (a) Every reference of a State Bill from the State should be self-contained, setting out precisely the material facts, points for consideration and the ground on which the reference has been made. The relevant provisions of the Constitution should also be indicated.

(b) If the reference is made under Article 254(2), the provisions of the Bill which are considered repugnant to or inconsistent with the specific provisions of a Union law or an existing law, should be clearly identified.

(Para 5.15.01(i)&(ii))

5.19.06 State Governments often consult the Government of India at the drafting stage of a Bill. Generally, high-level officers of the State Government hold discussions on the provisions of the draft Bill with their counterparts at the Union. This is a healthy practice and should continue.

(Para 5.15.02)

5.19.07 (a) As a matter of salutary convention, a Bill reserved for consideration of the President should be disposed of by the President within a period of 4 months from the date on which it is received by the Union Government.

(b) If, however, it is considered necessary to seek clarification from the State Government or to return the Bill for consideration by the State Legislature under the Proviso to Article 201, this should be done within two months of the date on which the original reference was received by the Union Government.

(c) Any communication for seeking clarification should be self-contained. Seeking clarification piece-meal should be avoided.

(d) On receipt of the clarification or the reconsidered Bill from the State under the Proviso to Article 201, the matter should be disposed of by the President within 4 months of the date of receipt of the clarification or the back reference on the reconsidered Bill, as the case may be, from the State Government.

(e) It is not necessary to incorporate these or any other time-limits in the Constitution.

(Para 5.16.03 & 5.7.09)

5.19.08 (a) As a matter of convention, the President should not withhold assent only on the consideration of policy differences on matters relating, in pith and substance, to the State List, except on grounds of patent unconstitutionality such as those indicated in the recommendation in paragraph 5.19.01 above.

(b) President's assent should not ordinarily be withheld on the ground that the Union is contemplating a comprehensive law in future on the same subject.

(Para 5.10.06)

5.19.09 If a State Bill reserved for the consideration of the President under the First Proviso to Article 31A(1) or the Proviso to Article 31C clearly tends to subvert the constitutional system of the State, by reason of its unduly excessive and indiscriminate abridging effect on Fundamental Rights or otherwise, then, consistently with its duty under Article 355 to ensure that the government of every State is carried on in accordance with the provisions of the Constitution, the Union Government may advise the President to withhold assent to the Bill.

(Para 5.8.06 & 5.8.07)

5.19.10 In cases where the Union Government considers that some amendments to a State Bill are essential before it becomes law, the President may return the Bill through the Governor in terms of the Proviso to Article 201 for reconsideration, with an appropriate message, indicating the suggested amendments. The practice of obtaining the so-called "conditional assent" should not be followed when a constitutional remedy is available.

(Para 5.11.02)

5.19.11 To the extent feasible, the reasons for withholding assent should be communicated to the State Government.

(Para 5.17.01)

5.19.12 State Governments should eschew the wrong practice of mechanical and repeated re-promulgation of an Ordinance without caring to get it replaced by an Act of the Legislature.

(Para 5.18.12)

5.19.13 In due regard to the requirement of clause (2) of Article 213, whenever the provisions of an Ordinance have to be continued beyond the period for which it can remain in force, the State Government should ensure, by scheduling suitably the legislative business of the State Legislature, enactment of a law containing those provisions in the next ensuing session. The occasions should be extremely rare when a State Government finds that it is compelled to re-promulgate an Ordinance because the State Legislature has too much legislative business in the current session or the time at the disposal of the Legislature in that session is short. In any case, the question of re-promulgating an Ordinance for a second time should never arise.

(Para 5.18.14)

5.19.14 A decision to promulgate or re-promulgate an Ordinance should be taken only on the basis of stated facts necessitating immediate action, and that too, by the State Council of Ministers, collectively.

(Para 5.18.15)

5.19.15 Suitable conventions should be evolved in the matter of dealing with an Ordinance which is to be re-promulgated by the Governor and which is received by the President for instructions under the Proviso to Article 213(1).

(Para 5.18.16)

5.19.16 The President may not withhold instructions in respect of the first re-promulgation of an Ordinance, the provisions of which are otherwise in order, but could not be got enacted in an Act because the Legislature did not have time to consider its provisions in that session. While conveying the instructions, the Union Government should make it clear to the State Government that another re-promulgation of the same Ordinance may not be approved by the President, and if it is considered necessary to continue the provisions of the Ordinance for a further period, the State Government should take steps well in time to have the necessary Bill containing those provisions passed by the State Legislature, and if necessary, to obtain the assent of the President to the Bill so passed.

(Para 5.18.17)

5.19.17 The recommendations in para 5.19.01 to 5.19.11 will apply *mutatis mutandis* to the seeking of instructions from the President for the promulgation of a State Ordinance. However, keeping in view the urgent nature of an Ordinance, a proposed Ordinance referred by the Governor to the President for instructions under the Proviso to Article 213(1), should be disposed of by the President urgently and, in any case, within a fortnight.

(Para 5.18.23)

QUESTIONNAIRE
ON
INSTITUTION OF GOVERNOR
UNDER THE CONSTITUTION

1. (a) Is the present method of appointing Governors working well?

YES ☐ NO ☐

(b) Does Article 155 of the Constitution need to be amended, providing for a collegium for selection of governors comprising of the Vice President, Prime Minister, Union Home Minister, Speaker of the Lok Sabha and Chief Minister of the concerned State?

YES ☐ NO ☐

(c) Is there any other composition which you would suggest?

YES ☐ NO ☐ Suggestions

2. Should the term of office of the Governor should be fixed (five years) and not subject to the pleasure of the President?

YES ☐ NO ☐ Suggestions

3. Should there be a procedure for impeachment of the Governor, on the same lines as that of the President, with suitable alterations to take care of the absence of the Upper House in most States?

YES ☐ NO ☐

4. Do you endorse the suggested criterion for appointment as Governor, i.e. he should be an eminent person, from outside the State, detached from active politics for some time prior to his appointment, particularly local politics?

YES ☐ NO ☐ Suggestions

5. Should the practice of sending *ad hoc* or fortnightly reports from the Governor be stopped, except when the Governor in conformity with his oath, feels obliged to do so under Article 356 i.e. when he is honestly satisfied that a situation has arisen where it is not possible to carry on the government of a State in accordance with the provisions of the Constitution?

YES ☐ NO ☐

6. Do you agree with the suggestion that a time limit of four months for the Governor to decide upon a Bill passed by the State Legislature and presented to him for his assent has to be incorporated in the Constitution?

YES ☐ NO ☐

7. In the event the Governor refers a Bill to the President, should an outer limit of three months be prescribed for the President to do one of the three things that is open to him viz., to assent to the Bill, or direct the Governor to return the same to the Legislature or seek the opinion of the Supreme Court under Article 143 of the Constitution, on the constitutionality of the proposed legislation?

YES ☐ NO ☐ Suggestions

8. Should the 'Money Bills' be specifically exempt from the afore-mentioned reference procedure?

YES ☐ NO ☐

9. Should the entire provision providing for reservation of a Bill by the Governor for the consideration of the President be expressly excluded, the same being permissible only in instances when the Constitution specifically mandates the same?

YES ☐ NO ☐

10. Do you agree with the suggestion that the provision of the Constitution enabling the Governor to withhold assent be deleted?

YES ☐ NO ☐

11. Do you like to make any other suggestions relating to the institution of Governor under the Constitution?

Not more than 200 words



NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

ARTICLE 356 OF THE CONSTITUTION

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating a public debate and eliciting public response.

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CONTENTS

		Pages
I.	Emergency Provisions of the Constitution	933
II.	Historical Background of article 356	935
III.	The Federal Spirit and article 356: A fine Balance	937
IV.	Judicial Interpretation of article 356	938
V.	Dissolution of Legislative Assembly of a State under article 356	940
VI.	Views of the Sarkaria Commission	943
VII.	Article 356 in action	945
VIII.	Whether the power under article 356 can be limited to non-compliance with the directions given under article 365	947
IX.	Need for amending article 356	948
X.	Suggestions	948
	Questionnaire	952

I. Emergency Provisions of the Constitution

Part XVIII of the Constitution speaks of emergency provisions. The emergency provisions therein can be classified into three categories: (a) Articles 352, 353, 354, 358 and 359 which relate to emergency proper - if we can use that expression, (b) Articles 355, 356 and 357 which deal with imposition of President's rule in States in a certain situation and (c) Article 360 which speaks of financial emergency.

1.2 Article 352(1) says that "If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion, he may, by proclamation, make a declaration to that effect in respect of the whole of India or of such part of the territory thereof as may be specified in the proclamation". The words "in respect of the whole of India ... in the proclamation" were added by the Constitution (42nd Amendment) Act, 1976 while the words "armed rebellion" were substituted by the Constitution (44th Amendment) Act, 1978 for the words "internal disturbance". In this paper we do not propose to deal with the emergency of the kind contemplated by article 352. Indeed no such emergency has been proclaimed after 1977. In any event, we think that the article as amended by the 44th Amendment Act eliminates any room for abuse and needs no further change. Similarly, we need not deal with article 360, financial emergency, inasmuch as no defect or inadequacy therein has been brought to our notice. The said article has not also been invoked till date. We would thus be dealing only with the power of the President to impose the President's rule in the States as provided in article 356.

1.3 Article 355 imposes an obligation upon the Union "to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution". The Constitution does not expressly provide as to how the duty of the Union to protect a State against external aggression and internal disturbance is to be carried out; obviously, it is left to the judgment of the Union how to meet any such situation, as and when it arises, but it does provide, in article 356, the manner in which it has to perform its duty to ensure that the government of every State is carried on in accordance with the provisions of the Constitution.

1.4 Article 356 carries the marginal heading "Provisions in case of failure of constitutional machinery in States". But neither clause (1) nor for that matter any other clause in the article employs the expression "failure of constitutional machinery". On the other hand, the words used are similar to those occurring in article 355, namely, "a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution". If the President is satisfied that such a situation has arisen, whether on the basis of a report received from the Governor of the State or otherwise, he may, by proclamation, take any or all of the three steps mentioned in sub-clauses (a), (b) and (c). It would be appropriate to read the entire clause (1) of article 356 at this stage:

> "(1) If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation –
>
> (a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State;
>
> (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State:

Provided that nothing in this clause shall authorize the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts."

Clause (2) says that such a Proclamation may be revoked or varied by a subsequent Proclamation. Clause (3) provides a check upon the power contained in clause (1). It says that "every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament" (The proviso to clause (3) provides certain details which it is not necessary to notice for the purpose of this paper). Clause (4) provides that "a Proclamation approved by both the Houses of Parliament shall, unless revoked, cease to operate on the expiration of a period of six months from the date of issue of the Proclamation (The 44th Amendment Act reduced the period in this clause from one year to six months). The proviso to clause (4), however, empowers such Proclamation to be extended, beyond six months subject to the approval of Parliament for a further period of six months at a time subject to an outer limit of three years. The second proviso to clause (4) provides for a specific situation which it is not necessary to refer to for the purpose of this paper. The third proviso to clause (4) is applicable to the State of Punjab and provides for a particular situation and is of no general relevance. Clause (5) has been substituted altogether by the 44th Amendment Act. The said clause was in fact inserted by the Constitution (38th) Amendment Act, 1975 with retrospective effect. The clause inserted by 38th Amendment Act barred judicial review of the Proclamation issued under clause (1). Inasmuch as, it has been substituted by the present clause (5), it is not necessary to deal with the language or effect of clause (5) as originally inserted. The present clause (5) provides certain details concerning the approval contemplated by clause (3) and is in fact a continuation of clause (4).

1.5 Article 357 contains certain consequential provisions relating to exercise of legislative powers under Proclamation issued under article 356. It is not necessary to notice them in any detail. It is, however, necessary to refer to a few more articles relevant in this behalf.

1.6 Article 365 which occurs in Part XIX - Miscellaneous - provides that "where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution". In the light of the language employed in article 365, namely, non-compliance with directions given in the exercise of executive power of the Union under any of the provisions of this Constitution", it is necessary to refer to articles 256 and 257 which provide for giving of such directions. The said articles occur in Chapter II - 'Administrative Relations - General' in Part XI which deals with relations between the Union and the States. Article 256 which carries the heading "Obligation of States and the Union" provides that "the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose". Article 257 which carries the heading "Control of the Union over States in certain cases" provides in clause (1) that "the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that

purpose". Clause (2) of article 257 provides that "the executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance". The proviso to clause (2) says that nothing in the said clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways or to give appropriate directions to the States for their maintenance. Clause (3) says that the executive power of the Union to give directions extends to the measures to be taken for the protection of the Railways within the State. Clause (4) provides for reimbursement of the cost incurred by the State in complying with or carrying out the directions given under clauses (2) and (3). It is not really necessary to refer to articles 258 and 258A. article 258 empowers the President to entrust certain executive functions of the Union to the States with their consent. Similarly, article 258A provides for the States entrusting their executive functions to the Union with its consent.

1.7 It is evident that article 355 insofar as it speaks of the obligation of the Union to protect the States from external aggression and internal disturbance appears to be influenced by article IV Section 4 of the United States Constitution which provides: "the United States shall guarantee to every State in this Union a republican form of government and shall protect each of them against invasion, and on application of the Legislature, or of the executive (when the Legislature cannot be convened) against domestic violence". That part of article 355 which speaks of the obligation of the Union to ensure that the government of the States is carried on in accordance with the provisions of the Constitution appears to have been inspired both by article IV(4) of the U.S. Constitution and by section 61 of the Australian Constitution Act, which empowers the federal government to "maintain" the Constitution (see the Constituent Assembly debates - Vol. 9, Page 150 onwards), though the language was altered to make it more clear and specific, having regard to the Indian context. However, as stated hereinabove, our Constitution does not set out the manner in which the Union shall perform its obligation to protect the States against external aggression and internal disturbance. The American Constitution too does not prescribe the manner in which the federal government shall perform its three obligations contained in article IV(4).

II: Historical Background of article 356

2.1 Article 356, it is obvious, is inspired by sections 93 of the Government of India Act, 1935. Section 93 of the 1935 Act provided that if a Governor of a province was satisfied that a situation has arisen in which the government of the province cannot be carried on in accordance with the provisions of the said Act, he could, by proclamation, assume to himself all or any of the powers vested in or exercisable by a provincial body or authority including the Ministry and the Legislature and to discharge those functions in his discretion. The only exception was that under this section the Governor could not encroach upon the powers of the High Court. (Section 45 conferred a similar power upon the Governor-General with respect to the Central Government/Central Legislature). It is well-known that the said two provisions were incorporated in the 1935 Act to meet certain purposes and exigencies. The 1935 Act contemplated, for the first time, delegation of certain powers of governance to the Ministries formed by Indian political parties and constitution of Legislatures elected, no doubt, on a restricted franchise. The colonial powers were not inclined to trust these Ministries even with limited powers probably in view of the fact that not only the political parties in India were ambiguous regarding entering the Legislatures and Ministries created under the said Act but some of them were also proclaiming that even if they entered the Ministries they would try to break the governments from within. The said sections therefore provided that if at any time the Governor or Governor-General felt that the Ministry in the province or at the Centre was not acting in accordance with the provisions of said Act, he could resume their powers and exercise the same in his discretion. (The provisions of the said Act relating to Central Government were not brought into operation partly because of the onset of World War II.)

2.2 Even though article 356 was patterned upon the controversial section 93 of the 1935 Act - with this difference that instead of the Governor, the President is vested with the said power - it was yet thought necessary to have it in view of the problems that the Indian republic was expected to face soon after independence. The socio-political experience of the framers of the Constitution made them acutely aware that security of the Nation and the stability of its polity could not be taken for granted. The road to democracy was not expected to be smooth. The vast difference in social, economic and political life, the diversity in languages, race and region were expected to present the nascent republic with many a difficult situation. (It is interesting to note that with respect to Union territories, a provision similar to article 356 is found enacted in section 51 of Government of Union Territories Act enacted in 1963 and that it was indeed invoked on as many as on 13 occasions). The Constituent Assembly debates disclose these sentiments. They also disclose that several members strongly opposed the incorporation of article 356 (draft article 278) precisely for the reason that it purported to reincarnate an imperial legacy. However, these objections were overridden by Dr. Ambedkar with the argument that no provision of any Constitution is immune from abuse as such and that mere possibility of abuse cannot be a ground for not incorporating it. He stated:

Even though article 356 was patterned upon the controversial section 93 of the 1935 Act - with this difference that instead of the Governor, the President is vested with the said power - it was yet thought necessary to have it in view of the problems that the Indian republic was expected to face soon after independence. The socio-political experience of the framers of the Constitution made them acutely aware that security of the Nation and the stability of its polity could not be taken for granted. The road to democracy was not expected to be smooth. The vast difference in social, economic and political life, the diversity in languages, race and region were expected to present the nascent republic with many a difficult situation.

> "In fact I share the sentiments expressed by my Hon'ble friend Mr. Gupte yesterday that the proper thing we ought to expect is that such articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces."
>
> He added: "I hope the first thing he will do would be to issue a clear warning to a province that has erred, that things were not happening in the way in which they were intended to happen in the Constitution."

2.3 It should also be remembered that adult franchise and a full-fledged democratic rule was being introduced for the first time in India, parts of which comprised princely States where elections or democratic rule were unknown. Even in what was known as British-India, the democratic experiment was a limited and a brief one, the founding fathers must have envisaged that the transition from a feudal rule to a democratic rule would not be easy and that several situations may arise in States which may call for intervention of the Central Government - a helping and guiding hand. Even so, the enormity of the power conferred by this article has to be appreciated and envisioned. This understanding is and must be central to any debate about article 356 and the various issues connected with it. The power to dismiss the duly elected government of a State, even while it is enjoying the confidence of the Legislative Assembly, and the very dissolution of a duly elected Legislative Assembly (which not only includes the party of the government but the Opposition and independents as well who may themselves be responsible for bringing to light the misgovernance of the government) by the Executive of the Union, is a concept which no believer in democracy can easily accept.

2.4 May be that the British Parliament thought of, while enacting the 1935 Act, providing a 'controlled democracy' or 'restricted democracy' in India but surely our Founding Fathers could not have envisaged or intended to import any such concept into our Constitution, as would be evident from the speeches of Dr.Ambedkar and Shri Alladi Krishnaswami Ayyar while the draft articles 277-A and 278 (corresponding to articles 355 and 356) were being debated in the Constituent Assembly. Article 356 was supposed to be an exceptional measure to be invoked to meet a grave and dangerous situation. It should also be remembered that clause (3) does not require a special majority; a simple majority is enough. Ordinarily, the Council of Ministers does command a majority in the Lok Sabha. The difficulty only arises when the Council of Ministers cannot command a majority in the Rajya Sabha. If, however, they command a majority in Rajya Sabha also, then the cost is clear. The Central Government can, if it is so inclined, simply play with the lives of the State Governments and the State Legislative Assemblies, as indeed it is said, by many, to have happened on several occasions in the past. Some people may argue that under our Constitution, the Centre is superior to States and that the central dominance over States is implicit in the several provisions including 256, 257, 355, 365 besides 356 itself. (For a discussion of this aspect, see paras 209 to 211 at pages 2052 to 2055 and paras 65 and 66 at pages 1976 to 1979 of S.R. Bommai versus Union of India, (AIR 1994 S.C. 1918). At the same time, it cannot be forgotten as affirmed by Dr. Ambedkar (his speech in the Constituent Assembly, quoted in para 53, page 1961 of S.R. Bommai ibid) that the States are supreme - in the words of Dr.Ambedkar, "sovereign" - in the field allotted to them and that notwithstanding a bias in favour of the Centre in our Constitution, ours is a federation - that too a democratic federation.

May be that the British Parliament thought of, while enacting the 1935 Act, providing a 'controlled democracy' or 'restricted democracy' in India but surely our Founding Fathers could not have envisaged or intended to import any such concept into our Constitution, as would be evident from the speeches of Dr.Ambedkar and Shri Alladi Krishnaswami Ayyar while the draft articles 277-A and 278 (corresponding to articles 355 and 356) were being debated in the Constituent Assembly.

III. The Federal Spirit and article 356: A fine Balance

3.1 It needs to be remembered that only the spirit of "co-operative federalism" can preserve the balance between the Union and the States and promote the good of the people and not an attitude of dominance or superiority. Under our constitutional system, no single entity can claim superiority. Sovereignty doesn't lie in any one institution or in any one wing of the government. The power of governance is distributed in several organs and institutions - *a sine qua non* for good governance. Even assuming that Centre has been given certain dominance over the States, that dominance should be used strictly for the purpose intended, nor the oblique purposes. An unusual and extraordinary power like the one contained in article 356 cannot be employed for furthering the prospects of a political party or to destabilize a duly elected government and a duly constituted Legislative Assembly. The consequences of such improper use may not be evident immediately. But those do not go without any effect and their consequences become evident in the long run and may be irreversible.

It needs to be remembered that only the spirit of "cooperative federalism" can preserve the balance between the Union and the States and promote the good of the people and not an attitude of dominance or superiority. Under our constitutional system, no single entity can claim superiority. Sovereignty doesn't lie in any one institution or in any one wing of the government. The power of governance is distributed in several organs and institutions - a sine qua non for good governance.

3.2 Unfortunately, however, it so happened that over the years, the Centre has not always kept in mind the concept of co-operative federalism or the spirit and object with which the article

was enacted while dealing with the States and has indeed grossly abused the power under article 356 on many occasions. Between 1950 and 1994, the said power was exercised on more than 90 occasions. The facts and figures contained in Chapter Six of the Sarkaria Commission Report read with Annexure VI (1 to 4) appended to the said chapter and the decision of the Supreme Court in S.R. Bommai v. UOI (reported in AIR 1994 SC 1918) amply bear out the truth of our assertion. The said Annexure shows that on several occasions, the State Governments were dismissed even when they enjoyed the majority in the Assembly; on some occasions, they were dismissed without giving them an opportunity to prove their strength on the floor of the House. The very instance of S.R. Bommai, who was the Chief Minister of Karnataka, is proof positive of such abuse. In spite of his asking the Governor to allow him to prove his majority, within a very short period, on the floor of the Assembly, the Governor did not give him that opportunity and recommended the dismissal of his ministry. The said action of the governor naturally invited strong condemnation at the hands of the Supreme Court.

Between 1950 and 1994, the said power was exercised on more than 90 occasions.

IV. Judicial Interpretation of article 356

4.1 Article 356, it may be remembered, occurs in the Part relating to emergency provisions. Though the article itself does not employ the expression emergency or any of its variants, the fact that it occurs in the chapter relating to emergency cannot be lost sight of. This is merely to emphasise the unusual character of the said provision and to remind ourselves of the hope expressed by Dr. Ambedkar that "such articles (articles 355 and 356) will never be called into operation and that they would remain a dead letter". Yet another indication is the marginal heading to the said article which speaks of "Failure of constitutional machinery".

4.2 Clause (1) of article 356 - indeed the whole article - has been the subject-matter of elaborate consideration at the hands of the Supreme Court in two of its decisions, namely, State of Rajasthan v. UOI (AIR 1977 SC 1361) and S.R. Bommai v. UOI referred to hereinabove. The first mentioned decision is by a Constitution Bench of seven judges while the latter is by a Constitution Bench of nine judges. In view of the fact that in certain respects, S.R. Bommai departs from State of Rajasthan, it would be sufficient to refer to the holdings in S.R. Bommai alone. In S.R. Bommai, the majority opinions are two, one was rendered by P.B. Sawant J. on behalf of himself and Kuldeep Singh J. The other was rendered by B.P. Jeevan Reddy J. for himself and S.C. Agarwal J. and with whose reasoning and conclusions S.R. Pandian J. agreed fully. (They also agreed with conclusions 1, 2 and 4 to 7 in the opinion of Sawant J). The principle of article 356 has been set out in the said decision in the following words:

> "The crucial expressions in Art.356(1) are - if the President, "on the receipt of report from the Governor of a State or otherwise" "is satisfied" that "the situation has arisen in which the government of the State cannot be carried on" "in accordance with the provisions of the Constitution". The conditions precedent to the issuance of the proclamation, therefore, are: (a) that the President should be satisfied either on the basis of a report from the Governor of the State or otherwise, (b) that in fact a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution. In other words, the President's satisfaction has to be based on objective material. That material may be available in the report sent to him by the Governor or otherwise or both from the report and other sources. Further, the objective material so available must indicate that the government of the State cannot be carried on in accordance with the provisions of the Constitution. Thus the existence of the objective material showing that the government of the State cannot be carried on in accordance with the provisions of the Constitution is a condition precedent before the

President issues the proclamation. Once such material is shown to exist, the satisfaction of the President based on the material is not open to question. However, if there is no such objective material before the President, or the material before him cannot reasonably suggest that the government of the State cannot be carried on in accordance with the provisions of the Constitution, the proclamation issued is open to challenge. It is further necessary to note that the objective material before the President must indicate that the government of the State "cannot be carried on in accordance with the provisions of the Constitution". In other words, the provisions require that the material before the President must be sufficient to indicate that unless a proclamation is issued, it is not possible to carry on the affairs of the State as per the provisions of the Constitution. It is not every situation arising in the State but a situation which shows that the constitutional Government has become an impossibility, which alone will entitle the President to issue the proclamation. These parameters of the condition precedent to the issuance of the proclamation indicate both the extent of and the limitations on, the power of the judicial review of the proclamation issued."

(opinion of P.B. Sawant J.)

4.3 "The power conferred by article 356 is a conditioned power; it is not an absolute power to be exercised in the discretion of the President. The condition is the formation of satisfaction - subjective, no doubt- that a situation of the type contemplated by the clause has arisen. This satisfaction may be formed on the basis of the report of the Governor or on the basis of other information received by him, or both. The existence of relevant material is a pre-condition to the formation of satisfaction. The use of the word "may" indicates not only a discretion but an obligation to consider the advisability and necessity of the action. It also involves an obligation to consider which of the several steps specified in sub-clauses (a), (b) and (c) should be taken and to what extent? The dissolution of the Legislative Assembly - assuming that it is permissible - is not a matter of course. It should be resorted to only when it is necessary for achieving the purposes of the proclamation. The exercise of the power is made subject to approval of the both Houses of Parliament. Clause (3) is both a check on the power and a safeguard against abuse of power.

Clause (1) opens with the words "if the President .... is satisfied". These words are indicative of the satisfaction being a subjective one.... Having regard to the nature of the power and the situation in which it is supposed to be exercised, principles of natural justice cannot be imported into the clause. It is evident that the satisfaction has to be formed by the President fairly, on a consideration of the report of the Governor and/or other material, if any, placed before him. Of course, the President under our Constitution being, what may be called, a constitutional President obliged to act upon the aid and advice of the council of ministers (which aid and advice is binding upon him by virtue of clause (1) of Art.74), the satisfaction referred to in Art.356(1) really means the satisfaction of the union council of ministers with the Prime Minister at its head. Clause (1) requires the President to be satisfied that a situation has arisen in which the government of the State "cannot" be carried on "in accordance with the provisions of this Constitution". The words "cannot" emphasise the type of situation contemplated by the clause. These words read with the title of the article "provisions in case of failure of constitutional machinery in States" emphasise the nature of

the situation contemplated.... It must, however, be remembered that it is not each and every non-compliance with a particular provision of the Constitution that calls for the exercise of the power under Art.356(1). The non-compliance or violation of the Constitution should be such as to lead to or give rise to a situation where the government of the State cannot be carried on in accordance with the provisions of the Constitution. It is indeed difficult - nor is it advisable - to catalogue the various situations which may arise and which would be comprised within clause (1). It would be more appropriate to deal with concrete cases as and when they arise. The satisfaction of the President referred to in clause (1) maybe formed either on the receipt of the report(s) of the Governor or otherwise.... He (the Governor) takes the oath, prescribed by Art.159, to preserve, protect and defend the Constitution and the laws to the best of his ability. It is this obligation which requires him to report to the President the commissions and omissions of the government of his State which according to him are creating or have created a situation where the government of the State cannot be carried on in accordance with the provisions of the Constitution.... Since he (Governor) cannot himself take any action of the nature contemplated by Art.356(1), he reports the matter to the President and it is for the President to be satisfied - whether on the basis of the said report or on the basis of any other information which he may receive otherwise - that situation of the nature contemplated by Art.356(1) has arisen. It is then and only then that he can issue the proclamation. Once the proclamation under Art.356(1) is issued or simultaneously with it, the President can take any or all the actions specified in clauses (a), (b) and (c)."

(opinion of B.P. Jeevan Reddy J.)

V. Dissolution of Legislative Assembly of a State under article 356

5.1 Notwithstanding the fact that article 356 does not expressly speak of dissolution of the Legislative Assembly, the majority opinions held, keeping in view the scheme and intendment of the relevant constitutional provisions and the practice obtaining since 1950, that in exercise of the power under article 356 it is open to the President to dissolve a Legislative Assembly but that such a power can be exercised only after both Houses of Parliament approve the proclamation as contemplated by clause (3). (See: the discussions in paras 219 to 222 at pages 2057 to 2059 (Jeevan Reddy J.) and paras 73 and 74 at pages 1983 to 1985 (Sawant J.)) Until then, it is held, he can only keep the Legislative Assembly in suspended animation. It is further pointed out that in case the Houses of Parliament disapprove or do not approve the proclamation as contemplated by clause (3), the Legislative Assembly springs back to life. (Of course there can be no question of dissolving the Legislative Council wherever it exists in any State.)

5.2 Instead of referring to each aspect of the said article it would be appropriate to set out the conclusions contained in the aforesaid two opinions in S.R. Bommai:

"I. The validity of the proclamation issued by the President under Art.356(1) is judicially reviewable to the extent of examining whether it was issued on the basis of any material at all or whether the material was relevant or whether the proclamation was issued in the *mala fide* exercise of the power. When a *prima facie* case is made out in the challenge to the proclamation, the burden is on the Union Government to prove that the relevant material did in fact exist. Such material may be either the report of the Governor or other than the report.

II. Art.74(2) is not a bar against the scrutiny of the material on the basis of which the President had arrived at his satisfaction.

III. When the President issues proclamation under article 356(1), he may exercise all or any of the powers under sub-clauses (a), (b) and (c) thereof. It is for him to decide which of the said powers he will exercise, and at what stage, taking into consideration the exigencies of the situation.

IV. Since the provisions contained in clause (3) of article 356 are intended to be a check on the powers of the President under clause (1) thereof, it will not be permissible for the President to exercise powers under sub-clauses (a), (b) and (c) of the latter clause, to take irreversible actions till at least both the Houses of Parliament have approved of the proclamation. It is for this reason that the President will not be justified in dissolving the Legislative Assembly by using the powers of the Governor under article 174(2)(b) read with article 356(1)(a) till at least both the Houses of Parliament approve of the proclamation.

V. If the proclamation issued is held invalid, then notwithstanding the fact that it is approved by both Houses of the Parliament, it will be open to the court to restore the *status quo ante* to the issuance of the proclamation and hence to restore the Legislative Assembly and the Ministry.

VI. In appropriate cases, the court will have power by an interim injunction, to restrain the holding of fresh elections to the Legislative Assembly pending the final disposal of the challenge to the validity of the proclamation to avoid the *fait accompli* and the remedy of judicial review being rendered fruitless. However, the court will not interdict the issuance of the proclamation or the exercise of any other power under the proclamation.

VII. While restoring the *status quo ante*, it will be open for the court to mould the relief suitably and declare as valid actions taken by the President till that date. It will also be open for the Parliament and the Legislature of the State to validate the said actions of the President.

VIII. Secularism is a part of the basic structure of the Constitution. The acts of a State Government which are calculated to subvert or sabotage secularism as enshrined in our Constitution, can lawfully be deemed to give rise to a situation in which the government of the State cannot be carried on in accordance with the provisions of the Constitution."
(Opinion of P.B. Sawant J.)

"(1) Article 356 of the Constitution confers a power upon the President to be exercised only where he is satisfied that a situation has arisen where the government of a State cannot be carried on in accordance with the provisions of the Constitution. Under our Constitution, the power is really that of the Union Council of Ministers with the Prime Minister at its head. The satisfaction contemplated by the article is subjective in nature.

(2) The power conferred by Art.356 upon the President is a conditioned power. It is not an absolute power. The existence of material which may

comprise of or include the report(s) of the Governor - is a pre-condition. The satisfaction must be formed on relevant material. The recommendations of the Sarkaria Commission with respect to the exercise of power under Art.356 do merit serious consideration at the hands of all concerned.

(3) Though the power of dissolving of the Legislative Assembly can be said to be implicit in clause (1) of Art.356, it must be held, having regard to the overall constitutional scheme, that the President shall exercise it only after the proclamation is approved by both Houses of Parliament under clause (3) and not before. Until such approval, the President can only suspend the Legislative Assembly by suspending the provisions of Constitution relating to the Legislative Assembly under sub-clause (c) of clause (1). The dissolution of Legislative Assembly is not a matter of course. It should be resorted to only where it is found necessary for achieving the purposes of the proclamation.

(4) The proclamation under clause (1) can be issued only where the situation contemplated by the clause arises. In such a situation, the government has to go. There is no room for holding that the President can take over some of the functions and powers of the State Government while keeping the State government in office. There cannot be two Governments in one sphere.

(5)(a) Clause (3) of article 356 is conceived as a control on the power of the President and also as a safeguard against abuse. In case both Houses of Parliament disapprove or do not approve the proclamation, the proclamation lapses at the end of the two-months period. In such a case, government which was dismissed revives. The Legislative Assembly, which may have been kept in suspended animation gets re-activated. Since the proclamation lapses - and is not retrospectively invalidated - the acts done, orders made and laws passed during the period of two months do not become illegal or void. They are, however, subject to review, repeal or modification by the government/Legislative Assembly or other competent authority.

(b) However, if the proclamation is approved by both the Houses within two months, the government (which was dismissed) does not revive on the expiry of period of proclamation or on its revocation. Similarly, if the Legislative Assembly has been dissolved after the approval under clause (3), the Legislative Assembly does not revive on the expiry of the period of proclamation or on its revocation.

(6) Article 74(2) merely bars an enquiry into the question whether any, and if so, what advice was tendered by the Ministers to the President. It does not bar the court from calling upon the Union Council of Ministers (Union of India) to disclose to the court the material upon which the President had formed the requisite satisfaction. The material on the basis of which advice was tendered does not become part of the advice. Even, if the material is looked into by or shown to the President, it does not partake the character of advice. Article 74(2) and section 123 of the Evidence Act cover different fields. It may happen that while defending the proclamation, the Minister or the concerned official may claim the privilege under section 123. If and when such privilege is claimed, it will be decided on its own merits in accordance with the provisions of section 123.

(7) The proclamation under article 356(1) is not immune from judicial review. The Supreme Court or the High Court can strike down the proclamation if it is found to be *mala fide* or based on wholly irrelevant or extraneous grounds. The deletion of clause (5) [which was introduced by the Constitution (38th Amendment) Act, 1975] by the Constitution (44th Amendment) Act, 1978 removes the cloud on the reviewability of the action. When called upon, the Union of India has to produce the material on the basis of which action was taken. It cannot refuse to do so, if it seeks to defend the action. The court will not go into the correctness of the material or its adequacy. It's enquiry is limited to see whether the material was relevant to the action. Even if part of the material is irrelevant, the court cannot interfere so long as there is some material which is relevant to the action taken.

(8) If the court strikes down the proclamation, it has the power to restore the dismissed government to office and revive and reactivate the Legislative Assembly wherever it may have been dissolved or kept under suspension. In such a case, the court has the power to declare that acts done, orders passed and laws made during the period the proclamation was in force shall remain unaffected and be treated as valid. Such declaration, however, shall not preclude the government/Legislative Assembly or other competent authority to review, repeal or modify such acts, orders and laws.

(9) The Constitution of India has created a federation but with a bias in favour of the center. Within the sphere allotted to the States, they are supreme.

(10) Secularism is one of the basic features of the Constitution. While freedom of religion is guaranteed to all persons in India, from the point of view of the State, the religion, faith or belief of a person is immaterial. To the State, all are equal and are entitled to be treated equally. In matters of State, religion has no place. No political party can simultaneously be a religious party. Politics and religion cannot be mixed. Any State Government which pursues unsecular policies or unsecular course of action acts contrary to the constitutional mandate and renders itself amenable to action under Art.356."

(opinion of B.P. Jeevan Reddy J.)

VI. Views of the Sarkaria Commission

6.1 The Sarkaria Commission examined this issue in Chapter Six of its Report. It pointed out in the first instance that the use of article 356 has been rising with the passage of time. Whereas between 1950 and 1954, it was invoked only on 03 occasions; it was invoked on 09 occasions between 1965 and 1969; it rose to 21 instances during the period 1975-1979 and to 18 during the period 1980-1987. The Commission examined the historical background to articles 355 and 356 and explained that the said provisions are not unprecedented. It referred to similar provisions in the U.S. Constitution and in the Government of India Act, 1935. It also quoted the speech of Dr. Ambedkar (which has been quoted hereinbefore) pointing out that the possibility of abuse cannot be a ground for not incorporating such a provision and the hope expressed by him that the said two articles will never be called into operation and that they would remain a dead letter. The Commission observed: "6.2.14 - In sum, the Constitution-framers conceived these provisions as more than a mere grant of overriding powers to the Union over the States. They regarded them as a bulwark of the Constitution, an ultimate assurance of maintaining or restoring representative

government in States responsible to the people. They expected that these extraordinary provisions would be called into operation rarely, in extreme cases, as a last resort when all alternative correctives fail. Despite the hopes and expectations so emphatically expressed by the framers, in the last 37 years, article 356 has been brought into action no less than 75 times". The Commission then examined the scope and effect of article 355 as well as article 356. While examining article 355, it referred to similar provisions in the Swiss and West German Constitutions as well. It then opined that where a State is confronted with external aggression or 'internal disturbance' (the expression occurring before the 44th Amendment Act), it is open to the Union to adopt all alternative courses available to it to perform its duty of protecting the State. So far as the last mentioned duty in article 355 is concerned, the Commission opined that it has to be discharged in accordance with article 356. It then examined the scope and effect of article 356 and pointed out that it is necessary in the first instance to understand the true import and ambit of this provision. The Sarkaria Commission noted that it is not each and every departure from the provisions of the Constitution that attracts the said article but only a situation where it can be said that there has been a "failure of the constitutional machinery". A liberal interpretation of article 356, the Commission pointed out, will reduce the States to mere dependencies and would cut at the root of the democratic, parliamentary, federal form of government. The Commission then pointed out that 'failure of constitutional machinery' can be examined under four heads, namely, (a) political crisis, (b) internal subversion, (c) physical breakdown and (d) non-compliance with constitutional directions of the Union Executive. It examined each of the said situations and opined that in case of political crisis, it would be the duty of the Governor to explore all possibilities for installing a viable government and if he finds that it is not possible to do so, and if fresh elections can be held without avoidable delay, he should ask the outgoing Ministry to continue as a caretaker government provided it was not defeated on the grounds of mal-administration and corruption; he should then dissolve the Assembly. The Commission also warned that invoking article 356 for solving the political crises in the ruling party was an instance of misuse. Regarding internal subversion, it said that if any State government deliberately pursues an unconstitutional policy it would be a case calling for the invocation of this power but after giving due warnings and opportunity for corrective measures. It then gave instances of physical breakdown such as internal disturbance leading to the paralysis of the State administration, and natural calamities. Coming to non-compliance with constitutional directions of the Union Government, the Commission pointed out that if the State Government does not comply with any directions issued under article 256, 257 or 339(2) - or under article 353 during an emergency - in spite of due warnings, it may invite the power under article 356. Similarly, the Commission pointed out, if a public disorder of a significant magnitude endangering the security of the State takes place, it is the duty of the State Government to inform the Centre of such development and if it fails to do so, it may again invite article 356, subject of course to prior warnings. The Commission set out certain illustrations where it can be said that it is a case of improper invoking of article 356. It then dealt with the wholesale dismissal of Assemblies in 1977 and 1980 and also analysed the decision of the Supreme Court in State of Rajasthan. So far as the recommendations made by the Sarkaria Commission are concerned, they are being dealt with elsewhere.

6.2 The views of the Sarkaria Commission that the extraordinary provisions contained in article 356 would be called into operation rarely, in extreme cases, as a last resort when all alternative correctives fail find echo in the views expressed by the founding fathers. The abuse of this article can be prevented only by way of reverting to the narrow sense in which it had been explained and understood by them. The narrow sense of this article emerges very clearly from the words of Shri Alladi Krishnaswamy Ayyar:

> "The primary thing concerning the nation and the Union Government is 'to maintain the Constitution'. If the import of that expression is fully realised, it will be noticed that there cannot be any intention to interfere with the provincial constitution, because the provincial constitution is a part of the Constitution of the Union. Therefore, it is the duty of the Union Government to protect (the States)

against external aggression, internal disturbance and domestic chaos and to see that the Constitution is worked in a proper manner both in the States and in the Union. If the Constitution is worked in a proper manner in the provinces or in the States, that is, if responsible government as contemplated by the Constitution functions properly, the Union will not and cannot interfere ." [C.A.D. Vol IX, page 150].

6.3 The views expressed in the Constitutent Assembly and reiterated by the Sarkaria Commission get support from the Supreme Court in relation to the cases about the interpretation of the provisions of the Constitution. The following observations of the Supreme Court can very well be cited in support of the proposition that the provisions of article 356 should be interpreted literally and in a narrow sense:

> "An argument founded on what is claimed to be the spirit of the Constitution is always attractive for it has a powerful appeal to sentiment and emotion; but a Court of law has to gather the spirit of the Constitution from the language of the Constitution. What one may believe or think to be the spirit of the Constitution cannot prevail if the language of the Constitution does not support that view."[per S.R. Das J. in Keshavan v. State of Bombay AIR 1951 S.C. 128 at p.129].

VII. Article 356 in action

7.1 In Chapter Six of its Report, the Sarkaria Commission has set out in detail the number of times the power under article 356 was used. It has classified them into four categories. The following statement from the said Report is apposite:

> **"Use of article 356**
>
> **A-When Ministry Commanded Majority**
>
> 6.6.30 President's Rule was imposed in 13 cases even though the Ministry enjoyed a majority support in the Legislative Assembly. These cover instances where provisions of article 356 were invoked to deal with intra-party problems or for considerations not relevant for the purpose of that article. The proclamation of President's Rule in Punjab in June 1951 and in Andhra Pradesh in January 1973 are instances of the use of article 356 for sorting out intra-party disputes. The imposition of President's rule in Tamil Nadu in 1976 and in Manipur in 1979 were on the consideration that there was maladministration in these States.
>
> **President's Rule was imposed in 13 cases even though the Ministry enjoyed a majority support in the Legislative Assembly. These cover instances where provisions of article 356 were invoked to deal with intra-party problems or for considerations not relevant for the purpose of that article.**
>
> **B-Chance not given to form alternative Government**
>
> 6.6.31 In as many as 15 cases, where the Ministry resigned, other claimants were not given a chance to form an alternative government and have their majority support tested in the Legislative Assembly. Proclamation of President's rule in Kerala in March 1965 and in Uttar Pradesh in October 1970 are examples of denial of an opportunity to other claimants to form a Government.

C-No caretaker Government formed

6.6.32 In 3 cases, where it was found not possible to form a viable government and fresh elections were necessary, no caretaker Ministry was formed.

D-President's rule inevitable

6.6.33 In as many as 26 cases (including 3 arising out of States Reorganisation) it would appear that President's rule was inevitable.

6.6.34 Situations arising out of non-compliance with directions of the type contemplated in article 365 have not occurred so far.".

To the above four categories must be added another category of wholesale dismissal of State governments and State Legislative Assemblies. Soon after a new Lok Sabha came into existence following the general election held in March 1977, bringing into office the Janta Party government, State governments and Legislative Assemblies of nine States, Haryana, Punjab, Himachal Pradesh, Uttar Pradesh, Bihar, Orissa, West Bengal, Madhya Pradesh and Rajasthan, were dismissed/dissolved. Again after the Congress Party returned to power in 1980, State governments and Legislative Assemblies in nine States were dismissed/dissolved. The ground on which they were dismissed is identical in both cases, namely, that the elections to Lok Sabha have disclosed that people have lost faith in the parties which were holding office in those States. To wit, the argument in 1977 was that in the aforesaid nine States, the Congress Party has almost been totally rejected by the electorate in the elections to Lok Sabha which showed the disenchantment of the people with the Congress governments in those States. An identical argument was employed in 1980 against the non-Congress parties.

7.2 Article 356 was invoked in the following instances after the Sarkaria Commission Report was submitted: (a) Assam (27.11.1990 - deterioration of the law and order situation), (b) Nagaland (2.4.1992 - fluid party position and deteriorating law and order situation), (c) Nagaland (7.8.1988), (Karnataka - 21.4.1989) and Meghalaya (11.10.1991) - these three cases are dealt with by the Supreme Court in S.R. Bommai and held to be totally unconstitutional and unsupportable, (d) Bihar (28.3.1995 - process of election could not be completed; to facilitate passage of vote on account by Parliament) and U.P. (1996 - No clear majority in election); and (e) Tamil Nadu (30.1.88 - Deadlock due to death of Sri M.G. Ramachandran), Mizoram (7.9.1988 - Defections reduced the Government to minority), Jammu and Kashmir (18.7.1990 – Militancy), Karnataka (10.10.1990 - dissensions in the ruling party - floor-crossing), Goa (14.12.1990 - C.M. resigned consequent upon his disqualification by High Court - No other Government found viable), Tamil Nadu (30.1.1991 - alleged LTTE activities), Haryana (6.4.1991 - with the disqualification of three MLAs, Government lost majority, Ministry refused to face floor-test and recommended dissolution of House), Manipur (7-1-1992 - Government lost majority as a result of resignation of certain members), Tripura (11.3.1993 - Government resigned - no alternative viable), Manipur (31.12.1993 - 1000 persons died in controlling Naga-Kuki clashes - continuing violence), U.P. (18.10.1995 - Government lost majority - no viable alternative Government in sight); and Gujarat (1996 - Government reduced to minority due to defections).

7.3 It follows from the facts stated above that more often than not power under article 356 was exercised wrongly. The Supreme Court proceeded to precisely check this abuse through its decision in S.R. Bommai. Though in the said decision no effective relief could be given to the

It follows from the facts stated above that more often than not power under article 356 was exercised wrongly.

State governments and the Legislative Assemblies which were wrongly dismissed/dissolved in view of the fact that pending the proceedings in the courts, fresh elections were held in those States, yet the court put the Central Government on notice that in case of a wrong dismissal of the State government and/or a wrong dissolution of the Legislative Assembly, the court does have the power, and that it will not hesitate, to restore such Government/Assembly back to life. Indeed it was indicated that that would be the normal and natural consequence of the finding that Art. 356 was wrongly invoked in the case. The result has been that since the said decision, the use of article 356 has drastically come down. Indeed, in the year 1999 when the Central Government recommended to the President to dismiss the State government in Bihar, the President called upon the Central Government to reconsider the matter in the light of the principles enunciated in the said decision. On a reconsideration of the matter, the government withdrew the proposal. We may also refer to yet another decision where the Governor of U.P. chose to dismiss arbitrarily the State government without allowing the government to test its majority on the floor of the House. Following the principles enunciated in S.R. Bommai, the Allahabad High Court restored the dismissed government to its office (W.P. 7151 of 1998 disposed of on 23 February, 1998). This decision was not disturbed by the Supreme Court in appeal though it purported to evolve a peculiar kind of floor-test, namely, both the contenders for the office of chief minister were asked to test their strength on the floor of the House. The Chief Minister who was dismissed wrongly by the Governor established his majority and continued in office (A.I.R. 1998 Supreme Court 998).

VIII. Whether the power under article 356 can be limited to non-compliance with the directions given under article 365:

8.1 Article 365 expressly provides that "where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution". We have pointed out hereinbefore that the "directions given in the exercise of executive power of the Union under any of the provisions of this Constitution" would naturally refer to articles 256 and 257 among others. Article 256 casts an obligation upon the States to so exercise their executive power as to ensure compliance with the laws made by Parliament and the existing laws. It further provides that it is open to the Union to issue directions in exercise of its executive power to ensure that the States exercise their executive power in the aforesaid manner. Article 257 goes further and states that the executive power of the State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union and that the executive power of the Union shall extend to give any appropriate directions to ensure the same. Clauses (2) and (3) of article 257 empower the Union Government to issue executive directions to States with respect to construction and maintenance of means of communication declared in the direction to be of national importance and with respect to railways. It is debatable whether the Union Government can issue executive directions under any other provision of the Constitution but one thing is beyond doubt – the Union Government cannot issue any executive directions to States to comply with any State laws.

8.2 In the above situation, when it may be possible to say that a substantial non-compliance with the directions issued under articles 256 and 257 would attract article 365 and may furnish a ground for taking action under article 356, it cannot be said at the same time that "a situation .....in which the government of the State cannot be carried on in accordance with the provisions of this Constitution" cannot arise in any other way. To put it differently, the non-compliance with the provisions of the Constitution means what it says: non-compliance, i.e., substantial non-compliance with the provisions of the Constitution applicable to the governance of the State. Violation of the provisions of the Constitution may occur otherwise than by non-compliance with the laws made by Parliament and without trenching upon the executive power of

the Union. Indeed it may be difficult - may be, inadvisable – to catalogue the situation wherein it can be said that the government of the State cannot be carried on in accordance with the provisions of the Constitution. The matter be best left to the wisdom and judgment of the appropriate authority subject, of course, to the provisions of the Constitution and their interpretation by the Supreme Court.

IX. Need for amending article 356

9.1 In the light of the above facts, the question arises whether article 356 needs to be amended. In fact there has been a strident demand for deletion of article 356 but if article 356 is deleted while retaining articles 355 and 365, the situation may be worse from the point of view of the States. In other words, the checks which are created by article 356 and in particular by clause (3) thereof, would not be there and the Central Government would be free to act in the name of redressing a situation where the government of a State cannot be carried on in accordance with the provisions of the Constitution. We are therefore not in favour of deleting article 356. If, however, Art. 356 (and the consequential article 357) is to be deleted then certain other provisions too require to be deleted viz., (i) the words "and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution" in Art. 355; and (ii) Art. 365, in its entirety. But then what would one say regarding Art. 256 and 257*, which, no doubt, state the obvious, yet if they are deleted, the Courts may construe such deletion as bringing about a drastic change in Centre-State Relations. In any event, we feel that the stage has not yet arrived in our constitutional development, where we can recommend the deletion of Art. 356. What is required is its proper use and that has to be ensured by appropriate amendments to the article.

We are, therefore not in favour of deleting article 356.

In any event, we feel that the stage has not yet arrived in our constitutional development, where we can recommend the deletion of Art. 356. What is required is its proper use and that has to be ensured by appropriate amendments to the article.

X. Suggestions

10.1 We, therefore, think it advisable to suggest that Art. 356 be amended to provide for the following:

a) It should be provided that until both Houses of Parliament approve the proclamation issued under clause (1) of article 356, the Legislative Assembly cannot be dissolved. If necessary it can be kept only under animated suspension.

b) Before issuing the proclamation under clause (1), the President/the Central Government should indicate to the State Government the matters wherein the State Government is not acting in accordance with the provisions of the Constitution and give it a reasonable opportunity of redressing the situation – unless the situation is such that following the above course would not be in the interest of security of State or defence of the country.

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* There has been consistent demands from certain State Governments to delete Articles 256 and 257 along with Article 365 – a fact that is also referred to in the Report of Sarkaria Commission, Chapter III. We are, however, not going into this question in this paper. We proceed on the assumption, for the purposes of this paper, that these articles are very much a part of our Constitution.

c) Once a proclamation is issued, it should not be permissible to withdraw it and issue another proclamation to the same effect with a view to circumvent the requirement in clause (3). Even if a proclamation is substituted by another proclamation, the period prescribed in clause (3) should be calculated from the date of the first proclamation.

d) The proclamation must contain (by way of annexure) the circumstances and the grounds upon which the President is satisfied that a situation has arisen where the government of the State cannot be carried on in accordance with the provisions of the Constitution. Further, if the Legislative Assembly is sought to be kept under animated suspension or dissolved, reasons for such course of action should also be stated in the appropriate proclamation.

e) Whether the Ministry in a State has lost the confidence of the Legislative Assembly or not, should be decided only on the floor of the Assembly and nowhere else. If necessary, the Central Government should take necessary steps to enable the Legislative Assembly to meet and freely transact its business. The Governors should not be allowed to dismiss the Ministry so long as it enjoys the confidence of the House. Only where a Chief Minister of the Ministry refuses to resign after his Ministry is defeated on a motion of no-confidence, should the Governor dismiss the State Government.

f) We wholeheartedly commend and reiterate the recommendations of the Sarkaria Commission Report in paragraphs 6.8.01 to 6.8.12, subject to the above. The recommendations of the Sarkaria Commission are to the following effect:

"6.8.01 Article 356 should be used very sparingly, in extreme cases, as a measure of last resort, when all available alternatives fail to prevent or rectify a breakdown of constitutional machinery in the State. All attempts should be made to resolve the crisis at the State level before taking recourse to the provisions of article 356. The availability and choice of these alternatives will depend on the nature of the constitutional crisis, its causes and exigencies of the situation. These alternatives may be dispensed with only in cases of extreme urgency where failure on the part of the Union to take immediate action under article 356 will lead to disastrous consequences.

(paragraph 6.7.04)

6.8.02 A warning should be issued to the errant State, in specific terms, that it is not carrying on the government of the State in accordance with the Constitution. Before taking action under article 356, any explanation received from the State should be taken into account. However, this may not be possible in a situation when not taking immediate action would lead to disastrous consequences.

(paragraph 6.7.08)

6.8.03 When an 'external aggression' or 'internal disturbance' paralyses the State administration creating a situation drifting towards a potential breakdown of the constitutional machinery of the

State, all alternative courses available to the Union for discharging its paramount responsibility under article 355 should be exhausted to contain the situation.

(paragraph 6.3.17)

6.8.04 (a) In a situation of political breakdown, the Governor should explore all possibilities of having a government enjoying majority support in the Assembly. If it is not possible for such a government to be installed and if fresh elections can be held without avoidable delay, he should ask the outgoing Ministry, if there is one, to continue as a caretaker government, provided the Ministry was defeated solely on a major policy issue, unconnected with any allegations of maladministration or corruption and is agreeable to continue. The Governor should then dissolve the Legislative Assembly, leaving the resolution of the constitutional crisis to the electorate. During the interim period, the caretaker government should be allowed to function. As a matter of convention, the caretaker government should merely carry on the day-to-day government and desist from taking any major policy decision.

(paragraph 6.4.08)

(b) If the important ingredients described above are absent, it would not be proper for the Governor to dissolve the Assembly and install a caretaker government. The Governor should recommend proclamation of President's rule without dissolving the Assembly.

(paragraph 6.4.09)

6.8.05 Every proclamation should be placed before each House of Parliament at the earliest, in any case before the expiry of the two months period contemplated in clause (3) of article 356.

(paragraph 6.7.13)

6.8.06 The State Legislative Assembly should not be dissolved either by the Governor or the President before the proclamation issued under article 356(1) has been laid before Parliament and it has had an opportunity to consider it. Article 356 should be suitably amended to ensure this.

(paragraph 6.6.20)

6.8.07 Safeguards corresponding, in principle, to clauses (7) and (8) of article 352 should be incorporated in article 356 to enable Parliament to review continuance in force of a proclamation.

(paragraph 6.6.23)

6.8.08 To make the remedy of judicial review on the ground of mala fides a little more meaningful, it should be provided, through an appropriate amendment, that, notwithstanding anything in clause (2) of article 74 of the Constitution, the material facts and grounds on which article 356(1) is invoked should be made an integral part of the proclamation issued under that article. This will also make the control

of Parliament over the exercise of this power by the Union Executive, more effective.

(paragraph 6.6.25)

6.8.09 Normally, the President is moved to action under article 356 on the report of the Governor. The report of the Governor is placed before each House of Parliament. Such a report should be a "speaking document" containing a precise and clear statement of all material facts and grounds on the basis of which the President may satisfy himself as to the existence or otherwise of the situation contemplated in article 356.

(paragraph 6.6.26)

6.8.10 The Governor's report, on the basis of which a proclamation under article 356(1) is issued, should be given wide publicity in all the media and in full.

(paragraph 6.6.28)

6.8.11 Normally, President's rule in a State should be proclaimed on the basis of the Governor's report under article 356(1).

(paragraph 6.6.29)

6.8.12 In clause (5) of article 356, the word 'and' occurring between sub-clauses (a) and (b) should be substituted by 'or'.

(paragraph 6.7.11)".

10.2 It will be seen immediately that the Sarkaria Commission has recommended only three amendments, namely those mentioned in Paras. 6.8.07, 6.8.08 and 6.8.12, whereas we are inclined to suggest a few more in the light of the experience gained since the submission of Sarkaria Commission Report and in the light of the principles enunciated by the Supreme Court in S.R. Bommai. The recommendation in Para 6.8.08 of Sarkaria Commission Report has been reiterated by us. The other two suggestions in Paras 6.8.07 and 6.8.12 though not specifically suggested by us, yet we do commend them for acceptance.

10.3 Lastly, we may clarify that the suggestions mentioned hereinbefore in this paper are our tentative suggestions put forward with a view to invite debate. We request all the concerned members of the public, institutions and organisations to respond to the above suggestions. All your suggestions, criticism and opinions are welcome and they shall receive our respectful consideration. Your opinions would help us in finalizing our views on the subject.

10.4. The suggestions and opinions expressed hereinabove, it must be emphasized, are only provisional in nature and do not represent the final views of the Commission. We solicit views, opinions, suggestions and criticism of the suggestions from the public which will receive Commission's consideration. The final recommendations would be made only after a full and fair consideration of all the responses, keeping in mind the interest of the society and nation, consistently with the values of our Constitution.

QUESTIONNAIRE
ON
ARTICLE 356 OF THE CONSTITUTION

1. Should the Constitution provide that until both Houses of Parliament approve the proclamation issued in clause (1) of article 356, a State Legislative Assembly cannot be dissolved?

   YES ☐ NO ☐

2. Do you agree that if necessary, the Legislative Assembly need only be kept under suspended animation?

   YES ☐ NO ☐

3. Do you agree with the suggestion that before issuing a proclamation under clause (1) of article 356, the President/the Central Government should specifically indicate to the State Government the matters wherein the State Government is not acting in accordance with the provisions of the Constitution and give it a reasonable opportunity of redressing the situation – only exception being a situation where following the above course would not be in the interest of security of State or defence of the country?

   YES ☐ NO ☐

4. Do you agree with the suggestion that once a proclamation is issued, it should not be permissible to withdraw it and issue another proclamation to the same effect with a view to circumvent the requirement in clause (3) of article 356?

   YES ☐ NO ☐

5. Do you agree that, even if a proclamation is substituted by another proclamation, the period prescribed in clause (3) should be calculated from the date of the first proclamation?

   YES ☐ NO ☐

6. Do you agree with the suggestion that a proclamation must contain (by way of annexure) the circumstances and the grounds upon which the President has reached the satisfaction that a situation has arisen where the government of the State cannot be carried on in accordance with the provisions of the Constitution?

   YES ☐ NO ☐

7. Do you agree with the suggestion that, whether the Ministry in a State has lost the confidence of the Legislative Assembly, it should be decided only on the floor of the Assembly and nowhere else?

   YES ☐ NO ☐

8. Do you agree that in a case where the confidence of the Legislative Assembly in the Ministry in a State has been lost, or not has not been tested on the floor of the House, it is advisable to the Central Government to take necessary steps to enable the Legislative Assembly to meet and freely transact its business?

   YES ☐ NO ☐

9. Further, do you agree, that the Governors should not be allowed to dismiss the Ministry so long as it enjoys the confidence of the House?

YES ☐ NO ☐

10. Further, do you agree, that only where a chief minister of the Ministry refuses to resign after his Ministry is defeated on a motion of no-confidence, should the Governor dismiss the State government?

YES ☐ NO ☐

11. Do you agree with the suggestion that safeguards corresponding, in principle, to clauses (7) and (8) of article 352 should be incorporated in article 356 to enable Parliament to review continuance in force of a proclamation?

YES ☐ NO ☐

12. Do you agree with the suggestion that in clause (5) of article 356, the word 'and' occurring between sub-clauses (a) and (b) should be substituted by 'or'?

YES ☐ NO ☐

13. Do you have any further suggestions to make on the issues discussed in this paper? If so please state them.

Not more than 200 words



NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

REVIEW OF THE WORKING OF THE CONSTITUTIONAL PROVISIONS FOR DECENTRALIZATION (PANCHAYATS)

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating a public debate and eliciting public response.

September 26, 2001
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On

Decentralisation and Devolution; Empowerment and strengthening of Panchayati Raj Institutions

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CONTENTS

Chapters		Pages
1	Introduction	963
2	Elections	965
3	Functional Domain	967
4	Financial Domain	973
5	Planning Process	982
6	Gram Sabha	987
7	Personnel System	988
8	Other Issues	993
9	Concluding Remarks	999
	Questionnaire	1000
	References	1006

CHAPTER 1

Introduction

1.1 A new Part, namely, Part IX relating to Panchayats was incorporated in the Constitution of India, *vide* The 73rd Constitution Amendment Act, 1992. This Amendment generated great expectations. It was considered as radical in nature, for it promised institutionalisation of a third stratum of government at the local level. The implications of establishing institutions of self-government at the sub-state level have been, indeed, far-reaching. It seemed that a decentralised polity was a distinct possibility in our country. More than eight long years have passed, but the change brought about by the Amendment has not been radical, nor its implications are found to be far-reaching. For, Panchayats have, till now, failed to emerge as governments at the third stratum, up to the expected level.

1.2 Yet, change that has taken place in Indian polity cannot certainly be belittled. Substantial changes did take place in at least three fronts. First, certainty of Panchayat institutions has been assured. Every State has to establish Panchayats. Their space in the institutional structure of Indian State is now guaranteed. Second, continuity of the institutions through elections every five years has been stipulated. Even the defaulting States – and they are many in number – which did not take their Constitutional duty seriously had to explain to the public, to the media and also to the judiciary the reasons as to why they could not hold the elections. Third, entry of weaker sections of people including women in the power-structure of Panchayats. Today, Panchayats elect three million members of whom one million are women and 0.66 million belong to the Scheduled Caste/Scheduled Tribe communities. As many as 175 district Panchayats, 1970 intermediate Panchayats and over 77,000 village Panchayats are headed by women. Positioning of innumerable elected bodies below the State level and representation within them of the people belonging to the weaker sections constitute an event that cannot be dismissed easily.

1.3 Despite this achievement, no evidence is yet available to indicate that the country is moving towards a system of decentralised governance with Panchayats (and municipalities) as governments at the third stratum capable of voicing the 'local will' and empowered to exercise autonomy over local functions. Those who noticed radical elements in the Constitution Amendment believed that as institution of self-government nearest to the people, Panchayats would assert their autonomy and prepare the ground for dispersal of political power at an unprecedentant scale. But, the old order has refused to yield for the new. Forces are at work to scuttle the project of decentralisation. The list of omissions and commissions on the part of the status quoist is quite long. Elections have not been held regularly, functional and financial devolution has not taken place, administrative and financial resources have been denied to the Panchayats, gram sabha has not been empowered and even right of Panchayats to prepare development plans and implement them has not been given proper recognition. Besides, both the Central and State Governments have set up implementation machinery for development schemes by-passing the Panchayats and have been responsible for creation of parallel power-structures outside the panchayati raj system.

1.4 No doubt, this tendency has to be reversed. Major task for decentralisation of the polity was given to the States. Even within the existing framework of Part IX of the Constitution, the States can cover a large ground than has, so far, been attempted. The case of Kerala is an instance where heroic efforts are being made to decentralise development functions of the State.

1.5 At the same time, experience of the last few years suggest that the provisions of the 73rd Constitution amendment themselves require a fresh look. From the hindsight, it has now become clear to us that the amendment did say certain things clearly and unambiguously but preferred to express many other vital things only by way of implications, suggestions and hints, as it were. This led to various interpretations of the same provisions – refreshingly liberal in nature at one extreme and highly conservative at the other end of the pole. Most States have stuck to the conservative view and refused to give concrete shape to the 'spirit' of the Constitution. It is not without some justification that the

Panchayats that came in the wake of the post-73rd Constitution amendment have been described as democratic institutions without power – a decorative box, as it were, that contains nothing inside.

1.6 It is also necessary to remember that Parts IX and IXA were added to the then existing body of the Constitution vide the Constitution (73rd Amendment) Act, 1992 (w.e.f. 24-4-1993) and the Constitution (74th Amendment) Act, 1992 (w.e.f. 1-6-1993) respectively. Not much thought was probably given to the kinds of issues of fundamental nature that they might throw-up afresh. Were we, by Constitutionalising the Panchayats and by defining them as 'institutions of self-government' opting for a multi-level federation in place of the existing two-level federation? Did this imply conferring coordinate status to the local government? If so, what were its implications in respect of division of powers and functions among different levels of Government? If the Constitution did not think about conferring co-ordinate status to the local government institutions, contrary to the expectations of many advocates of decentralisation, what kind of status it sought to give to these institutions? Certainly the Constitution did never intend that the Panchayat would be like any other authority created by a statute of the State with the only difference as regards the Constitutional guarantee of its certainty, continuity, reservations, etc., but with no difference as regards the State Government's unfettered power to restrict or limit its autonomy. If the position of the Panchayats (and municipalities) was above that of usual statutory authorities, then how much above the floor, short of the level of coordinate status, should the local government institutions rise. The Constitution left these questions unanswered.

1.7 Thus, it is felt that there is scope to introduce reforms in the existing pattern of Part IX and Part IXA of the Constitution. By leaving unattended the basic question of the status of Panchayats, the Constitution, by and large, failed to give a definite direction to the decentralisation process. This needs to be corrected drawing insights from the experience of the past eight years. Assuming that the local government institutions will have autonomy, however limited it may be, Parts IX and IXA will have implications for provisions in other parts of the Constitution, particularly in matters connected with the distribution of executive and financial powers. Since this was not taken care of earlier, some inconsistencies have begun to surface while attempting to operationalise the provisions of Part IX. This apart, there are internal inconsistencies and even incongruities between the provisions of Part IX and IXA themselves.

1.8 The purpose of this paper is to make a review of the working of the Constitutional provisions on Panchayats in different States and to suggest, on the basis of such review, specific Constitutional reform in certain matters. Institutionalisation of panchayati raj system will depend to a large extent on the State Governments. Hence reforms are necessary in their Panchayat Acts and rules as also in their executive orders which supplement the legal instruments. These issues differ from State to State and have not been addressed in this paper. In its suggestive part, the paper concentrates only on that part of reform measures that pertains to Constitutional provisions on Panchayats.

1.9 In the seven chapters that follow, several issues have been taken up for consideration. They are as under:

(1) Election;
(2) Functional domain;
(3) Financial domain;
(4) Planning Process;
(5) Gram Sabha;
(6) Personnel System; and
(7) Residual issues, such as, reservation for OBCs, intermediate tier, size of Gram Panchayat, direct election of sarpanch, membership of MPs/MLAs in Panchayats, regulatory and coordinating machineries.

1.10 The concluding chapter of the paper addresses the issue relating to the integration of parts IX and IXA of the Constitution and briefly touches on the need for taking a holistic view of decentralisation.

CHAPTER 2

Elections

Irregular Elections

2.1 The mandate of the Constitution for holding regular elections to the Panchayats is clear and unambiguous. Clause (1) of article 243E stipulates that every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer. Clause (3) of the said article stipulates that election to constitute a Panchayat should be completed before the expiry of its duration as specified in clause (1). Thus, the Constitution provides for completion of the election just before the 5-year term of the previous Panchayat ends, so that transition to the newly constituted Panchayat can be a smooth process.

2.2 "It is a sad commentary on our respect for Constitutional norms and practices that State after State is being allowed to defy with impunity" the mandate to hold Panchayat elections on time (Mathew, 2001). Almost all the States, except West Bengal, Tripura and Rajasthan, are guilty in this respect. For example, Bihar took 8 years' time after the 73rd Constitution Amendment legislation was passed to announce its first Panchayat elections in April 2001. Similarly, the States of Tamil Nadu, Kerala and Karnataka delayed their first election. When the five-year term of Panchayat was complete, postponement took place in Assam and Madhya Pradesh. Madhya Pradesh held the second election in January 2000, but Assam's election remains due since October 1997. In Orissa, the State Government dissolved all the elected Panchayats before expiry of their term, but failed to hold elections within six months as stipulated in the Constitution. Gujarat postponed its gram Panchayat elections that was scheduled to be held in May-June 2000. Punjab has held up elections to the intermediate level and district level Panchayat since September 1999. The election to all the three-tiers of Panchayat in Andhra Pradesh was due in July 2000. Despite directives from the High Court and then from the Supreme Court, elections were not held. In Orissa and Uttar Pradesh, Panchayat elections were held after the Court intervened and gave direction. In the case of Andhra Pradesh, even direction of the Supreme Court failed to produce result.

2.3 The view that the Constitutional provisions with regard to the holding of Panchayat election is unambiguous and mandatory in nature has been vindicated by several judicial pronouncements. In Prof. B.K. Chandrasekhar and others vs. the State of Karnataka, a Division Bench of Karnataka High Court declared that article-243G of the Constitution is 'mandatory and not directory,' (AIR 1999, Karnataka, 461). In W.P. No. 2481 of 2000, the High Court of Andhra Pradesh also gave similar view. Finally the Supreme Court in its judgement dated 12 August 1997, in WP (Civil) No, 719 of 1995 observed as follows:

> ".... It is necessary to emphasise that various clauses of Art.243 are to be followed in letter and spirit. The concerned States cannot be permitted to withhold election of Panchayats except in case of *genuine supervening difficulties*, e.g., unforseen natural calamities in the State like flood, earthquake, etc., or urgent situation prevailing in the State for which election of the Panchayat cannot be held in time. It will be unfortunate if the concerned States remain insensitive to the Constitutional mandate of holding election of Panchayats in time...." (emphasis added).

Thus, the only valid ground for withholding Panchayat election after it has become due is some 'supervening difficulty', but difficulty has to be 'genuine' in nature. In no case where the States withheld Panchayat elections during the post-73rd amendment period, the difficulties cited by the States could be considered as 'genuine.'

Strengthening State Election Commission

2.4 One of the compelling reasons for Constitutionalising Panchayats and municipalities was to ensure regularity of election to these bodies. The objective does not seem to have been realised fully because of the stubborn resistance from a large number of States. By refusing to perform their Constitutional duty, the defaulting States have denied the people of their democratic right to elect their Panchayat representatives. This shows that legal instrument alone may not always guarantee realisation of the democratic rights. They have to be earned through various forms of 'public-action' in which people themselves have to take active role. Nevertheless, it is worthwhile to examine if further reforms in the provisions of law could improve the situation.

2.5 One can have no dispute with the provisions contained in article 243E. It is clear and the mandatory nature of these provisions has been reconfirmed by judicial pronouncements. In the light of the experience of last few years, it may however be fruitful to consider if there is scope to introduce reform in the provisions of article 243K. This article provides for the appointment of State Election Commissioner (SEC) for "superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats." (Similar provisions exist in article 243ZA for municipal elections). These powers are comprehensive and wide and they enable the SEC to conduct polls in free and impartial manner. However, clause (4) of article 243K empowers the State Legislatures to frame laws to regulate "all matters relating to, or in connection with, elections to the Panchayats". Once such law is there, SEC can exercise his inherent powers, subject to the provisions of such laws. Election rules/Acts of many States have armed the State Governments with powers relating to many vital election matters, such as, issuance of election notification, delimitation of constituencies, reservation of seats, rotation of reserved seats, etc. When holding of election gets delayed because of non-completion of such works on time, SEC remains helpless.

2.6 There is no inherent problem with article 243K relating to elections to the Panchayats or article 243ZA relating to elections to the Municipalities. (The provisions of these articles are in line with article 324 which deals with matters relating to the conduct of election to the Union and State legislatures and Constitution of Election Commission). However, past experience indicates that the State Governments quite often delay the process of Panchayat elections willfully on purely political considerations. They can do so, partly because they retain some powers relating to the conduct of elections under the States' Acts/Rules and partly because SEC has to depend upon the State Government for logistic support that includes staff as well as fund-support. There is specific provision for providing staff support to SEC under clause (3) of article 243K, but similar provision does not exist in respect of funding to defray the expenses of conducting elections. At least, SECs of some States cited non-receipt of adequate funds as reasons for not holding elections. Besides, as has been noted in the previous paragraph certain important powers like issuance of election notification, delimitation of constituency, earmarking reserved seats etc. are retained by the State Governments in many States. Considering all these, ***there seems to be a case for strengthening further the hands of the SEC by making specific provisions in the Constitution itself.*** **Article 243K (and article 243 ZA) may specifically, assign the following functions, among others, to the SEC, namely:-**

(1) **Delimitation of territorial constituencies of Panchayats and municipalities;**
(2) **Allotment of reserved seats to various electoral wards; and**
(3) **Rotation of reserved seats among constituencies.**

2.7 Sometimes, SECs had to fight lone battles against the State Governments in order to fulfil their Constitutional duty to hold election timely and as per provisions of law. The classic case is that of State Election Commissioner of Andhra Pradesh. He sought judicial intervention to prevent operation of an Ordinance promulgated by the Government just before the Panchayat election was due, as this ordinance made provisions which were clearly unconstitutional. One may take recourse to judicial intervention in extra ordinary situation. But, other channels should be made available to the SEC, so that it can register its views on the acts of omission and commissions of the State Government which stand in the way of performing its Constitutional duty. Accordingly, ***It may be considered as to whether the***

Constitution should make provisions requiring SEC to submit a report annually to the Governor in the same manner as the State Public Service Commission is required to submit under clause (2) of article 323. **As provided in the said clause, the report of the SEC along with the views of the State Government on the same may be placed before the State Legislature.** Such a provision will, at least, enhance the accountability of the State Government, if it fails to fulfil the Constitutional mandate of holding Panchayat/municipal elections.

CHAPTER 3

Functional Domain

3.1 Ever since the coming into force of the 73rd Constitution amendment, controversies have been raised about the kind of functions the Panchayats should discharge and powers and authority they should possess to perform the functions assigned to them. The root of such controversies lies in the rather vague nature of article 243G. The said article reads as under:-

"**243G.** Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to –

(a) the preparation of plans for economic development and social justice;
(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.".

This article along with the Eleventh Schedule indicates the kind of functions to be discharged by the Panchayats. It does also probably indicate, as some observers assert, the nature of power and authority that the Panchayat should be endowed with. But the provisions do not go to the extent of specifying the 'functions', 'powers' and 'authority'. That task is left to the respective State Legislatures. Most of the State Legislatures in their turn have interpreted the provisions in a way that seem to be in contravention with the basic principles of democratic decentralisation.

Institution of Self-Government

3.2. In article 243(d), 'Panchayat', is defined as an institution of self-government. Article 243G expresses the intention that while framing laws, the State Legislatures should endow the Panchayats "with such powers and authority as may be necessary to enable them to function as institutions of self-government". This guideline is in full conformity with that of article 40.

3.3. The Constitution has not elaborated the concept of 'self-government'. In order to derive the meaning and the implications of the concept, one has to take into consideration the context in which the expression has been used either in article 243G or in article 40. Viewed from that context, the term,' self-government' must have two major attributes. Firstly, it is a Government by the people, that is to say, it is a Government which is democratically elected by the people. Secondly, an institution of self-government is, by its very nature, autonomous. This means that it is empowered to function without any outside interference. To be more explicit, within the boundary of the specific functions devolved upon it, an institution of self-government will have powers and authority to take decisions independently. Autonomy, however is an elusive concept in a State where there are governments at multiple levels . Here Government at any particular level enjoys only partial autonomy. Accordingly, the functional autonomy of

1208 LJ&CA/2002—14A

Panchayats has also to be partial. How much autonomy Panchayats should enjoy is, however, a matter of judgement as well as policy. The Constitution empowers the respective State Legislatures to adopt their individual policies in this regard based upon their own judgement of practical situation. But, they have to ensure that devolution of functions becomes as complete as possible and does not get reduced to a situation where Panchayats enjoy only such 'power' and 'authority' as may enable them to function merely as *agents* of the State Government. That clearly is not the intention of the Constitution, as it hurts the basic principles of democratic decentralisation. What Part IX of the Constitution intends to bring about is 'devolution' type of democratic decentralisation, and not the 'deconcentration' or 'delegation' type of administrative decentralisation under which the superior decision-making body retains various control including the power of withdrawing the power and authority given to a lower body for administrative convenience.

Functions of Panchayats

3.4. The question as to whether the Panchayats are for development purpose only or for the wider purpose of governance is being debated for quite sometime. The notion that the Panchayats are for development purpose only was popularised by the Balvantray Mehta committee of 1957. The same view was endorsed by the Asoka Mehta Committee of 1978. All the policies of Government on panchayati raj from the 50's onwards also reflect such a view.

3.5. Nevertheless, there has always been an alternative school of thought represented by such eminent persons as Jayaprakash Narayan and E.M.S Namboodiripad. They held the view that the panchayati raj institutions should be considered as governments of local areas and therefore no distinction should be made between the so called 'developmental' and 'regulatory' functions of the State, while assigning functions to them. For a clear exposition of this view, it will be worthwhile to refer to the classic dissenting note of Namboodiripad in the Asoka Mehta committee report. " I cannot ...think of panchayati raj institutions" observed Namboodiripad in his dissenting note, "as anything other than the integral parts of the country's administration with no difference between what are called the 'developmental' and 'regulatory' functions. What is required is that, while certain definite fields of administration like defence, foreign affairs, currency, communications, etc., should rest with the centre, all the rest should be transferred to the States and from there to the districts and lower levels of *elected administrative bodies*". (GOI, 1978:163, emphasis added).

3.6. The above observation is a bold statement in favour of democratic decentralisation under which the local self-government institutions will have a distinct role to play in the country's governance along with the Governments of the States and the Centre. Hence, in assigning functions to the governments at the three levels, the totality of the governmental functions have to be considered and then division of powers and functions between them has to be made on the basis of the principle of subsidiary. Under such a situation what is required to be considered is what functions can be done best at what level. Whatever function can be discharged at a lower level without loss of efficiency should not be unnecessarily usurped by the government at the higher level. This is the essence of the idea of decentralisation voiced by Namboodiripad or Jayaprakash Narayan. Hence, the question of drawing distinction between the developmental and regulatory functions for the purpose of devolution of functions to Panchayats has no place in such conceptualisation. This view about the role of the Panchayati Raj Institutions (PRIs) shared by many today and has found systematic expression in the literature on panchayati raj.

3.7. How does article 243G stand against this? From a plain reading of the provisions of this article, particularly those in clauses (a) and (b) read with the Eleventh Schedule, it would appear that the Constitution reserves only developmental functions for the Panchayats. In Mukarji (1993) and Mukarji and Bandopadhyay (1993), however, we find a different view. According to the latter, that portion of article 243G which directs the State Legislatures to endow, by law, the Panchayats "with such powers and authority as may be necessary to enable them to function as institutions of self-government" has overriding force over the rest of the portions of the said article. Accordingly, they observe as follows:

"Our own view is that it is entirely within the competence of the State Legislatures to decide what powers and authority the Panchayats should have in order that they function as credible institutions of self-government. This was the Constitutional position all along[1]; the Amendment served to reaffirm it. The introduction of the development motif in the Amendment, perhaps, limits the competence of the legislatures only in the sense of indicating the minimum that each State Legislature should transfer to the Panchayats. There is, in other words, a floor but no ceiling. How far above the floor a particular State may go is a question of policy for that State, bearing in mind that the Panchayats from now on are (1) Constitutional bodies and (2) institutions of self-government."

3.8. Whether harmonious construction of article 243G leads to the above view is a matter of debate. As the later discussion would show, at least the conformity Acts of various State Legislatures do not subscribe to this view. But, one should not fail to note that there are valid reasons to interpret article 243G in the manner Mukarji and Bandyopadhyay have done. The point to note for our purpose is the fact that the Eleventh Schedule is only an illustrative list which may be ignored by the State Legislatures, if they so desire.

The Conformity Acts[2]

3.9. By and large, none of the conformity Acts has tried to grapple with the concept of self-government. In fact, excepting the mandatory provisions of the Constitution, these Acts have nothing new to offer. We may examine Acts of a few States to illustrate the point.

3.10. Under the Gujarat Panchayat Act, the duties of village, Taluka and District Panchayats have been elaborated in three separate schedules. The list of functions as detailed in these schedules may appear to be impressive, but adequate provision for fund and staff has not been made in order to enable them to carry out the duties. Panchayats receive funds for depermentally determined specific projects. As a result, the PRIs function largely as agents of State Government. Their functional autonomy is highly restricted.

3.11. In Maharashtra or Tamilnadu, there has been no attempt whatsoever to alter the pattern of distribution of functions to the panchayati raj bodies. There is no reflection of the 11th Schedule in assigning functions to the Panchayats. What is more, the Maharashtra Panchayat Act empowers the State Government to 'omit any entry' or add and amend any such entry, by an executive order, from the schedule of the Act that contains list of functions devolved to the PRIs. In the Rajasthan Act, a number of functions have been assigned to all the tiers of Panchayat, but the same Act confers power to the State Government to take away any such function.

3.12. Uttar Pradesh had made much noise on the issue of decentralisation. The State had appointed an Administrative Reforms and Decentralisation Commission. The Commission after studying the activities and functions listed in the 11th Schedule, identified thirty two departments of the State Government whose activities/functions could be shared with the gram Panchayats, kshetra samitis and zilla Panchayats. To examine the feasibility of these recommendations, the State Government appointed a committee of officials. After receiving the report of this committee in 1997, the Government had issued orders to twenty-eight departments for transferring some of their functions to the PRIs. But such transfer of functions has no operational significance, since all important decisions are taken as before by the respective departments.

3.13. In Orissa, the gram Panchayats have been assigned with an impressive functions/activities of 43 odd items under obligatory and discretionary lists. But there is no provision for fund or staff to enable them to discharge such functions, thus, making their statutory functional domain practically useless. Powers and functions of Orissa's Panchayat samiti remain unaltered since the sixties and the 11th Schedule does not seem to have any impact upon them. The gram Panchayats and Panchayat samitis of

[1] Probably, they are referring to the provisions of article 40.
[2] This section draws heavily on ISS, 2000 and ISS, 1998.

the State have no power to prepare plans for their own areas, even though this right is Constitutionally given to all such institutions.

3.14. In Andhra Pradesh also, the gram Panchayats and the mandal parishads are not required to plan for 'economic development' and social justice'. All the tiers of Panchayat have been assigned with large number of functions. But none of them has financial or administrative resources under their control to execute them. The mandal parishad has no control over the staff of Development blocks, and the zilla parishad has no control over the DRDA which controls huge fund under various poverty alleviation programme.

3.15. West Bengal which claims to have a highly developed panchayati raj system has shown little respect for devolution type of decentralisation following the Constitution amendment. Even though the State's conformity Act recognises each Panchayat to be a 'unit of self-government', it keeps its earlier scheme of distribution of power unaltered. The Act provides impressive lists of functions which Panchayats may discharge, but does not make provisions either of untied fund or of staff. By executive orders the State Government allows the Panchayats to share implementation responsibilities of some of its projects/ schemes/ functions. Thus the Panchayats of the State have to remain satisfied with only 'agency functions' which are, of course, substantial, but are incapable of exercising autonomy in its own functional domain as given by the statute.

3.16. Karnataka, Madhya Pradesh and Kerala are the States where some attempts have been made to ensure the growth of Panchayats as self-governing institutions. In 1997, Karnataka had amended substantially its original conformity Act of 1993. The amendments expressed explicit commitment for developing Panchayats 'as units of self-government', eliminated bureaucratic control over elected bodies, gave powers of delimitation of constituencies to the State election commission, made provisions for establishing a State Panchayat council with chief minister as chairperson and all the adhyakshas of zilla parishads as members to act as a forum for discussing matters relating to the functioning of Panchayats. Substantial staff and resources also are being transferred to the Panchayats. But, the situation cannot be called as satisfactory. Funds come to the PR bodies in tied form for the purpose of administering departmental schemes. Untied funds are not substantial and the Panchayats have little scope to launch programmes based upon their own initiative. They also have no effective administrative control over the Government staff transferred to them and they do not have their own cadres. Hence, despite some laudable attempts, Panchayats of the State perform mainly agency functions.

3.17. The original conformity Act of Madhya Pradesh only referred to the State Government's power of entrusting functions to the Panchayats in terms of the provisions contained in article 243G read with 11th Schedule. But, like before, the Act also provided that the State Government had the right to withdraw functions already assigned to the Panchayats. An amendment made in 1996 reaffirmed the position and provided that the Panchayats at different levels should have such power and authority as may be necessary to enable them to function as institutions of self-government in relation to the matters listed in the 11th Schedule. It also provided that the Panchayats should have the power to select employees necessary for implementation of the assigned functions. But such provisions were in the nature of general statement and could not be operationalised in the absence of the statutory provisions that would entrust the PRIs with specific powers and authority. Since the Panchayat Act by itself was insufficient to carry forward the project of decentralisation, the State Government has issued from time to time a series of executive orders for delegation of powers. As the matter stands now, responsibility for programmes/activities of seventeen departments have been transferred to the Panchayats along with staff and resources. Despite these efforts , Panchayats remain only implementing agencies of the schemes conceived by the State or Central Government. They receive funds which are mostly tied to specific schemes. The staff continues to remain with the Government even where full responsibilities of any function or activity have been stated to be transferred to the Panchayats. Even in respect of taking major decisions on implementation, the district bureaucracy retains control. By far the greatest distortion in the process of decentralisation has been made by making a State Minister the Chairperson of district planning committee and naming it as district Government. The concept of district Government as developed in M.P is a direct assault on the authority of the Zilla Parishad.

3.18. Kerala appears to be the only State where a sytematic and sincere effort is on since 1996 to carry forward the process of decentralisation in its totality. Kerala's Panchayat Act as amended in 1999 is probably the best attempt to define the functional areas of different tiers of PRIs as precisely as possible, the objective being to reduce their agency role and expand their autonomous-actor's role. The Act has eliminated direct control of Panchayats by bureaucracy and reduced drastically Government control over them.

Devolution of function: An assessment

3.19. From a brief survey of the conformity Acts of different States, certain general conclusions can be drawn. Firstly, most States have shown lack of political will to decentralise. Taking advantage of the non-mandatory nature of article 243G in its operative part, as distinguished from its conceptual part relating to the idea of 'self-government', most States have chosen to keep the functional domain of Panchayats unaltered. Even the mention of the 11th Schedule functions in many State Acts does not alter the character of the functions assigned to them.

3.20. Secondly, the post-Constitution-amendment-Panchayats are operating, like before, within the framework of what may be called 'permissive functional domain'. That is to say, the State Legislatures do not carve out an exclusive functional area for the Panchayats, but merely permit them to work within the functional domain of the State, subject to such conditions as it may deem fit to impose. Excepting some municipal functions which are invariably given to the gram Panchayats, for all other so-called developmental functions assigned to the different tiers of Panchayat, there are specific line departments of State Government or parastatal bodies like DRDA. They handle these functions. They have access to necessary resources as also staff for the discharge of the functions. Mere statutory authority to undertake functions already being performed by the State Government is no guarantee that those would, indeed, be taken up by the PRIs, unless they have adequate funds and personnel to discharge them. Since these resources are not made available to them, the lists of various functions that every Panchayat Act religiously provide remain sterile. What the 73rd Constitution amendment intended is 'exclusive' and not 'permissive' functional domain, backed up by resources for the Panchayats. That has not happened.

3.21. Even in the States which have shown political will to decentralise, devolution has not gone beyond the implementation responsibility of the schemes/projects conceived by the State or Central Government. As a result, Panchayats have not blossomed into institution of self-government. Instead they have become one of the implementing arms of the State Government.

3.22. Lastly, all the States, except to a certain extent, Kerala, have chosen to assign functions not through the statute, but by delegated legislation in the form of rules or executive orders. The task of assigning functions to the Panchayats was given to the State Legislatures, but the same seems to have been usurped by the State Government. The Constitution failed to guarantee assignment of a set of exclusive functions for the Panchayats. Hence, the kind of role they would be expected to play in governance depends on the policies of the regime that controls the Government of a State.

Need for Constitutional reform:

3.23. The State Legislatures, it is clear, have denied autonomy to the Panchayats. This is contrary to the expectations of those who held the view that the 73rd amendment has constitionalised "three strata of governance of the country: the Union, the States and the Panchayats." (Mukarji and Bandyopadhyay, 1993:6).

3.24. The concept of a third stratum of governance at the district level and below was voiced initially by Nirmal Mukarji (1986, 1993). Today, there are many who subscribe to the view that the panchayati raj institutions should be treated as governments for the respective local areas at the sub-state level, just as the State Government is the Government for the State and the Union Government for the whole country. They also hold that by making provision for enabling the Panchayats to function as 'institutions of self

government', article 243G has practically introduced the 'third stratum' in the country's federal structure. (Arora, 1995).

3.25. Practically, all the State Legislatures/Governments, except perhaps that of Kerala, has rejected this view. On the contrary, their vision of Panchayat, like before, has been one of 'local authority' that will enjoy such kind of delegated power and authority as may be given to them by the State Acts or rules and executive orders made thereunder. Again, such powers and authority could be exercised by the Panchayats, subject to such limitations and control, including bureaucratic control, as the State Government would like to prescribe. *What is singularly absent in the State Acts is the concept of 'autonomy' of Panchayats which is at the centre stage of conceptualisation of the institution as the third stratum of governance. Also missing in the State Acts is the idea that Panchayats can be relied upon not only for developmental functions, but also for regulatory functions of the State.*

3.26. It seems that in the Constitution itself there are sources from which the State Legislatures/ Governments have derived their own understanding about the nature of self-government that Panchayat (or municipality) represents. In article 243G itself (as also in 243W in the case of municipalities), there are provisions for specifying 'conditions' while devolving power and responsibilities to the Panchayats (and municipalities). There is no check upon the State Legislatures in specifying 'conditions' upon the functions to be assigned to the Panchayats or municipalities. The power seems to be absolute, unless the provisions in the same articles regarding empowerment of Panchayats (and municipalities) for enabling them to function as institutions of self-government are considered to be possessing an overriding force. Clearly, this is a source of confusion. Another source of confusion arises from entry 5 of Seventh Schedule of the Constitution. Here, three terms have been used interchangeably, namely, 'local government', 'local self government' and 'local authorities'. According to the illustrations given, Panchayats or municipalities under this entry stand in the same footing as an Improvement Trust or any other local authority as defined in the General Clauses Act, 1897.

3.27. Thus, we are now faced with two types of conceptualisation of Panchayats and municipalities. Both of them draw their strength from the Constitution. One type of conceptualisation leads us to envision these institutions as constituting the third stratum of governance. Another takes us to the opposite extreme under which the Panchayats (and municipalities), subject to the Constitutional guarantee of their permanent existence, composition, election etc, are no more than a local authority as understood under the General clauses Act. *The Constitution has to categorically express the status of the 'institution of self government' as mentioned in article 243G or 243W.*

Options for reform:

It seems that three options are available.

(a) Panchayats (and municipalities) constitute the third stratum of governance. Hence, in the Constitution there shall be clear recognition of such status. This would mean that these institutions will have a coordinate status along with the Union and State Governments, each having its Constitutionally given functional domain, area of jurisdiction, powers and authority. This will amount to the formal conversion of the existing two-level federation into a multi-level federation.

(b) They will not have a coordinate status along with the other two levels of governance. They will still be the creatures of the State Acts and subject to some kind of control by the State Government. Yet, they will have sufficient autonomy over a set of identifiable functions which should be spelt out in the Constitution. The functions that will be carved out by the Constitution for these institutions will represent the minimum that should be given to all such bodies of the country, but the State Legislatures may have the option to endow these institutions with more functions, power and authority.

N.B. Under both the options, the functional domain of Panchayats and municipalities have to be carved out by making suitable entries in the Seventh Schedule to the Constitution by introducing separate lists for local government or for state-local concurrent jurisdiction or both. Alternatively,

the character of the 11th (and 12th) schedules should be altered in order to ensure 'devolution' type of decentralisation. Obviously some functions, power or authority from the existing State List will have to be taken out for endowment to the Panchayats/ municipalities.

(c) They will continue to remain as local authority as envisaged under entry 5 of List II (State List) in the Seventh Schedule to the Constitution, even though their right to exist, nature of their composition, election and some other things would be guaranteed by the Constitution.

3.28. The third option, obviously, is unacceptable. This amounts to maintaining the *status quo*. Constitutional reform is necessary, since the existing provisions have, by and large, failed to ensure local democracy. To be really effective, measures for reform have to be chosen either from option (a) or option (b). A fully decentralised polity demands Constitutional reform on the line of the first option. But, it has far reaching implications - legal, administrative and political. This will transform India's two-level federation into a multi-level federation. It is apprehended that decentralisation in this form may generate complex and difficult problems of administrative coordination between the State and the local bodies. Besides, such an arrangement may be construed as coming into conflict with the basic features of the Constitution. (Datta, 1987). The second option is comparatively easier to implement and many features of the first option may be introduced in it. This will avoid the problem of granting coordinate status to the Panchayats and municipalities. But, at the same time it will give the Constitutional guarantee of independent status to these bodies, thus enhancing their autonomous jurisdiction considerably. (Ibid)

3.29. Whatever the choice may be, the vagueness about the expression 'self government' has to be removed. It is also necessary to distinguish between the democratically elected institutions of self-government and other kinds of local authority within the meaning of the General Clauses Act, 1897. 'Local government' within the meaning of entry 5 of List II (State List) in the Seventh Schedule and the various provisions of Part IX and IX A cannot coexist.

CHAPTER 4

Financial Domain

4.1 As an institution of self-government, the Panchayat should have adequate fiscal capacity as well as substantial fiscal autonomy. The fiscal capacity may be defined as the capability of the Panchayat to raise financial resources commensurate with the functions assigned to it. In other words, the functions assigned to a Panchayat institution must match with the financial resources it is capable of raising from various sources including grants from the State Government. Fiscal autonomy, on the other hand, is the extent of independence the Panchayat has in raising and spending financial resources. This means that its dependence on the discretionary funding from the higher level Government for the discharge of its 'core functions' should be minimum, and on the other hand, it should not be unduly bound by the conditionalities of 'tied' grants coming from the State Government.

Fiscal Decentralisation

4.2 It was noted earlier that decentralisation of governmental functions from the State to the local bodies has not taken place in the manner intended by the Constitution. Barring one or two, no State has made serious efforts in transferring functions, powers and responsibilities to the PRIs. This is also reflected in the expenditure decentralisation ratio (EDR) which represents local government expenditure as percentage of State Government expenditure. In table 4.1 given below, this ratio is constructed for 12 States based on the figures relating to the year 1997-98.

Table 4.1

Expenditure Decentralisation Ratio

Figures in Rs. Lakhs

States	Total Expenditure PRIs 1997-98	Total Expenditure ULBs 1997-98	Total Expenditure (ULBs+PRIs)	State Total Expenditure (RE) 1997-98	PRIs Expenditure as % of Total State Exp.	ULBs Expenditure as % of Total State Exp.	Local Govt.Exp. as % of State Exp.
Assam	4056.91	5338.47	9395.38	475939.00	0.85	1.12	1.97
Gujarat	226880.85	95089.25	321970.10	1155902.00	19.63	8.23	27.85
Haryana	14642.90	34425.57	49068.47	634809.00	2.31	5.42	7.73
Karnataka	369640.89	44585.38	414226.27	1183320.00	31.24	3.77	35.01
Kerala	73056.08	27261.64	100317.72	920388.00	7.94	2.96	10.90
Madhya Pradesh	178529.90	62143.64	240673.54	1222886.00	14.60	5.08	19.68
Orissa	64002.25	13787.79	77790.04	582310.00	10.99	2.37	13.36
Punjab	15954.89	35939.89	51894.78	819565.00	1.95	4.39	6.33
Rajasthan	153738.30	48902.45	202640.75	920972.00	16.69	5.31	22.00
Tamil Nadu	49061.87	125191.9	174253.77	1489359.00	3.29	8.41	11.70
Uttar Pradesh	90714.07	60587.18	151301.25	2509649.00	3.61	2.41	6.03
West Bengal	55487.91	38111.55	93599.46	1269906.00	4.37	3.00	7.37

Source: Report of the Eleventh Finance Commission for 2000-2005, Annexure VIII 2A and VII 3A.
RBI Bulletins, February 1999

4.3 It has to be admitted that the computation made in Table 4.1 was a crude exercise, since the data were not sufficiently refined to make comparison between local government expenditure and State Government expenditures accurate. Nevertheless, it gives an indication that sufficient fiscal decentralisation has not taken place. PRI expendiure as percentage of total expenditure of the State Government is less than 10 per cent in as many as 7 out of 12 States. In six among them it is less than 5 per cent. Out of the five remaining States, EDR in respect of PRIs ranges between 11 and 20 per cent in 4 States. The State of Karnataka only is found to be an exception where local government expenditure constitute more than 30 per cent of the State expenditure. Considering other evidence, EDR in respect of Orissa and Rajasthan seem to be a suspect. There are strong reasons to believe that EDR in these States is below 10 per cent.

4.4 An exercise was done by Oommen (2000) to measure tax-revenue decentralisation ratio, indicating percentage of local government tax revenue to total State Government tax revenue. It was found that out of 12 major States the tax revenue of local bodies (PRIs and urban local bodies) in 9 States constituted less than five per cent of the total tax revenue of State Government. In two other States, the ratio was higher, but less than 10 per cent. This indicates that the local bodies have not been given sufficient tax assignments to raise revenue locally.

4.5 In table 4.2 given below, revenue collected by the Gram Panchayat and all the three tiers of Panchayats has been separately shown. It is noted that in 6 States out of 12 major States, gram Panchayats collect less than 10 per cent of their revenue requirements. When all the three-tiers of Panchayats are taken into account, the position deteriorates further. Of the rest, the position in Haryana and Punjab seems to be much better, as the gram Panchayats of these States can raise 68 per cent and 46 per cent revenue respectively internally. Own revenue in respect of all the three tiers of PRIs in these two States constitute 62 per cent and 40 per cent respectively. The position of Gujarat is also

comparatively better in the sense that the gram Panchayat of the State can raise nearly one-third of their revenue requirements, but when it comes to the position of all the three-tiers taken together, own revenue turns out to be around two per cent of the total revenue. The position of Kerala, Karnataka and Assam is marginally better but none of them can raise more than 22 per cent of their total revenue internally.

Table 4.2

Revenue of the PRIs: 1997-98

Figures in Rs. Lakhs

States	Own Revenue		Total Revenue		Own revenue as % of Total Revenue	
	GP	PRIs	GP	PRIs	GP	PRIs
Assam	234.85	345.99	1391.85	1550.31	16.87	22.32
Gujarat	3158.25	4036.11	9838.40	223253.71	32.10	1.81
Haryana	5295.00	5301.00	7744.00	8522.00	68.38	62.20
Karnataka	3013.72	3013.72	23365.29	376806.54	12.90	0.80
Kerala	9909.34	9909.34	74427.39	98276.59	13.31	10.08
Madhya Pradesh	2718.24	3203.83	68242.67	177901.47	3.98	1.80
Orissa	699.38	699.38	14573.15	64002.25	4.80	1.09
Punjab	4610.30	5386.62	10117.51	13541.04	45.57	39.78
Rajasthan	1344.00	3074.57	80109.82	152020.75	1.68	2.02
Tamil Nadu	2575.30	3403.77	27929.04	42216.41	9.22	8.06
Uttar Pradesh	382.13	4665.17	73281.22	88324.36	0.52	5.28
West Bengal	1296.51	1959.21	25507.46	48775.46	5.08	4.02

Source: Report of the Eleventh Finance Commission for 2000-2005, Annexure VIII.2A and VIII.2B

4.6 From table 4.2 above, it becomes clear that the fiscal autonomy of PRIs is extremely poor – almost throughout the country. Data used in this table relate only to the revenue receipts, that is to say, the receipts that are necessary to meet the recurring expenses of the institutions, namely, salary of staff, office expenses, and maintenance of assets. To be viable, they should be able to meet a least 50 per cent of their revenue requirements by using their own fiscal powers. But, this is not the case and the Panchayats remain principally grant fed.

4.7 The capacity of PRIs to meet their revenue expenses from own sources is reflected in table 4.3 under paragraph 4.9. The table indicates that in eight out of 12 major States, the GPs can meet not more than 12 per cent of their revenue expenditure from internal sources. When it comes to the case of all the three tiers taken together, the figure sharply goes down to below 10 per cent in 9 States and at or below 5 per cent in at least 6 States. An immediate impact of this is the lack of autonomy of the PRIs to finance from its own funds, the maintenance expenses of the core services, that is to say, water supply, street lighting, sanitation and roads. As table 4.3 shows, expenditure on core services as a percentage of total revenue expenditure is low in all the States and below even one percent in a number of States. Similarly, very small portion of internally collected revenue is spent on core services.

4.8 To sum up, the following conclusions can be drawn from the above discussion.

(a) the extent of fiscal decentralisation through the empowerment of the PRIs has been very little.

(b) The fiscal autonomy of the PRIs is far from adequate, because they cannot balance their revenue budget (not to speak of creating a surplus), by using their own fiscal powers.

(c) The PRIs are principally grant-fed and their dependence upon the State Government even for carrying out their routine functions is quite heavy.

(d) Among the three-tiers of Panchayats, the gram Panchayats are comparatively in a better position. This is so, because the GPs have some taxing power of their own, while the other two tiers are dependent only on tolls, fees and non-tax revenue for generating internal resources.

4.9 The data have indicated that the fiscal capacity of the PRIs even at their present level of functional responsibilities is poor and they are disproportionately dependent upon the State Government and secondly, their fiscal autonomy is negligible. What the data do not show is the additional funding necessary for providing reasonable services to the people. In fact, **major fiscal restructuring and financial resources are necessary to enable the Panchayats to function as viable local self-government institutions.** Some of the measures necessary for such reforms may be taken even within the framework of existing Constitutional provisions. But, there are areas where rethinking about the Constitutional framework itself would be necessary. In the rest of the chapter an attempt will be made to present certain views in this regard.

The Constitutional Provisions on the Finances of Local Government

4.10 There are two provisions in the Constitution, namely 243H and 243-I dealing with the finances and fiscal powers of the Panchayats. (Exactly similar provisions exist for the urban local bodies in Part IXA of the Constitution, namely articles 243X and 243Y)

Tax Assignments

4.11 Article 243H is in the nature of an enabling provision that gives authority to the State Legislature to authorise the Panchayats in respect of levy, collection and appropriation of taxes, duties, fees and tolls as well as for the creation of a fund within the Panchayat institution to regularise and control inflow and outflow of financial resources. In effect, this article provides nothing new, but only reconfirms and institutionalises the practices that were in existence even prior to the enactment of the Constitution (73rd Amendment) Act, 1992. In other words, like before, the prerogative to decide what taxes, duties, fees and tolls leviable under legislation made under entries in the State List of the Seventh Schedule to the Constitution, should be assigned to the Panchayat and in what manner lies with the State Legislature. The Constitution also permits the Legislatures of the States to put such 'conditions and limits' as they deems proper, before assigning specific fiscal powers. The said article also authorises the State Legislature to enact laws for enabling the State Government to give grant-in-aid to the Panchayats from the Consolidated Fund of the State.

4.12 What is significant is that the Constitution does not specifically earmark some of the fiscal powers of the State List either exclusively for the local government or under State-local concurrent jurisdiction. In the State List, there are some entries on the levy of taxes/rates covering subjects that can be administered better locally.

Examples are as under:

Entry	: 49	:	Taxes on land and building
	53	:	Tax on the entry of goods
	54	:	Tax on advertisements other than advertisement published in the newspaper, and advertisement broadcast by radio or television.
	57	:	Taxes on vehicles (At least non-mechanically propelled vehicles are fit to be administered by the local bodies).
	58	:	Taxes on animals and boats
	59	:	Tolls
	60	:	Taxes on professions, trade, callings and employment
	61	:	Taxes on entertainment, betting and gambling.

Some of the above mentioned taxes have been traditionally levied and collected by the rural and urban local governments for a long time. For example, the property tax (entry 49), octroi (entry 53) and profession tax (entry 60) have remained traditionally under the jurisdiction of either the municipalities or the rural local bodies or both. Similarly, 'tolls' on roads and ferries have been traditionally levied and collected by the zilla parishad, while bill boards in cities and town, have been taxed by the municipal bodies.

4.13 Given the situation as above, it is not difficult to introduce the concept of exclusive and/or State-local concurrent tax domain for the Panchayat as well as the municipal bodies. At the moment this concept is absent. The purpose behind article 243H was to ensure that the issue of financial viability of PRIs is not overlooked by the State Legislatures. But by giving blanket power to the State Legislatures, the said article has been made practically sterile. It is not capable to serve its purpose since the State Governments do not want to share their fiscal powers with the local government institutions. ***The only way out is to introduce afresh the concept of a separate tax domain for the local bodies.***

Table 4.3

Table 4.3 : Revenue Receipts and Expenditure of PRIs : 1997-98

Figures in Rs. Lakhs

States	Own Revenue		Total Expenditure		Expenditure on Core Services		Own revenue as % of Total Expenditure		Expenditure on Core Services as % of Own Revenue		Expenditure on Core services as % of Total Expenditure	
	GP	PRIs	GP	PRIs	GP	PRIs	GP	PRIs	GP	PRIs	GP	PRIs
Assam	234.85	345.99	2919.69	4056.91	1049.68	1082.14	8.04	8.53	446.96	312.77	35.95	26.67
Gujarat	3158.25	4036.11	5908.53	226880.85	1657.28	1657.28	53.45	1.78	52.47	41.06	28.05	0.73
Haryana	5295.00	5301.00	13652.00	14642.90	NA	NA	38.79	36.20	NA	NA	NA	NA
Karnataka	3013.72	3013.72	24365.02	369640.89	5727.05	36124.04	12.37	0.82	190.03	1198.65	23.51	9.77
Kerala	9909.34	9909.34	44057.89	73056.08	7191.05	8725.05	22.49	13.56	72.57	88.05	16.32	11.94
Madhya Pradesh	2718.24	3203.83	70767.86	178529.90	2563.73	5640.33	3.84	1.79	94.32	176.05	3.62	3.16
Orissa	699.38	699.38	14573.15	64002.25	436.63	793.25	4.80	1.09	62.43	113.42	3.00	1.24
Punjab	4610.30	5386.62	12382.88	15954.89	3910.10	3915.10	37.23	33.76	84.81	72.68	31.58	24.54
Rajasthan	1344.00	3074.57	82123.69	153738.30	NA	1163.57	1.64	2.00	NA	37.84	NA	0.76
Tamil Nadu	2575.30	3403.77	23753.93	49061.87	10832.00	16386.42	10.84	6.94	420.61	481.42	45.60	33.40
Uttar Pradesh	382.13	4665.17	74361.98	90714.07	5060.44	5060.44	0.51	5.14	1324.27	108.47	6.81	5.58
West Bengal	1296.51	1959.21	31515.93	55487.91	63.00	194.51	4.11	3.53	4.86	9.93	0.20	0.35

Source: Report of the Eleventh Finance Commission for 2000-2005, Annexure VIII.2A and VIII.2B.

N.B. Core Services mean water supply, street lighting, sanitation and roads.

4.14 Independent as well as concurrent tax domain for the local bodies can be brought about by restructuring the existing seventh schedule. ***The restructuring would necessitate introduction of a local list and a State-local concurrent list.*** The other alternative is to make changes in the 11th and 12th Schedules. There are problems in the second alternative, as these Schedules, in present form, are no more than illustrative lists. Experience shows that without Constitutional support, Panchayats and the municipalities will not be able to achieve substantial fiscal autonomy. ***Ideally, a Local List in the Seventh Schedule will be most helpful to provide fiscal autonomy to the local government institutions. If that is found difficult, then the Eleventh and Twelfth Schedules have to be restructured in a manner that reduces the area of State's discretion and guarantees devolution of fiscal powers from State to the Panchayats/Municipalities.***

4.15 It is true that there are some difficulties in carving out a list of fiscal powers exclusively for the local bodies from the Seventh Schedule exclusively. First, between Gram Panchayats and Zilla Parishads and between Nagar Panchayats and Municipal Corporations, there are various types of local bodies which differ from one another in respect of size, functional responsibilities and administrative or financial resources. How to distribute taxing power among them may be difficult to determine centrally by the Constitution. Secondly, some kind of uniformity across the State is necessary in respect of principles for determining the base for the tax and the fixing of tax rate. While some differences among the different local bodies are natural and may, in fact, be welcome, wide disparities may hurt the principle of equity. However, some power for fixing the 'procedure', or 'conditions' or 'limits' may be retained by the State Legislatures, while earmarking certain taxes for the local bodies.

Transfer and Grant-in-Aid

4.16 By far, the most novel provisions that brought the local government institutions in the scheme of fiscal federalism are contained in articles 243-I (for Panchayats) and 243Y (for Municipalities). They envisage the setting up of State Finance Commission (SFC) as soon as may be within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992 and thereafter after expiration of every fifth year in every State for reviewing the financial status of the Panchayats/municipalities and for recommending measures to improve the same by restructuring, if necessary, the State-local fiscal relationship.

4.17 In making these provisions, it was rightly assumed that the financial viability of the rural and urban local bodies cannot be ensured only by assigning tax, duties, tolls and fees, for by their nature, they are less elastic and less buoyant. Transfer from the States' revenue as well as grants-in-aid would thus be necessary to supplement the finances of the PRIs and the municipalities. It is through such mechanism that the vertical imbalance and horizontal imbalance can be corrected in a federal polity. (The former refers to the mismatch between the revenue earning power and functional responsibilities of a unit of Government and the latter refers to the unequal development of areas falling under the jurisdiction of different governmental units). Accordingly, these provisions provide to States "a unique opportunity to redesign the existing fiscal system that is coherent and flexible enough to meet the rapidly changing local needs and responsibilities." (Mathur, 2000: 360).

4.18 The status as on 1st July, 2000 with regard to the setting up of SFCs and submission of their report after the coming into effect of Constitutional amendments is provided in table 4.4. It will be seen that the first reports of SFCs have been submitted in all the States (except Bihar) and in some States, second SFCs have been set up.

4.19 The reports of the SFCs have not been uniform in respect of their approach, coverage and methodology adopted for making recommendations. "Many SFC reports have not addressed the specific items listed in articles 243-I and 243Y, nor have they provided a clear idea of the power, authority and responsibilities actually entrusted to the local bodies. Many of these reports also do not clearly indicate the principle formulated for sharing or assignment of State taxes, duties, tolls, fees and the grants-in-aid." — (Report of the Eleventh Finance Commission: para 8.11b). Some SFC reports such as those of West Bengal and Karnataka have been hailed because their approach unmistakably,

was towards creating institutions of self-government.' Some reports, on the other hand, have been criticised for their failure to take a similar approach (Oommen, 2000: 30-31).

Table 4.4

Status of State Finance Commissions (as on 1 July 2000)

State/Union Territory	First State Finance Commission			Second SFC Constituted on
	Constituted on	Report Submitted on	Action Taken #	
Andhra Pradesh	June 22, 1994	May 31, 1997	4	Dec. 8, 1998
Arunachal Pradesh	SFC not constituted as the State Panchayat Act did not receive assent of the President			
Assam	June 23, 1995	Feb. 29, 2996	1	
Bihar	April 23, 1994	Report not submitted	-	
Goa	April 22, 1994	June 5, 1999	1	-
Gujarat	Sept. 15, 1994	July 13, 1998	1	-
Haryana	May 31, 1994	March 31, 1997	2	-
Himachal Pradesh	April 23, 1994	Nov. 30, 1996	3	May 25, 1998
Karnataka	June 10, 1994	Jan. 31, 1996 (Urban Local Bodies)/ July 30, 1996 Panchayat Raj Institutions	4	June 23, 1999
Kerala	April 23, 1994	Feb. 29, 1996	3	June 23, 1999
Madhya Pradesh	June 17, 1994	June 20, 1996	4	June 17, 1999
Maharashtra	April 23, 1994	Jan. 31, 1997	4	June 22, 1999
Manipur	April 22, 1994	Dec. 20, 1996	4	-
Orissa	Nov. 21, 1996	Dec. 30, 1998	4	
Punjab	April 22, 1994	Dec. 31, 1995	2	
Rajasthan	April 23, 1994	Dec. 30, 1995	3	May 7, 1999
Sikkim	July 22, 1998	Aug. 16, 1999	2	Aug. 16, 1999
Tamil Nadu	April 23, 1994	Nov. 26, 1996	4	Dec. 1, 1999
Tripura	April 23, 1994	Jan. 12, 1996	4	Oct. 29, 1999
Uttar Pradesh	Oct. 22, 1994	Dec. 26, 1996	4	Feb. 25, 2000
West Bengal	May 30, 1994	Nov. 27, 1995	3	-
Pondicherry	March 1997	Sept. 15, 1997*	5	-
Chandigarh	April 1995	De. 31, 1997	1	-
Delhi			1	-
A&N Islands	Sept. 8, 1995	Aug. 28, 1998	2	-
D&N Haveli			2	-
Daman & Diu			2	-
Lakshadweep			2	-

Note: #Action taken: 1 = No action taken; 2 = Report under consideration of the State Government/UT Administration; 3 = Accepted; 4 = Accepted with modifications; 5 = Information not available.

Jammu and Kashmir, Mizoram, Meghalaya and Nagaland are excluded from the purview of the Constitution (Seventy-third Amendment) Act, 1992.

* This was the first report to be followed by a report every six months. The Commission was constituted for three years.

Source: Status of Panchayati Raj in States and Union Territories of India, 2000.

4.20 Whatever may be omission and commission committed by the SFCs, their first reports have been successful in creating the concept of a divisible pool between the State and the local bodies, almost similar to the pattern of transfer of central revenue to the States. At least in nine major States, such as West Bengal, UP, Tamil Nadu, Rajasthan, Kerala, Karnataka, Assam and Andhra Pradesh, the respective SFCs have recommended a certain percentage of the net proceeds of the total tax revenue of the State for transfer to the local bodies. The recommended share of local bodies however ranges from as low as 2 per cent in Assam to nearly 40 per cent in Andhra Pradesh. In some other States, certain taxes have been earmarked, a certain percentage of the proceeds from which could be transferred to the local bodies. Some SFCs have identified innovative parameters for distribution of divisible pool fund among different local bodies in order to ensure horizontal equity.

4.21 Experience shows that some corrective measures are necessary to make the institutional mechanism of SFC more effective and purposeful. These have been brought into focus by the Eleventh Finance Commission (para 8.11 to 8.13) as well as by some others. Some of the measures recommended relate to changes necessary in the State Panchayat laws. In some cases, executive interventions would be necessary. But, there are few areas where more fundamental changes involving Constitutional amendment seem to be called for. These are indicated below:

4.22 Sub-clauses (bb) and (c) of clause (3) of article 280 require the Federal Finance Commission to make its recommendations in respect of the Panchayats and municipalities "on the basis of the recommendations made by the Finance Commission of the State". The Eleventh Finance Commission found it difficult to work strictly within this frame because of various problems. It found that in some States SFCs were not either constituted or did not submit their reports. Again, in view of the 'heterogeneity of approach' of different SFCs and differences in contents and periods covered by them, the Eleventh Finance Commission found it difficult to form their opinion only on the basis of their recommendations. For the purpose of avoiding such situation in future and in order to enable the Federal Finance Commission to take a macro-level view, **the provisions of article 280(3) (bb) and (c) may be amended. The words "on the basis of the recommendation" in these clauses may be replaced by the words "after taking into consideration the recommendations."**

4.23 In order to enable the Federal Finance Commission to give due weight to the reports of SFCs for assessing the situation in each State, it is necessary to synchronize the periods covered by the reports of both of them. The first generation SFC reports made available to the Eleventh Finance Commission were for different periods of time. It would have been much better if the periods covered by both of them were same or nearly the same. Since the second generation SFCs has already started working, it will also be creating the same problem for the Twelfth Finance Commission. Ideally, **the periods covered by both the types of Finance Commissions should more or less be the same. Presently, that part of the provision of clause (1) of article 243-I which calls for constitution of SFC at the expiration of every fifth year create problem to get the above objective realised. Hence, in line with article 280(1), the words "or at such earlier time as the Governor considers necessary" may be added after the words 'fifth year'.**

4.24 According to the information available to the eleventh Finance Commission, some States—for example, Goa, Gujarat, Haryana and Sikkim – had not submitted to the respective Legislatures the report on action taken on the SFC recommendations, even after the lapse of one year or more after the submission of the report. Some States had taken more than six months time to present the action taken report (ATR). Some States (for example, West Bengal) took about four years to implement partially the SFC recommendation. While, it is for the State Legislature to ensure that the Government implements fully what it assures before it, ***there has to be Constitutional obligations for placing the ATR before the legislature within 'six months' or so after the submission of the report. Clause (4) of article 243-I may need to be amended accordingly.***

4.25 Taxes on professions, trades, callings and employment under article 276 has been a traditional source of revenue for the local bodies. (Of late, there is, however, a tendency for the State Governments to take over such powers from the local bodies). One of the impediments in generating

substantial revenue from the levy and collection of this tax is that the upper ceiling (presently, Rs. 2500 per annum) has been Constitutionally fixed [*see* article 276(2)]. While there is a need for fixing the upper ceiling of the tax centrally in order to avoid the charge of double taxation on 'income', Constitutional provision for this is unnecessary and troublesome. For long, the upper ceiling remained at the unrealistic level of Rs. 250 only because of the rather difficult process involved in amending the Constitution. ***It would be better to change this provision and give the necessary legislative power of fixing upper limit to the Parliament. The words "district board, local boards or any other local authority" as mentioned in clauses(1) and (2) of Art. 276 may be suitably replaced by the words "Panchayats and Municipalities".***

4.26 Now-a-days, the local governments are being encouraged to take recourse to borrowing for financing asset-building and/or remunerative projects. Some Municipal Corporations have been given power even to go to the capital market. The Panchayats of West Bengal are permitted to borrow from the financial institutions, subject to Government approval. With the role we are envisaging for PRIs in the governance structure, there is no reason as to why the borrowing power should not be Constitutionally given to the Panchayats, especially, the Zilla Parishads. ***In chapter II of Part XII of the Constitution, a new article may be added to allow the Panchayats (and Municipalities) to borrow from the State Government and financial institutions. The zilla parishads may, in addition, be permitted to borrow from the capital market.***

CHAPTER 5

Planning Process

5.1. The 73rd and the 74th Constitution Amendments have sought to initiate a process of decentralisation in respect of developmental planning as well as implementation. This becomes clear from the provisions of articles 243G, 243W and 243ZD. *Vide* article 243G, the State Legislatures are given specific direction to frame laws which would contain provision for the "devolution of powers and responsibilities upon the Panchayats at the appropriate level" with respect to (a) "the preparation of plans for economic development and social justice" and (b) "the implementation of schemes for economic development and social justice *as may be entrusted to them* including those in relation to matters listed in the Eleventh Schedule" (emphasis added). Similar provisions exist for the municipalities in article 243W.

Decentralised and Participatory Planning: The Constitutional Scheme

5.2. Preparation of plans seems to be the original function of Panchayats (and Municipalities). If this is so, implementation of schemes arising out of such plans should also fall in that category, even though it is not explicitly mentioned in clause (a) of article 243G. Such inference is logical since planning becomes merely a "wish list" and, therefore, a useless exercise, unless it can be implemented. It cannot be the intention of the Constitution to entrust the Panchayats with a useless exercise. The subject of implementation is brought in clause (b). Does the provision in this clause mean that the Panchayats are entitled to implement only such schemes (of the State Government) as may be entrusted to them? In that case, the Panchayat's role will be restricted to that of an agent of State Government only, so far as implementation of development schemes is concerned. But, that certainly is not the intention. The Constitution has certainly given to the Panchayats implementation responsibility of both types of schemes - schemes originally conceived by the Panchayats in the process of preparation of plan as well as schemes of the State Government implementation of which may be decentralised. Sub clause (ii) of clause (c) of article 243W is more explicit and refers to both 'original' and 'agency' functions of municipalities. Thus, article 243G read with the Eleventh Schedule provides that (a) the Panchayats will make plans for economic development and social justice, (b)

implement schemes and perform other functions arising out of that plan, and (iii) implement schemes as may be entrusted by the State Government to execute.

5.3. It seems that by decentralising the developmental functions, the Constitution seeks to correct two types of weaknesses of the country's macro-level development planning. One relates to the mismatch between growth and equity resulting into unjust treatment to the weaker sections of the people. The other is related to the absence of inter-sectoral coordination for pursuing a common goal. The Panchayat-municipality system is expected to contribute towards removal of both of these types of weaknesses.

5.4. In the mandate given to the Panchayats and the municipalities, the concern for social justice is noteworthy. 'Economic development and social justice' has been set as the goal of their development plans. Read conjunctively, the mandate is to pursue the growth and the equity objectives simultaneously. How to make it happen at the micro-level of Panchayats and municipalities, when, with all the resources at their command; the macro-level planners have failed to achieve this? The chances of promoting social justice brighten only when the victims of social injustice are themselves enabled to participate directly in the planning process. Participation of the weaker sections of people becomes easier at the micro-level of Panchayats/municipalities. But, even at these levels, the marginalised people may find it difficult to register their voice. Hence, the Constitution has provided for safeguards. Firstly, the gram sabha in the case of gram Panchayats and ward committees in the case of municipalities have been given Constitutional recognition and the State Legislatures have been empowered (and, perhaps, also advised) to devolve power and functions to them. Secondly, the Constitution has provided for reservation of seats and posts of chairpersons for women and members of SC and ST people, so that they can have access to the power-structure of the local government institutions. Thus, the Constitution intends to usher in a regime of participatory planning at different levels of Panchayats as well as at the municipalities to remove the hiatus between development and social justice which unfortunately has taken place in India's top-down planning process.

5.5. By mandating the Panchayats to perform planning functions the Constitution has also tried to ensure institutionalisation of the concept of 'area plan' at the micro-level which will form building blocks of the macro-level planning at the State or national level. The 'area plans' are holistic plans for given areas and they cut across the identities of individual sectors. Such plan aims at horizontal coordination of different sectors in order to pursue a common goal. This goal as determined by the Constitution is economic development with social justice. It is evident that along with the participatory nature of planning process, the Constitution also aims at 'area plans' for optimum inter-sectoral coordination. Both of these objectives are meant to remedy the shortcomings of the country's macro-level plans.

5.6. A question may arise as to whether planning at each of the three levels simultaneously will lead to duplication of efforts, since area of a Panchayat samiti overlaps with that of a gram Panchayat and similarly the jurisdiction of zilla parishad overlaps with that of Panchayat samiti. If the principle of subsidiary is applied also in the planning function, the danger of duplication may be avoided. Thus, a plan prepared at the level of Panchayat samiti would be consolidated plans of all gram Panchayats under it plus some additional features which can be conceived/performed only at that level. These additional features may consist of (a) interventions that cover more than one G.P.; (b) projects that require technical expertise of superior level not available at GP, and last, but not least, (c) intervention that requires an over-all view of an area larger than that of GP (for example, developing market facilities). The last point is important, because as planning area expands from village-level plan to gram Panchayat plan, gram Panchayat plan to Panchayat samiti plan, Panchayat samiti plan to zilla parishad plan, localist view has to gradually make space for taking a wider view. This is the way how peoples' perceptions and local needs or aspirations can be integrated with the technical requirements of plan through participatory multi-level planning process. It is felt that the intention of the Constitution is to institutionalise this process.

5.7. In construing the provisions relating to the planning function contained in article 243G in the manner shown above, certain inferences had to be drawn. But, such inferences, as will be seen, are

quite logical and harmonious, if the various provisions relating to people's participation in decision-making through gram sabha, reservations for women and members of SCs/STs in Panchayats, assignment of planning function to the Panchayats, inter-linkage with different tiers of Panchayats, Constitution of State Finance Commission and inclusion of Panchayats/ municipalities in the terms of reference of the Federal Finance Commission - all are considered together. There is a definite pattern and this pattern has to be kept in mind for logical and harmonious construction of article 243G and 243W. Unfortunately, no State other than the State of Kerala has shown 'political will' to translate this Constitutional scheme into reality. They have taken refuge under the non-mandatory and, at times, vague nature of the provisions in which the Constitution has expressed its scheme of decentralisation of development functions:

District Planning Committee

5.8. The harmony in the planning process as noted above, however, breaks down when one considers the provisions relating to District Planning Committee (DPC) under article 243ZD. The very idea of a committee outside the institutions of self-government is incongruous with the scheme elaborated in Parts IX and IX A of the Constitution. The anomalies it has created will be examined in the following paragraphs:

Non-elective character of DPC

5.9. DPC is the only body in the decentralisation scheme of the Constitution where at least one-fifth of the total members can be nominated. Since the manner of choosing the chairperson of the committee has been left to be decided by the State Legislature, there is no bar in making one of the nominated members also to be the chairperson. In fact, as many as six States have taken the liberty to nominate a minister to head the committee (see Table 5.1), thus undermining the position of the elected members of PRIs and municipalities, including the chairperson of zilla parishad. Nomination is a convenient tool which may be used by the regime in control of the State Government for political expediency and to load the committee with the political heavy weights to weaken the role and position of zilla parishad. DPC may thus emerge as a strong power-centre outside the PRI-municipality system. This cannot definitely be the intention of the Constitution. In Madhya Pradesh, DPC has been converted into what has been brandished as district Government - a Government of the district but not accountable to the people of the district. DPC has not been constituted everywhere. But, where it has been constituted, distortion of various kinds are coming to surface. In Tamil Nadu, for example, law provided that the collector would be the chairperson of DPC and the chairperson of district Panchayat its vice-chairperson. After protests were lodged against such a preposterous arrangement, the decision was reversed and the chairperson of zilla parishad was made the chairperson of the committee.

Table 5.1

Status of DPCs in different States

(As on January 2000)

Sl. No.	Name of the State	Status	Chairperson
1.	Andhra Pradesh	Not constituted	--
2.	Assam	Constituted	Zila Parishad (ZP) Chairperson
3.	Bihar	Not Constituted	--
4.	Gujarat	Constituted	Minister
5.	Himachal Pradesh	Constituted	ZP Chairperson
6.	Karnataka	Constituted	ZP Chairperson
7.	Kerala	Constituted	ZP Chairperson
8.	Madhya Pradesh	Constituted	Minister
9.	Maharashtra	Constituted	Minister

1208 LJ&CA/2002—15B

Sl. No.	Name of the State	Status	Chairperson
10.	Orissa	Constituted	Minister
11.	Punjab	No Provision in Earlier Act, Amendment is being considered	
12.	Rajasthan	Constituted	ZP Chairperson
13.	Tamil Nadu	Constituted	Earlier District Collector, ZP Chairperson by recent amendment
14.	Tripura	Constituted	Minister
15.	Uttar Pradesh	To be Constituted	Minister
16.	West Bengal	Constituted	ZP Chairperson

Source: Network Update, January 2000.

Panchayat plan vis-à-vis DPC's plan

5.10. The task of DPC, as per article 243ZD, is, "to consolidate the plans prepared by the Panchayats and the municipalities in the district and to prepare a draft plan for the district as a whole". The draft plan so prepared will have to be forwarded to the State Government, obviously for its consideration and approval. Apparently, there is a contradiction between this provision and that of article 243G and 243W that mandates Panchayats and municipalities respectively to prepare substantive plans for economic development and social justice. As noted earlier, these are final and actionable plans. There cannot be anything tentative about them. But, when these plans get consolidated at the DPC level, can that be the basis of a district plan which is not final, but only a 'draft'? If that is the meaning conveyed, then the huge exercise involving all the gram Panchayats, Panchayat samitis, municipalities including their wards upto zilla parishad become infructuous. Moreover, if the plan which is to be prepared from below through participatory process is not treated as final, but only as 'draft' then this will amount to an assult on the democratic process itself. This cannot be the intention of the Constitution. It is contradictory to the letter and spirit of the various provisions of Parts IX and IXA of the Constitution.

5.11. A rational and harmonious construction of the provision would be that the plans prepared at the various levels of the PRI - municipality system are final and are also to be implemented by them. They would pass on to their respective higher level bodies those elements of the plan which could not be executed, because of the constraints in respect of jurisdiction, lack of technical expertise or financial/administrative resources. The so-called 'draft' status of the 'draft development plan for the district as a whole can then refer to only those residuary elements which the zilla parishad or the municipalities could nor execute for one reason or the other. These may be considered to be constituting the draft plan. The rest of the plan of the district consisting of locally actionable plans of the PRIs and the municipalities are final. To be authoritative, such a construction of article 243ZD has to wait for a judicial verdict. Till then, one has to live with this gross anomaly unless suitable Constitution amendment is made.

Jurisdictional conflict

5.12. DPC is to make plan (Draft or otherwise) for the district as a whole. Zilla Parishad's plan is also for the whole district, but restricted to the rural areas. Since in most districts more than three-fourth of the population reside in rural areas, the plan prepared by the zilla parishad will cover practically the whole district, barring a few urban pockets. Two authorities for the same function not only go against the canons of organisation principles, but also pose a constant source of dispute on account of nearly common jurisdictional boundary.

Doubtful legitimacy

5.13. Members of the DPC are partly nominated and partly indirectly elected. To whom it is accountable? It is not accountable to the local people. It is also not accountable to the PRI-municipality system. Yet, it has all the possibility of growing as an alternative power centre. The case of Madhya Pradesh is an instance. It has also the possibility of controlling the fund-flow to the Panchayats and the municipalities. It may also be given power to monitor the activities of elected Panchayats and municipalities, as has been done in the State of Tamil Nadu. In a democratic framework, such exercise of power by a non-elective body over the elected institutions is certainly not legitimate.

5.14. It requires to be noted that neither the national Planning Commission nor the planning boards of the States have been Constitutionalised. They remain as parts of the national and State Government respectively, even though they may have been given at certain times a measure of autonomy. If that is so, what was the urgency or necessity to give Constitutional status to the DPC? The logic is not clearly understood.

Institutional mechanism for rural-urban integration:

5.15. Only significant role that may be played by DPC in the existing framework of PRI-municipality system is one of rural-urban integration in the preparation of district plan. The Panchayats are for rural areas and the municipalities for urban areas. This institutional arrangement may work at the micro-level of village and town. But when it comes to the level of a district, the distinction disappears. A plan for the whole district has to combine both rural and urban areas. In Indian context, district is considered as meso-level, but there are many districts in the country, the population of which may be more than that of a small sovereign State. Planning technique applicable at the micro-level of village or small town will not suit planning exercise for the whole district. Many functions that towns perform as seats of industry, trade and commerce, provider of services, higher education, communication, etc. have to be taken into consideration, even while a district plan aims at economic and social sector development of the rural areas. Similarly, planning for urban areas has to take into consideration the situation of the rural hinterland they serve. In article 243ZD (3) (a) (i), the Constitution recognises this problem and gives the direction that in preparing development plan for the whole district, the DPC should give due regard to the "matters of common interest between the Panchayats and the municipalities". Since the zilla parishad which has a district-wise coverage caters only to the rural areas, necessity of DPC has arisen.

5.16. The problems with an institution like that of DPC have been discussed earlier and it has been shown that its position is, rather, incongruous with the pattern of decentralisation sought to be institutionalised through the PRI-municipality system. Its role in coordination, particularly in the matter of rural-urban integration in the district plan, is recognised. But, for this, an institution like DPC is not absolutely essential. This task can be performed at the level of zilla parishad by expanding its jurisdiction to the whole district. It may be conceived as the institution of self government for both rural and urban areas of a district. In that case, ZP's members would be elected by the people of the entire district-rural as well as urban. Under such a scheme, rural-urban distinction among local government institutions will remain for individual municipalities and the Panchayats upto the intermediate level. At the district level, this distinction will disappear and the local government institution at that level will represent rural as well as the urban people.

5.17. If the jurisdiction of zilla parishad covers the entire district, the mandate of preparing the district plan may be given to it. This plan will be an integrated plan for the district as a whole combining both rural and urban areas.

5.18. There will still be a need for a body like DPC. Firstly, experts' advice has to be made available to the elected representatives of ZP in order to enable them to make sound judgement on developmental policies and programmes. Secondly, involvement of State Government officials will be necessary in the preparation of district plan, because, even after decentralisation, the line departments will have to retain with themselves some functions to be executed fully or partially within a district.

These relate mostly to the projects spread over more than one district or which require expertise and organizational strength of high degree or which have implications for the State as a whole. DPC may be formed with experts, Government officials and activists/social workers, but it should be constituted by the zilla parishad in accordance with guidelines in the State Act. Its tasks will be (i) to prepare draft district plan after consolidation of the individual plans of gram Panchayats, Panchayat samitis and municipalities for consideration of the ZP, (ii) to assist the Panchayats and municipalities to prepare their plans, (iii) to coordinate district planning exercise with that of the State Government. The details of the constitution of DPC may be left with the respective States. There may be an enabling provision in the Constitution. MPs and MLAs of the district may be associated with the DPC.

Constitutional reform:

5.19. The jurisdiction of zilla parishad should be the entire district combining both rural and urban areas

5.20. Planning shall be an obligatory function of Panchayat at all levels and the municipalities. District planning shall be the function of zilla parishad.

5.21. District Planning Committee should be constituted by the zilla parishad in accordance with such guidelines as may be provided in the State Acts. Members of the DPC may include experts, MPs/MLAs, officials in charge of State or Central Government functions within the district, representatives of Non-governmental Organisations and social workers.

CHAPTER 6

Gram Sabha

6.1 The significance of the concept of Gram Sabha as a body of all adult people of the village does not seem to have been fully grasped. It, therefore, receives a casual treatment in the State Acts.

6.2 The gram sabha is not conceived as an organization that is required to perform certain tasks in order to realise specific goals. It is a forum for registering 'voice' of individual citizens in the process of decision-making on matters that affect their lives. Herein lies its uniqueness. Our democracy — like democracies of all large countries — is based on the principle of representative government. Gram Sabha is the only forum where people can take part in 'direct democracy'. It can be used by the people for collective-thinking and over-seeing as well as participating in the activities of gram Panchayat. In a more practical sense, it may conduct social audit of gram Panchayat, take collective decisions on village-level plans, collaborate with gram Panchayat in implementing its programmes. A vibrant gram sabha has the potentiality of realising the vision of participatory governance at least at the level of the village.

6.3. Article 243A stipulates that "gram sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may by law provide". The State Legislatures have, by and large, provided it with only a peripheral role. In most of the State Acts, the jurisdiction of the gram sabha covers the following:

- To consider matters relating to the annual administration report, the annual statement of accounts, the budget, the report on development works, etc. of the gram Panchayat;
- To discharge such functions as raising voluntary contribution, promoting unity and harmony in the village, adult education, identification of beneficiaries, etc.

Some States are experimenting with the idea of giving wider powers and functions. An amendment of Madhya Pradesh Panchayat Act which came into force on 26th January, 2001 has given a range of functions to the gram sabha. To discharge these functions, there shall be eight standing and other *ad hoc* committees. Kerala has involved gram sabha in its people's plan campaign. West Bengal is considering introduction of a model of participatory planing under which the *gram sansads* (roughly wards of gram Panchayat) will play a substantial role in preparing gram Panchayat's plan. The gram sabhas of Orissa and Rajasthan have been given power to approve the GP's plan and budget.

6.4. Barring exceptions, the gram sabha in most States is treated as a recommendatory body. Common people naturally do not find interest in attending its meetings. In many States, the gram sabha meetings are not held regularly. Since they are given only the power to recommend and no power to approve what the gram Panchayat seeks to do, the Sarpanchs are under no compulsion to treat gram sabha seriously. Either the meeting would not be called or their recommendations would be ignored.

6.5. Experience of the last eight years of the post 73rd Constitution amendment phase shows that gram sabha is yet to emerge as a forum where common people can participate in the process of collective decision-making. A major reason for this is, of course, the nature of power-relations that operate in rural society under which large sections of people remain in a disadvantaged position because of their lower social or economic status. At the same time, the political empowerment that a forum like gram sabha confers to the ordinary men and women can go a long way in removing caste, gender and class barriers that stand in the way of their participation in the process of collective decision-making. For this to happen, the gram sabha itself has to be made powerful. It has to play a vital role in the functioning of gram Panchayat. It should not be reduced to a decorative forum to make recommendations only. It has to be given substantial authority to influence the functioning of gram Panchayat effectively.

6.6. Since the practical situation differs from State to State, it is not possible to make Constitutional provisions on the specific functions and powers that should be given to the gram sabha, but *the Constitution should explicitly indicate its intention to allow the Gram Sabha to play substantive role in the functioning of gram Panchayat.*

CHAPTER 7

Personnel System

Self-Government and its Human Resource

7.1 An institution of self-government must have its clearly demarcated field of activities, free from outside interference, financial capacity and autonomy to perform these activities, as also the power to recruit and control the officers and other employees required for managing its functions. Staff is a resource that an organisation must possess to perform its day to day activities and execute its decisions. Access to and command over the human resources are therefore an essential element to measure the kind of autonomy that an institution of self-government enjoys. Judged from this point, the Panchayats present a disquieting picture. It is necessary to note that Part IX and Part IXA of the Constitution are totally silent about this vital aspect of institutional autonomy. **Failure to address the human resource issue has definitely affected the growth of Panchayats as self-governing institution.**

7.2 There are three varieties of personnel system for the local government institutions in India namely: (i) separate; (ii) unified; and (iii) integrated. Under the separate system, each local

government unit has full control over matters concerning recruitment, control and discipline of its staff. Under the unified system, State-wise or region-wide common cadres of some or all categories of staff of local government are constituted. Such cadres are fully managed by the State Governments. In the integrated system, the State Government employees and the local government employees come from the common cadre managed by the State Government. It is only in separate system that the local government institution has total control over its staff. In the other two systems, it has no power to recruit or to dismiss its staff and even in the day-to-day management, its power to control personnel is severely limited in the unified system and negligible under the integrated system.

7.3 Ideally, a self-government should have separate personnel system. It is significant that even the local self-government institutions with limited powers that came into existence in the wake of Ripon Resolution of 1872, namely the Municipalities, District Boards and Union Boards, enjoyed practically full powers in respect of recruitment, control and discipline of their staff. The present day municipalities are, by and large, continuing that tradition, even though their autonomy in respect of personnel management has been seriously circumscribed by their dependence, in most States, on the State Governments which are paying staff salaries and allowances. The PRIs, on the other hand, have to depend upon the Government officials for staff support, whatever may be the organisational arrangement – unified or integrated. In some States, the Panchayats have been given power to create posts or to recruit their own staff upto a certain level. But in the absence of financial solvency this power remains grossly under utilised or non-utilised. Before we take up the issue of reforms in PRIs' personnel system, it will be worthwhile to take stock the situation as it obtains in different States.

An Overview of Panchayat's Personnel Structure in Different States

7.4 In West Bengal's gram Panchayat, there is a Secretary and a Job Assistant, both of whom are recruited, trained and controlled by the State Government. They enjoy government pay scales and their salaries are paid by the Government. The Panchayat samiti does not have separate staff excepting one clerk who is also appointed by the State Government. The rest are staff of Block Development Officer drawing salaries from the State Government. The services of none of the staff including that of the BDO have been transferred to the samiti. They remain full-fledged Government staff. In zilla parishad, the CEO is the collector who hardly finds time to the work of the parishad. There is an Additional Executive Officer, but he also is not a full-time officer, as he holds the *ex-officio* position as Additional District Magistrate. There are one Secretary, one Executive Engineer and one Accounts Officer all of whom come from the State Government cadres of different departments. There are some staff including one District Engineer and a few Engineering Officers as also some other subordinate staff who belong to the zilla parishad, but all vital matters in respect of them like creation of posts, fixation of pay and allowances, etc. are controlled by the State Government. Thus in matters concerning personnel, West Bengal's PRIs are totally dependent on the State Government.

7.5 In Orissa, the situation is highly unsatisfactory. Here zilla parishad is practically non-functional for lack of staff. Law provides that the staff of DRDA would work for zilla parishad, but they prefer to take orders from the Collector rather than from the chairperson of zilla pari-shad. In Panchayat Samiti, there are a number of Government officials including the teachers. But, the Samiti has no administrative control over such staff. They are controlled by the respective departments to which they belong. The gram Panchayat has not been given any Government staff. Subject to the approval of the district bureaucracy and/or the Directorate of Panchayat, the gram Panchayats may recruit their Secretary and other staff. But since, they have to meet full or at least 50 per cent of the staff salary, the GPs are unable to recruit full-time quality staff. In a study it was noticed that GPs were paying their secretaries consolidated pay of a little over Rs.1000 per month. What service can be expected from such poorly paid staff? (ISS, 1998).

7.6 In Karnataka, the Panchayats have no power of recruitment, transfer and discipline over their staff. In this State, the zilla parishads and taluka Panchayats are packed by the State Government officials. This results in dual loyalties and needless friction in the day-to-day working of Panchayats.

Only gram Panchayat have power to recruit their own employees, provided their salaries are paid from their own resources. Own resources being insufficient, this power remains grossly underutilised.

7.7 For the gram Panchayats of Andhra Pradesh there are executive officers who are State Government employees. In most cases, one Executive Officer serves 3-4 gram Panchayats. Gram Panchayats have power to recruit their staff, subject to various bureaucratic controls. But, because of financial weakness, they cannot pay adequate salaries to attract competent and full time staff. A study showed that a gram Panchayat was paying its own staff salaries ranging between Rs.500 and Rs.1500 per month. (ISS, 1998). At mandal parishad – the intermediate level Panchayat – there is one Mandal Development Officer, one Engineering Officer and one Education Officer. All are Government servants. The staff of various development departments like agriculture, industry, veterinary, cooperation, etc are outside the mandal parishad. The zilla parishad has considerable organisational capacity, particularly in respect of engineering personnel all of whom including the Chief Executive Officer are Government officers. There is, however, conspicuous absence in zilla parishad of the staff of various development departments.

7.8 Maharashtra has the distinction to create 'district service' (technical and general) of respective zilla parishads. The staff belonging to class III and class IV categories in different levels of Panchayat belong to such service which is controlled by the zilla parishad, subject to the rules framed by the State Government. All other members of staff are Government employees deputed to the Panchayats at different levels. Village Development Officer (erstwhile *gram sevak*) who act as Secretary to gram Panchayat is recruited by zilla parishad and belongs to the district service. In introducing the concept of zilla parishad cadres as early as the sixties, Maharashtra broke new grounds and opened up exciting possibilities of building up Panchayat buraucracy in a manner different from its counterparts in the Union and the State Governments. But this did not happen. A powerful bureaucracy at zilla parishad level consisting of Government officials and headed by a senior IAS officer concentrated all administrative powers, leaving elected representatives with little control over their staff. Hence, even after working with the system of zilla parishad cadres for more than three decades, working relationship between the officials and elected representatives has not yet developed. There is a sense of distrust among the elected representatives. They feel that "decisions are thrust upon them by officials under the guise of laws and rules. As the power of recruitment, promotion, transfer and control over day-to-day work lie with the CEO [Chief Executive Officer of Zilla Parishad], the elected representatives feel powerless." (ISS, 2000: 194).

7.9 As in other States, the Chief Executives of zilla parishad and the janpad Panchayats (the intermediate level Panchayat) of Madhya Pradesh are Government officers. There is no separate cadre of Panchayat service in the State. The gram Panchayat secretaries (except a few gram sahayaks recruited earlier by the Government) are appointed by the gram Panchayat on a small monthly remuneration. Power and responsibilities of some functions of several departments of the State Government are stated to have been transferred to the PRIs, but the staff attached to them continue to remain with the Government. "The Government is reluctant to transfer any staff to the Panchayats due to likely resistance from them" (ISS, 2000: 178).

The Pattern of Personnel System

7.10 The pattern of personnel system that emerges from the brief survey given above is as follows. The separate system, that is to say Panchayats' power to recruit and control their own staff, has been allowed in a few States and that too mostly at the level of gram Panchayats. But gram Panchayats are financially weak and financial viability being the pre-condition for successful working of the separate personnel system, this power remains unutilised. Even if the power is used, the Panchayats can pay them absurdly low salaries and thus end up in recruiting substandard staff. Generally, the Panchayats at all the levels are manned by the staff belonging to the State Government. Either they are recruited specifically for Panchayat work – such as gram Panchayat secretaries – or they are recruited against posts of specific departments and posted to the Panchayat samitis or the zilla parishads. Such staff includes BDO who is generally Chief Executive Officer of Panchayat samiti or officers of the rank of

Additional District Magistrate, and in some cases, of the rank of Collector (e.g., in Karnataka) who act as the Chief Executive Officers of zilla parishads. Officers of some development departments like agriculture, fishery, cooperative, industry, etc., are also posted to the Panchayats, especially, in the intermediate level Panchayats. Where intermediate Panchayats are smaller than blocks as in Andhra Pradesh, they are to serve a group of such Panchayats. The common feature of such arrangement is that all of them retain their departmental identities and their departmental superiors continue to exercise both administrative and functional control over them. In many States where the subject of primary education has been made over to the Panchayats, school teachers form the bulk of Panchayat employees. But, Panchayats' control over them is negligible, as their recruitment, posting, disciplinary matters – all are controlled by the State Governments in most States. In Kerala where serious efforts are being made for decentralisation, the staff of many departments and institutions has been transferred along with the devolution of function to different levels of Panchayats. Despite this, the Panchayats cannot exercise effective administrative control over them since they have been allowed to function under their respective departmental superiors.

Constitutional Reform

7.11 For governance at the third stratum, the Panchayats, with or without coordinate status, have to have autonomy over management of its personnel. That is to say, they must have the authority to create posts, make recruitment to such posts and control the employees. Some State laws provide this power to the Panchayats, subject, however, to strict bureaucratic control and subject to the condition that the staff should be paid out of their own resources. As noted earlier, even this power could not be utilised by the Panchayats properly, as they cannot pay their employees reasonable salaries. Assuming that the Panchayats will acquire, sooner or later, sufficient fiscal autonomy either through the devolution of taxing powers or through transfer of State's revenue or both, details of operating such separate personnel system have to be worked out. These details include recruitment procedure, conditions of service, disciplinary matters, salary structures, etc. Much innovative thinking must precede before such details can be worked out, because a golden opportunity of developing an efficient, responsive and accountable bureaucracy for Panchayat will be lost if the same ingredients of governmental bureaucracy, namely, security, non-accountability, preference of seniority over efficiency and honesty, etc., are allowed to be a part of it. Models incorporating innovative operational details without sacrificing substantially autonomy of Panchayats over personnel matters are yet to emerge. The so-called unified system that is in operation in a few States is controlled totally by the State Governments through their bureaucracy. The model that is yet to evolve has to be one where the PRIs will substantially retain their autonomy, but will be subjected to certain well accepted codes of discipline and norms. As situation differs from State to State, working out of the models of separate personnel system for Panchayats has to be left to the States. It is, however, necessary that the enabling powers in this respect are provided in the Constitution, as has been done in matters relating to finance under article-243H. *A specific Constitutional provision on personnel will, if not anything else, legitimise the right of Panchayats to have their own staff and to have powers to control them, so that they are enabled to perform functions devolved upon them.*

7.12 Constitutional intervention is also necessary in another important field. For quite a considerable period of time, the Panchayats will have to depend upon persons who are presently employed by the State Government. This is so because for functions to be devolved to the Panchayats, the State Governments have their own cadres of employees. When functions go to the Panchayats, the staff earmarked for them become redundant for Government, but are considered essential for Panchayats. Hence, the logical step is to transfer the services of such staff to the Panchayats. Several problems are being encountered even by the State Governments who have demonstrated the political will to take such rational decision. The employees have resisted this on the ground that such en-bloc transfer of specific cadres amounts to violation of their service conditions guaranteed by the rules made under the proviso to article 309 of the Constitution and is therefore not legally valid. Sometimes the judiciary has lent tacit support to such kind of argument creating road blocks in placing the services of government staff with the Panchayats. The controversy persists in several States and no State has yet been able to transfer the services of Government employees

effectively. Even where this has been done, (e.g., in Kerala and Madhya Pradesh), the cadres of the transferred staff have not been abolished, recruitment to the vacant posts of the cadres continues to be made by the State Government, the functional and administrative control over employees including their transfers, posting, promotion or disciplinary matters is being retained by the State Government. This kind of diarchy in respect of Panchayats' personnel management functions is going to serve nobody's purpose. **What is necessary is full-scale transfer of services of staff from the State Government to the PRIs.**

7.13 In order to remove any doubt over the legality of the aforesaid transfer policy, it is necessary that an enabling provision is made in Part IX of the Constitution ***permitting the State Legislature to make, by law, provisions that would empower the State Government to confer to the Panchayats full power of administrative and functional control over such staff as are transferred following devolution of functions, notwithstanding any right they may have acquired from Act/Rules made under article-309.*** The Constitutional provision may, however, protect certain financial entitlements of the employees (such as pay, allowances and terminal benefits) as on the day of such transfer.

7.14 In order to make provisions in the Constitution on Panchayat personnel, it will be necessary to remove a major inconsistency. In Part XIV of the Constitution that deals with public services, recognition has been given to only two levels of services namely 'services and posts in connection with the affairs of the Union or of any State' (article-309). With the advent of Panchayats and municipalities in the field of governance, ***the provision of article-309 has to be amplified to include posts and services under Panchayats/municipalities as public services.*** This will have the effect of reinforcing the provisions on personnel matters proposed to be made in Part IX or Part IX-A of the Constitution.

7.15 While on the subject of Constitutional recognition of services and posts under Panchayats/municipalities, two dangers have to be carefully guarded. First, the rule-making power of the State or law-making power of the Legislature under article-309 should not be so absolute as to restrict unduly the autonomous space of Panchayats. Secondly, article-310 (doctrine of pleasure) and article-311 (major punishments of Government servants) have been misused in various ways. On one extreme they have encouraged the Government servants to be rigid, unaccountable and uncaring for public they are supposed to serve. On the other extreme, article-311(2) (b) and (c) have been used, at times, by Government to victimise even innocent employees for political reasons. It would perhaps be better to exclude the local government personnel from the operation of these provisions. Instead, separate innovative procedures and rules may be devised for them to ensure discipline, efficiency, responsiveness and accountability.

Concluding Remarks

7.16 Major task to build up the structure, norms, procedural rules, etc. of local government personnel lies with the States. There is tremendous scope to try innovative ideas in this field, so that the local government bureaucracy acquires a culture that is different from the Union or State bureaucracy and is appropriate for responsible democratic governance. But, the Constitution has the duty to give a framework as also a direction. This is the rationale that prompted to make certain suggestions with regard to making new provisions on local government personnel in appropriate parts of the Constitution.

CHAPTER 8

Other Issues

Reservation of Seats and Posts for OBCs

8.1. Clause (6) of article 243D provides that nothing in Part IX shall prevent the legislation of a State from making any provision for reservation of "seats in any Panchayat or offices of chairpersons in the Panchayats at any level in favour of backward class of citizens." In terms of this provision, a large number of States have opted for reservation of seats for Other Backwaard Classes (OBCs). The position in respect of a few States is reflected in Table 8.1

Table 8.1

Reservation of OBCs in PRIs

States	Reservation of Seats	Reservation in the Posts of Chairpersons.
Andhra Pradesh	34 per cent in all tiers	34 per cent in all tiers
Bihar	No Limit. In proportion to Population in all tiers	No limit. In proportion to Population in all tiers.
Uttar Pradesh	In proportion to population but subject to the limit of 25 per cent in all tiers	In proportion to population, but subject to the limit of 25 per cent in all tiers
Gujarat	10 per cent in all tiers	10 per cent in all tiers
Madhya Pradesh	27 per cent in all tiers of non-tribal areas	27 per cent in all tiers of non-tribal areas.
Maharashtra	Not exceeding 27% seats	27 per cent by rotation
Rajasthan	15 per cent, but if the SC/ST population exceeds 70 per cent, no reservation for OBC	
Haryana	One seat at every level	
Karnataka	One-third seats in all tiers	One-third posts in all tiers
Orissa	27% in all tiers	

8.2 OBC is a relative concept. In the first place, there is no way of estimating correctly the number of people in different caste categories in a given State, since census does not enumerate population on caste basis. Figures relating to number of people belonging to different castes are always a bone of contention. Secondly, within the OBCs themselves, there may be some categories of people who are relatively advanced than others. In a judgement delivered by Patna High Court, it was shown that certain castes within the OBCs of Bihar were over represented in the Union and State legislatures and hence providing them with the additional advantage of reserved seats or reserved posts in Panchayats was considered unjustified.

8.3 It is not our intention to go into the merit of reserving seats or posts for OBCs in Panchayats. But, it is necessary to point out certain problems associated with the implementation of the reservation policy for the OBCs. No State has been able to devise a transparent and rational procedure of determining population size of OBCs in different territorial constituencies of Panchayats at different levels. In most cases, dubious procedures have been adopted. And this had led to innumerable litigations in the States of Tamil Nadu, Karnataka, Bihar, Uttar Pradesh and Andhra Pradesh. One of the reasons for the delay in holding the first post-73rd amendment election in Tamil Nadu and Karnataka was court cases over the issue of reservation of OBCs. Bihar High Court has struck down, among other things, the provisions of the State Act on reservation for OBCs. The Government appealed to the Supreme Court where it is pending since 1996. In the process, Panchayat elections

got held up for long six or seven years. Andhra Pradesh High Court had to decide on hundreds of writ petitions on the same question and had ultimately to devise a procedure for enumerating OBCs which according to its own admission was not fully satisfactory.

8.4 A national policy on reservation of seats for Other Backward Classes is yet to come.

Three-tier System

8.5 The Constitution has prescribed a uniform pattern of three-tier Panchayat for the entire country, except for small States having population below 20 lakhs. In some States where districts are large, the three-tier system is working well and appears to be quite appropriate (e.g., West Bengal). In some States where districts are small and communication system is well developed (e.g., Kerala), the intermediate tier does not serve much purpose. There are some States, such as Andhra Pradesh and Karnataka, where intermediate level Panchayat is not coterminous with Block. They face the problem of providing adequate staff to the intermediate level Panchayats. Leaving aside the problems created by the States themselves, the fact remains that some States are comfortable with a two-tier system (village and district) because of their long administrative traditions, but not with the three-tier system. Some States however, find three-tier system more useful and effective. It may be recalled that Asoka Mehta Committee recommended a two-tier system.

8.6 Since there are differences in the experiences of different States, *it may perhaps be worthwhile to examine the question as to whether constitution of the intermediate level Panchayat should be left to the discretion of the individual States.*

Panchayat at the Village Level: Its Size

8.7 For the purpose of Part IX of the Constitution, 'village' has been defined in article 243G as a village specified by the Governor by public notification to be a village for the purpose of Part IX of the Constitution and includes a group of villages so specified. Village is difficult to be defined. Sometimes, the 'mouza', which is the lowest unit of land revenue administration of the State, is referred to as village. But this unit may or may not coincide with the area that local people perceive to be a village. Hence, the Constitution took the correct step in recognising as village an area that may be specified by a public notification. The purpose of specifying such area is to determine the spatial jurisdiction of a village level Panchayat.

8.8 How big or how small should a gram Panchayat be? This issue is left to the discretion of the State Government. It will be worthwhile to look at the way how the States have chosen to respond to this. Table 8.2 provides State-wise information, among others, on the number of gram Panchayats, population covered on average by each gram Panchayat and number of people a gram Panchayat member represents on average. The figures relate to all States (except Bihar) having population of 10 million and above.

Table 8.2
Gram Panchayats in Selected States: Population and Elected Members

S. No.	State	Population (1991) Rural	Gram Panchayats (Nos)	Gram Panchayat (Total Elected Members)	Population per GP	Population/ GP Member	Year of Election/Remarks, if any
1	Andhra Pradesh	48620882	21943	230529	2216	211	1995 Elections to PRIs in Vth Scheduled areas were held in 1998
2	Assam	19926527	2489	24860	8006	802	1992
3	Gujarat	27063521	13316	123470	2032	219	1995

S. No.	State	Population (1991) Rural	Gram Panchayats (Nos)	Gram Panchayat (Total Elected Members)	Population per GP	Population/ GP Member	Year of Election/Remarks, if any
4	Haryana	12408904	5958	54159	2083	229	1994
5	Karnataka	31069413	5675	80627	5475	385	1993
6	Kerala	21418224	991	10270	21613	2086	1995
7	Madhya Pradesh (Undivided)	50842333	30922	474351	1644	107	1994
8	Maharashtra	48395601	27619	303545	1752	159	1997
9	Orissa	27424753	5261	81077	5213	338	1997
10	Punjab	14288744	12369	87842	1155	163	1998
11	Rajasthan	33938877	9185	119419	3695	284	1995
12	Tamil Nadu	36784354	12607	97398	2918	378	1996
13	Uttar Pradesh Undivided)	111506372	58805	682670	1896	163	1995, 1996
14	West Bengal	49370364	3330	50345	14826	981	1998

8.9 As will be evident from Table 8.2, most of the major States have opted for tiny village Panchayats. Population covered by an average gram Panchayat ranges between 1000-2000 in 4 States, between 2000 and 3000 in 4 States and between 3000 – 4000 in one State. In three States, population per gram Panchayat ranges between 5000 and 8000. Large gram Panchayats are to be found in West Bengal and Kerala which have population of around 15 and 21.6 thousand respectively. Between a gram Panchayat of Punjab covering a population of barely 1100 and that of Kerala catering to twenty times larger population size, there is hardly any element of commonality except that both are in the same category of Panchayat. It is not necessary to go into the reasons behind the growth of large-sized gram Panchayats either in Kerala or in West Bengal. What is necessary to learn from the experiences of both the States is that none of them found it uncomfortable with gram Panchayats catering to large population. Again, it is these two States which can claim some credit for promoting the cause of local democracy. Large size of gram Panchayats has not stood in their way in creating a strong base for Panchayat democracy.

8.10 Can the same thing be said with regard to the States having very small gram Panchayats? Are they quite comfortable with them? In all probability, the answer will be in the negative. Sheer number of gram Panchayats in these States is staggering. In the States of Andhra Pradesh, Maharashtra and Madhya Pradesh, the number of gram Panchayats range from around 22,000 to 31,000 and in undivided Uttar Pradesh, it was nearly 59,000. In the States like Rajasthan, Tamil Nadu, Gujarat and Punjab, the number of gram Panchayats vary between 9,000 and 14,000.

8.11 It is difficult to say as to what should be the optimum size of a gram Panchayat. The general principle is that it should not be too small to pose problems of viability and, again, it should not be too large to prohibit people's participation.

8.12 Let us consider first the issue of viability. **To be an institution of self-government, a gram Panchayat should, as far as possible, be a viable unit both financially as well as**

administratively. It should be capable of generating internal resources by using its own fiscal powers that include taxing power. A small gram Panchayat which is too small cannot do this satisfactorily. Similarly, a gram Panchayat will remain deprived of the service of staff, if, because of its low income generation capacity, it cannot recruit staff of its own and on the other hand, the State Government also finds it difficult to give it full time staff. This is happening in the States like Rajasthan, Andhra Pradesh or Uttar Pradesh. Considered from these aspects smallnesss is more a curse than a blessing for gram Panchayats.

8.13 The Constitution mandates Panchayats at all levels, including gram Panchayats to prepare development plans. If the size of the gram Panchayat is too small, it cannot be a viable planning unit. Firstly, financial and human resources at the disposal of the gram Panchayat will be too small to plan and implement development schemes. Secondly, it is difficult for a small gram Panchayat to plan for infrastructure like roads, irrigation sources, health centres, schools, etc, since the areas they are expected to serve may in most cases stretch beyond its boundary.

8.14 It is for these reasons that we have strong reservations about too small gram Panchayats that have been set up in most of the major States. The kind of role we are envisaging for Panchayats including gram Panchayats cannot be performed by unviable institutions. We are therefore in favour of fixing a minimum population criterion in defining village under article 243G. Though somewhat arbitrary, *it seems that the minimum population of 'village' for the purpose of constituting a Panchayat may be 5000 which roughly corresponds to 1000 families.*

8.15 It may be argued that gram sabhas will be unworkable if gram Panchayats become large. This is true. Participation being one of the precious objectives of democratic decentralisation, effectiveness of gram sabha cannot be allowed to be sacrificed. In West Bengal and Kerala, each ward functions as gram sabha. Two meetings of these sabhas – are compulsory. In both the States, these ward level institutions have been given powers and functions. Obstacles to participation in large gram Panchayats may be avoided, if the patterns developed in Kerala and West Bengal are adopted. If found necessary, Constitutional provision may also be made along this line.

Direct Election of Chairperson of Gram Panchayat

8.16. Sub-clause (b) of clause (5) of article 243C of the Constitution specifically provides that the chairperson of the intermediate level Panchayat as well as district level Panchayat shall be elected by, and from amongst, the elected members thereof. This is perfectly in line with the practice of cabinet system of government that is prevalent in our country. However, under sub-clause (a), the power to decide the manner of electing chairperson of gram Panchayat has been left to the State Legislature. This means that the State Legislature has the option to adopt a presidential type system under which the chairperson of a gram Panchayat will be directly elected by the people. The logic behind this is not understood, unless the provision has been made only to leave an old practice undisturbed, without considering soundness of the system within the framework of governance the Constitution has given to us.

8.17. In a large number of States, namely, Andhra Pradesh, Orissa, Gujarat, Haryana, Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh, Bihar and Tamil Nadu, the respective Panchayat Acts provide for election of the chairperson of gram Panchayat directly by the people. In a few States like West Bengal, Maharashtra, Kerala and Karnataka, however, the chairperson of gram Panchayat is elected by, and from amongst its elected members. Thus, in the latter case, there is uniformity among all the three-tiers in the manner of election of the chairperson.

8.18. There are several reasons to take a view that the practice of direct elections to the post of chairpersons is not sound for the democratic functioning of Panchayats. Firstly, in no other institution of government – Union, State, district or intermediate level Panchayat – such a system exists. To have a separate system for the gram Panchayat does not seem to have rationale. Secondly, under such a system all the executive powers of gram Panchayat get concentrated in the hands of its

chairperson. It is nobody's case that the gram Panchayat should turn into chairperson-centric institutions. In that case, the ward members will have no role to play, even though they are also people's representatives. Developing a culture of collective responsibility within GP is, therefore, of absolute necessity. Unless the chairperson works in a team along with other members of the Panchayat, a culture of participative decision-making will not develop. Thirdly, there is an inherent contradiction in most of the State Acts where the chairperson is elected directly by the people, but a vote of no confidence against him or her can be passed not by the people but by two-third of the elected members. Advantage of such provision has been taken against many chairpersons of gram Panchayats, particularly Dalit Women Chairpersons. Data from two districts of Rajasthan (Alwar and Pali) show that as many as 61 no-confidence motions were brought for hearing between March 1997 and February 1998. Out of them as many as 56 cases related to gram Panchayat and only 5 to Panchayat samiti chairpersons or deputy chairpersons. Incidence of no-confidence motion is less in Panchayat samiti, because here chairperson is elected by the members themselves. It is also instructive that out of 61 victims of no-confidence motion, half were women[3]. This case study also highlights the point that in a system where chairperson is elected directly, he may not necessarily enjoy the confidence of majority of members of the gram Panchayat. In such a situation, gram Panchayat will turn into a hotbed of internal squabbles.

8.19. In view of the above, ***it is necessary to consider seriously as to whether the practice of direct election of Sarpanch of gram Panchayat should be dispensed with.***

MPs and MLAs in PRIs

8.20. In terms of sub-clauses (c) and (d) of clause (3) of article 243C, the State Panchayat Acts may make provision for *ex-officio* membership of the Members of the Parliament (house of the people as well as council of States) and Legislative Assemblies/Councils in the intermediate and district levels of Panchayat. Many State Acts have this provision. The Madhya Pradesh Act has even gone to the extent of enabling an MP or an MLA to have his nominee on the Panchayats. This is arbitrary and may be construed as unconstitutional. Some major States, on the other hand, have chosen to dispense with this non-mandatory provision of the Constitution. Maharashtra, for example, which has a long tradition of PRIs do not have such provision. Through a recent amendment, Kerala's Panchayat Act has repealed the earlier provision relating to the membership of MPs and MLAs in the district Panchayat and of MLAs in the Block Panchayat.

8.21. In fact, there is hardly any rationale behind the provision on *ex-officio* membership of MPs and MLAs in the Panchayats. It may be argued that as representatives of the people they have the responsibility to highlight the critical problems of the local areas at the State or national levels and, as such, they should have membership in the Panchayats. On the face of it, the argument does not have any strength. It is not necessary to be a member of the Panchayat to get acquainted with the local needs and problems. An MP or an MLA is also not required to represent his constituency in the Panchayats. For this, people have their separate set of representatives. The presence of MPs/MLAs in Panchayat is accordingly superfluous. Their presence in Panchayat quite often creates negative effect, because, they tend to dwarf the Panchayat members who are invariably less powerful politically. They may, thus, stand in the way of encouraging the growth of grassroots level leaders.

8.22. In view of the above, the ***enabling provision relating to the ex-officio membership of MPs and MLAs/MLCs as contained in sub-clauses (c) and (d) of clause (3) of article 243 deserve to be deleted. They may, however, be members of the District Planning Committee to be constituted by the Zilla Parishad.*** (*see* Chapter 5).

[3] Panchayati Raj Update

Regulatory and Coordinating Machineries

8.23. The Constitution provides for a State Election Commission to conduct elections to the Panchayats in a systematic and impartial manner. Another important body is the State Finance Commission. *A few more bodies are needed for efficient functioning of the Panchayats, transparency in their functioning and promoting their accountability.*

Panchayat Tribunal

8.24. Election disputes go to munsiffs, subordinate judges or district judges. They are very busy functionaries and experience shows that election petitions are not disposed for an unduly long period and an environment of uncertainty hangs over the functioning of the concerned Panchayats affecting their work. To overcome this; **it would be useful to provide for the constitution of a *Panchayat Tribunal* in each State to deal with election disputes. An enabling provision may be made in the Constitution, leaving the details to the State Legislatures.**

State Panchayat Council

8.25. There is need for co-ordination among the Panchayats. They also need continued support from the State Government. It is, therefore, necessary that **there is a suitable machinery at the State level to bring about necessary co-ordination among them and between the Panchayats and the State Government.** Gujarat, Orissa and Karnataka Acts provide for such a body.

8.26. Keeping in view the necessity and importance of such a body, it may be considered whether a provision for Constitution of the ***State Panchayat Council under the chairmanship of the Chief Minister may be made in the Constitution on the analogy of the provision in article 263 of the Constitution relating to the Inter-State Council.*** The leader of the opposition may be made ex-officio vice-chairman to provide a consensual approach to the development of Panchayats as fully democratic, efficient and responsible institutions.

State Audit Commission

8.27. Experience shows that there is considerable lack of accountability because of **inadequate provisions in law relating to audit of accounts of public bodies.** There is no time-frame to conduct the audit of accounts of a given year, submit the audit report or comply with the objections raised in the report. Delay in audit provides opportunity for misuse of fund, tardy implementation of projects and over-all weakening of the system. It is, therefore, necessary that **the provisions are made in this respect to ensure that all works related to audit (conduct of audit, submission of audit report and compliance with audit objections if any) are completed within a year of the close of a financial year.**

8.28. Provisions for audit of accounts of the Panchayats have been made in all Confirmity Acts. But the provisions differ from State to State. Conduct of audit is the responsibility of the Examiner of local accounts in some States. In others, it is done by an authority appointed for the purpose. A few State Acts provide for submission of audit report within a given period while there is no provision relating to completion of audit or compliance with audit objections in any Act.

8.29. It seems that there is necessity to make suitable provisions in the Constitution for introducing a uniform pattern throughout the country in-so-far-as matters relating to audit of Panchayat accounts are concerned. In this context ***there seems to be case for constituting an Audit Commission in each State with independent status. In the alternative, it is for consideration as to whether the Comptroller and Auditor-General of India may be either empowered to conduct the audit or lay down accounting standards for Panchayats.***

CHAPTER 9

Concluding Remarks

Integrating Part IX and IXA of the Constitution

9.1 The distinction between the 73rd and 74th Constitution Amendments appears to us artificial. The objective of both is the same: institutionalisation and empowerment of the institutions of self-government at the sub-state level for the purpose of decentralising the busines of governance and greater participation of people in the same. Rural and urban people do not constitute two separate categories. Both of them need transparent, participative and responsive local governments. What kind of functions the local governments in urban and rural areas should discharge may differ with each other in matters of detail. But, what is common in both the cases is that the local government should be capable of expressing the local will. Therefore conceptually, they belong to the same category and their basic features are common. So far as these basic features are concerned, they should be treated as one.

9.2 It is not surprising that as many as nine articles are identical or near identical in both Part IX and Part IXA of the Constitution. The provision relating to DPC finds mention in Part IX A, but is applicable to the Panchayats also. The institutions of SFC and SEC are common for both Panchayats and municipalities. Many subjects of 11th and 12th Schedules are also common.

9.3 In view of the above, it stands to reason that **Parts IX and IXA may be integrated into one part. All matters related to sub-state level institutions of self-government may be dealt in this part.**

Holistic View Decentralisation

9.4 A decentralised polity requires transfer of power and functions not only from State to the local level, but also from the Union to the State. It is acknowledged by everyone that in the matter of distribution of powers and functions of the State, bias of the Constitution is towards the Centre. There is much truth in the characterisation of Indian State as quasi-federal. Yet, the discourse on decentralisation gets concentrated in the sphere of State-local relations only. In order to pursue the goal of decentralised governance, one has to take a holistic view. The decentralisation discourse will remain incomplete if matters relating to Centre-State relations remain untouched. This issue, however, is beyond the scope of this Paper.

Note: The Commission is separately releasing Consultation Papers on "Empowering and Strengthening Local Self-Government in Cantonments" and "Decentralisation and Municipalities".

1208 LJ&CA/2002—16A

QUESTIONNAIRE
ON
REVIEW OF THE WORKING OF THE CONSTITUTIONAL PROVISIONS FOR DECENTRALISATION (PANCHAYATS)
[*Note*: Please attach additional sheets, if necessary]

1 (a) Do you consider that the implementation of the provisions of Part IX relating to Panchayats in the Constitution of India has been successful to achieve the desired objectives?

Yes ☐ No ☐

(b) If your answer to part (a) above is in the negative, what, according to you, are the basic reasons for the failures in implementation?

(Not more than 200 words)

Reasons:

2. What, according to you, are the specific reasons for the State Governments in not holding elections to local bodies in time?

(Not more than 200 words)

Reasons:

3. (a) Do you consider that the powers of the State Election Commissions are adequate for their effective functioning or they are to be enhanced?

Adequate ☐ To be enhanced ☐

(b) Should the State Election Commissions be assigned the functions of:-

(i) delimitation of territorial constituencies of Panchayats and Municipalities

Yes ☐ No ☐

(ii) allotment of reserved seats to various electoral wards

Yes ☐ No ☐

(iii) rotation of reserved seats amongst the constituencies

Yes ☐ No ☐

4. Do you agree to the suggestion that in order to enhance the accountability of the State Government and the State Election Commission for holding elections to the Panchayats and Municipalities in time, suitable provisions should be made in the Constitution itself by making it mandatory for the State Election Commission to submit a report annually to the Governor in the same manner as the Public Service Commission is required to submit report under clause

1208 LJ&CA/2002—16B

(2) of article 323 of the Constitution and for the State Government to lay the same before the Legislature of the State with an Action Taken Report?

Yes ☐ No ☐

5. What, according to you, are the specific reasons for the State Governments in not giving full financial and administrative autonomy to the Panchayats and Municipalities in their functioning as units of self-government?

(Not more than 200 words)

Reasons:

6. (a) Do you consider that any amendments are required in article 243G of the Constitution for enabling the Panchayats to function as the third stratum of Government?

Yes ☐ No ☐

(b) If so, please give details:

(Not more than 200 words)

7. The Paper suggests the following options for the Panchayats and Municipalities:-

(a) that they should constitute the third stratum of governance, i.e., after the Centre and the State.

(b) that they should be the creatures of State Legislature with control by the State Government

(c) that they will continue to remain as local authorities as envisaged under entry 5 of List II of the Seventh Schedule to the Constitution.

What according to you is the best option:-

(a) ☐ (b) ☐ (c) ☐

8. (a) Do you consider it appropriate to vest legislative powers in Panchayats (and Municipalities)?

Yes ☐ No ☐

(b) Do you consider it appropriate to empower the Panchayats (and Municipalities) to make laws in certain areas of taxation only?

Yes ☐ No ☐

(c) If the answer to part (b) is yes, please state the extent of power to be given.

(not more than 200 words)

9. Should the Eleventh and Twelfth Schedules be restructured to rationalize and avoid duplication of provisions and also to provide more fiscal powers to the Panchayats and Municipalities ?

Yes ☐ No ☐

10. (a) Should a legislative list called the "Local List" be carved out of the State List and the Concurrent List ?

Yes ☐ No ☐

(b) If yes, please give details of your suggestion.

(Not more than 200 words)

11. (a) Do you consider that the institutional mechanism of State Financial Commissions needs any changes/ further strengthening ?

Yes ☐ No ☐

(b) If yes, please give your suggestions in this regard.

(Not more than 200 words)

12. Should a Constitutional obligation be created specifying laying of Action Taken Report on the recommendations of the State Finance Commission within a period of six months from the date of receipt of report of the Commission, before the appropriate Legislature?

Yes ☐ No ☐

13. Should the power to specify the maximum amount of annual tax on professions, trades, callings and employment as provided in clause (2) of article 276 of the Constitution be delegated to Parliament to specify by law?

Yes ☐ No ☐

14. It is noticed that one of the impediments in proper functioning of Panchayats (and Municipalities) is lack of adequate funds. Should it, therefore, be advisable to empower the Panchayats (and Municipalities) to borrow finances from-

(a) financial institutions

Yes ☐ No ☐

(b) capital markets

Yes ☐ No ☐

15. Should the jurisdiction of Zilla Parishad be the entire district, combining both rural and urban areas?

Yes ☐ No ☐

16. Should the district planning be the function of Zilla Parishad?

Yes ☐ No ☐

17. What, according to you, should be the composition of the District Planning Committee?

(Not more than 200 words)

18. What should be the role of Gram Sabha in the functioning of a Gram Panchayat?

(Not more than 200 words)

19. Should Panchayats (and Municipalities) have separate cadre of officers and other employees independent from the State cadres?

Yes ☐ No ☐

20. Do you agree to the suggestion that article 309 of the Constitution should be amplified to include the posts and services under the Panchayats (and Municipalities) within its ambit?

Yes ☐ No ☐

21. Do you consider that the employees of the Panchayats (and Municipalities) should be given Constitutional protection as available to persons appointed in connection with the affairs of the Union or of a State?

Yes ☐ No ☐

22. Please give details of your suggestions for making Gram Panchayat a viable unit of self-government, both financially as well as administratively?

(Not more than 200 words)

23. (a) Should a maximum population of a village for the purpose of constituting a Panchayat be prescribed?

Yes ☐ No ☐

(b) If yes, please specify the maximum population?

(i) 5,000 ☐ (ii) Any other maximum population, say : ☐

24. (a) In certain States, the Chairperson of a Gram Panchayat is directly elected. Do you agree to the suggestion that the Chairperson of Gram Panchayats should be elected from amongst the members and not directly?

Yes ☐ No ☐

(b) Please give your suggestions supported by reasons:-

(Not more than 200 words)

25. (a) Should the Members of Parliament and Members of State Legislatures be allowed to function as members of Panchayats (and Municipalities)?

Yes ☐ No ☐

(b) Please give reasons for your view:-

(Not more than 200 words)

26. Should the Members of Parliament and Members of State Legislatures be allowed to function as members of District Planning Committees?

Yes ☐ No ☐

27. (a) Do you consider it necessary to constitute any new bodies for the efficient functioning of the Panchayats?

Yes ☐ No ☐

(b) If yes, please give details of your suggestions?

(Not more than 200 words)

28. It is found that regular courts are very busy and take long time in disposing of election petitions relating to Panchayats (and Municipalities). Hence, it is suggested that each State should constitute a Panchayat Tribunal to deal with such election disputes. For this, an enabling provision could be made in the Constitution leaving the State Legislature to make detailed law. Do you subscribe to this suggestion?

Yes ☐ No ☐

29. Should State Panchayat Councils with the Chief Minister as the chairperson be constituted on the lines of Inter-State Council constituted under article 263 of the Constitution for coordinating between Panchayats *inter se* and the State Governments?

Yes ☐ No ☐

30. (a) What should be the mechanism for auditing the accounts of the Panchayats (and Municipalities)?

(Not more than 200 words)

(b) Should the Comptroller and Auditor-General of India be empowered to-

(i) conduct the audit; ☐

(ii) to lay down accounting standards; ☐

(iii) or both (i) and (ii)? ☐

31. Do you consider it necessary that Part IX relating to Panchayats and Part IXA relating to Municipalities in the Constitution be integrated by omitting the provisions which are a duplication of each other and rationalizing the other provisions?

Yes ☐ No ☐

32. Do you have any other suggestions to make on the issues relating to Panchayats dealt with in the Consultation Paper? If so, please give details.

(Not more than 200 words)

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NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

DECENTRALIZATION AND MUNICIPALITIES

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating a public debate and eliciting public response.

September 26, 2001
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CONTENTS

		Pages
CHAPTER 1	**CONSTITUTION OF MUNICIPALITIES, ELECTIONS AND STATE ELECTION COMMISSIONS**	1015
	A. Constitution of Municipalities	1015
	B. Qualifications and Disqualifications for Membership in Municipalities	1020
	C. Regularity of Elections	1021
	D. State Election Commissions	1026
	E. Wards Committees and Proximity to Citizen	1030
CHAPTER 2	**FUNCTIONAL AND FINANCIAL DOMAIN**	1033
	A. Functional Domain	1033
	B. Financial Domain	1036
CHAPTER 3	**DISTRICT PLANNING COMMITTEES, METROPOLITAN PLANNING COMMITTEES AND ORGANIC LINKS BETWEEN MUNICIPALITIES AND PANCHAYATS**	1042
	A. District Planning Committees	1042
	B. Metropolitan Planning Committee	1049
	C. Organic Links between Municipalities and Panchayats	1054
	D. Representation and rights of MPs and MLAs in Municipalities	1055
CHAPTER 4	**INTEGRATING THE 73RD AND THE 74TH AMENDMENTS**	1059
CHAPTER 5	**SUMMARY OF SUGGESTED LEGAL CHANGES**	1060
	Questionnaire	1067
	Annexures	1078

CHAPTER – 1

CONSTITUTION OF MUNICIPALITIES, ELECTIONS AND STATE ELECTION COMMISSIONS

A. Constitution of Municipalities

1.1 Part IXA relating to Municipalities which contains articles 243P to 243ZG was inserted in the Constitution *vide* the Constitution (74th Amendment) Act, 1992. Article 243Q of the Constitution specifies, in broad terms, that a Municipal Corporation shall be constituted for a 'larger urban area', a Municipal Council for a 'smaller urban area' and a Nagar Panchayat for 'an area in transition from a rural area to an urban area'. The determination of such areas is left to the States taking into account some criteria like total population, density of population, non-agricultural employment, annual revenue generation, etc. A lot of variation exists amongst the States.

Criteria

1.2 To constitute a Municipality in Andhra Pradesh, the population criteria is 40,000 and above. In Uttar Pradesh and Rajasthan it ranges from one lakh to five lakhs, in Himachal Pradesh it is from 5,000 to 50,000 whereas in Tamil Nadu the population should not be less than 30,000. The definition of a Nagar Panchayat is equally varied and the interpretation of population and other criteria are often irrational and casual. Because of this, municipalisation of urban areas is resisted. There are also considerations like lower tax liability, availability of more grants in the case of rural areas, etc., which act as a disincentive to municipalisation even though it may be justified. Recently it is seen that areas already municipalised are denotified and made into Panchayats once again as happened in 29 places in Haryana and in some parts of the Mumbai metropolitan area.

1.3 Another criteria is density of population per sq.km. Here also some State laws take cognizance but some others ignore it completely. In Andhra Pradesh for Corporations it is 10,000 and above, while in Karnataka it is 3000 and above. States like Uttar Pradesh, Himachal Pradesh, Madhya Pradesh, Tamil Nadu, Kerala and Rajasthan have not specified the required density range.

1.4 The third criterion is employment in non-agricultural activities. In Andhra Pradesh, to constitute a Corporation, 85% of the population should be in non-agricultural activities. In Karnataka, this should not be less than 50%. States like Kerala, Tamil Nadu and Rajasthan have not specified this criterion in their Acts.

1.5 The fourth criterion of annual revenue generation also varies from State to State. In Andhra Pradesh, annual revenue should be rupees four crore and above, in Himachal Pradesh it is rupees two crore and above, in Tamil Nadu it ranges from Rs. 5 lac to 30 crore, whereas in Karnataka it is not less than Rs. 6 crore per annum. States like Uttar Pradesh, Kerala, Rajasthan and Madhya Pradesh do not specify any criterion of this nature.

1.6 The 65th Constitution Amendment Bill, the precursor of the Constitution (74th Amendment) Act, 1992 had specified a population range of 10 to 20,000 for a Nagar Panchayat, 20,000 to 3 lakh for a Municipal Council and 3 lakh or above for a Corporation. The definition of an urban area is relied on the Census. These population criteria have been omitted in the 74th Amendment. They need to be reintroduced to bring about some uniformity.

1208 LJ&CA/2002—17A

Composition

1.7 Article 243R stipulates that all the seats in a Municipality shall be filled by persons chosen by direct election from territorial constituencies. Though a State can provide for the representation of MPs, MLAs, etc. a Municipality is regarded principally as an elected body. The determination of territorial constituencies referred to as municipal wards is a first and essential step for the composition of a municipality.

1.8 However, the number of wards within municipalities has been left to be determined by the States. Here again the range varies from State to State. Generally, State laws seek to limit the total number of wards based on population. In Uttar Pradesh it is 60-110, in Himachal Pradesh it is not more than 25, in Madhya Pradesh it varies between 40 to 70, in Karnataka it is between 30 to 100, in Rajasthan it is between 60 to 70 and in Punjab it is between 50 and 100 for Corporations. However, the population within each ward is the denominator and there has to be parity in the ratio between population and the seats. The table below shows a wide variation here. Within Maharashtra, for instance, the average population per ward is 45,000 in Mumbai, 22,000 in Nagpur and 14,000 in Pune. Within West Bengal, it is 31,200 in Calcutta, 19,000 in Howrah and 8,000 in Siliguri. Article 243C specifically stipulates such parity within a State so far as Panchayats are concerned. But there is no corresponding proviso in article 243R. Such parity is essential at least within the same State and the same class of municipalities such as Municipal Corporations, Municipal Councils or Nagar Panchayats.

Table 1

Average population per Councillor in some Municipal Corporations

Name of Corporation	Population 1991	No. of Corporators/Ward	Average Population per Councilor
1. Delhi	7206704	134	53700
2. Pune	1566651	111	14000
3. Mumbai	9925891	221	45000
4. Nagpur	1624752	75	22000
5. Calcutta	4399819	141	31200
6. Howarah	950435	50	19000
7. Asansol	435119	50	8700
8. Siliguri	376592	47	8000
9. Chandernegore	120379	33	3700
10. Chennai	3841396	155	25000
11. Bangalore	2660088	100	26600
12. Ludhiana	1042740	70	15000
13. Gwalior	690765	60	11500
14. Bhopal	1062771	66	16000
15. Indore	1091674	69	16000
16. Ratlam	183375	49	3700
17. Jabalpur	741927	60	13000
18. Satna	156630	45	3500
19. Raipur	438639	54	8100
20. Durg	150645	51	3000
21. Bilaspur	179833	55	3300
22. Lucknow	1619115	110	14700
23. Varanasi	929270	80	11600
24. Kanpur	1874409	110	17000

1208 LJ&CA/2002—17B

25. Agra	891790	80	11000
26. Allahabad	792858	70	11000
27. Moradabad	443701	60	7500
28. Aligarh	480520	60	8000
29. Dehradun	270159	25	11000
30. Meerut	753778	70	11000
31. Gorakhpur	505566	60	8500
32. Ghaziabad	511759	60	8500
33. Bareilly	587211	60	10000
34. Guntur	471020	50	9500
35. Vijaywada	757141	50	15000
36. Vishakapatnam	720024	50	15000
37. Kurnool	274795	44	6500
38. Warrangal	466877	50	9500
39. Jaipur	1458483	70	21000

1.9 Regarding representation of persons having special knowledge or experience in Municipal administration, several States have made a provision and their numbers vary from State to State. It is interesting to note that in Haryana, due to political difficulties in nominating such persons, the Haryana Municipal (Second Amendment) Act, 2000 has removed the provision altogether. In Delhi, the provision for such nomination has also become the subject of litigation. Since an acceptable definition of knowledge and expertise appears to be elusive, it may be better to drop the provision altogether. Andhra Pradesh is the only State where one person belonging to the Minority Community is nominated to a Municipality, although without the right to vote.

1.10 Delimitation of municipal wards is an important step to elections and constitution of municipalities. Though article 243U confers on the Municipalities the "right to live" and a clear tenure of 5 years, political and other considerations have prompted some State Governments and individuals to delay the elections, usually by seeking the intervention of courts. Hyderabad amply illustrates the problem. Elections have not been held for the Hyderabad Corporation for several years. In 1998, the State Government proposed to extend the city boundaries by including 11 adjoining municipalities. Elections were deferred pending the reorganisation. Early in 2000, the decision to enlarge the boundaries was given up and elections were organised for the 11 surrounding municipalities later in the year. In the meantime a petition was moved before the High Court seeking delimitation of municipal wards on the basis of the 1991 population, though such delimitation has not been held anywhere else in the State. However, in the case of Hyderabad, the High Court has stayed elections till delimitation is done. The arguments made in this chapter on regularity of elections apply here as well. Fresh delimitation should not be a ground for delaying elections.

Election and Removal of Mayors / Chairpersons

1.11 Under article 243R the manner of election of Mayors/Chairpersons is left to be determined by the State. In Rajasthan, Himachal Pradesh, Haryana, Karnataka, Kerala, West Bengal, Maharashtra and Gujarat, the Mayors/ Chairpersons are elected from amongst the elected Councillors. In Andhra Pradesh, Uttar Pradesh, Madhya Pradesh and Tamil Nadu, Mayors/ Chairpersons are elected directly by the people. The term also varies. Table below contains the details:

Table 2
Mode of Election of Chairperson and Term

STATE	ELECTION	TERM
Andhra Pradesh	Direct	Five years
Assam	Indirect	One year
Bihar	Indirect	--
Delhi	Indirect	One year
Gujarat	Indirect	Two and Half years
Haryana	Indirect	One year
Himachal Pradesh	Indirect	One year
Karnataka	Indirect	One year
Kerala	Indirect	Five years
Madhya Pradesh	Direct	Five years
Maharashtra	Indirect	Two and Half years
Orissa	Indirect	One year
Rajasthan	Indirect	Five years
Tamil Nadu	Direct	Five years
Uttar Pradesh	Direct	Five years
West Bengal	Indirect	Five years

1.12 It is to be considered whether the manner of electing a Mayor or a Municipal Chairperson should be uniform and even if that varies the term of office should be uniform or at least a minimum term should be prescribed. It stands to reason that the term of office of the head of a municipality should be the same as for the Municipality.

Removal of Mayor/Chairpersons

1.13 The provisions in State laws for removing a Mayor/Chairperson through a no confidence motion vary from State to State. The table below indicates the extent of variations. It may appear that some provisions limiting the frequency of such motions and requiring specified majorities for their passage may appear stringent in comparison to a Council of Ministers in a State. But these provisions in some State laws were inspired by proposed articles 243B and 243R of the 64th and in 65th Constitutional Amendment Bills introduced in 1989. Some States went ahead and changed their laws without waiting for the Bills to be enacted.

Table 3
Procedure for No-confidence Motion against Mayor

State	Tabling of Motion	Notice of Requisition	Passing of Motion	Repetition of last motion
Haryana			By a majority of not less than two-thirds	
Kerala	Not within six months of assumption of office	By not less than one-third of the Councillors.	By more than one-half of the elected Councillors.	Cannot be repeated before six months of the last motion
Madhya Pradesh	Not before two years of the assumption of office	By not less than half of the total number of elected councillors.	More than three-fourths of coun-cilllors present and voting, such majority should be more than two-thirds of the total councillors.	Cannot be repeated before one year of the last motion
Himachal	Not before six months	By not less	To be passed	Cannot be repeated

State	Tabling of Motion	Notice of Requisition	Passing of Motion	Repetition of last motion
Pradesh	of the assumption of office	than majority of total elected Councillors	by majority of members. pre-sent, the quorum of which should not be less than one half of its total elected members.	before six months of the last motion
Rajasthan	Not before one year of the assumption of office	By not less than one-third of the Councillors	By a majority of two-thirds	Cannot be repeated before two years of last the motion
Uttar Pradesh	Not before two years of the assumption of office	By not less than one-half of the total number of Councillors.	By more than one-half of elected Councillors	Cannot be repeated before two years of last month
Maharashtra		By not less than one-third of the Councillor	Majority of the total number of members	
Tamil Nadu	Not before six months of assumption of office	By not less than one-half of the total number of elected Councillor	By three-fourth of the total strength of the elected Councillors.	Cannot be repeated before six months.
West Bengal	Not before six months of assumption of office	By not less than one-third of the members.	By a majority of the total number of members.	

1.14 So far as the term of office is concerned, one year tenure makes the Mayor mainly ceremonial. The provision of two-and-a-half years in Maharashtra and Gujarat is an after thought brought about by a recent amendment and is really a compromise to give a chance of holding office to at least two people within a municipality's tenure of 5 years. Some political parties find even two-and-a-half years as too long and would like the Mayors to 'resign voluntarily' after one year. In April 2000, a lady mayor of Nagpur resigned after completing only 11 months in office in obedience to her party's decision and another lady Councillor from the party became the Mayor. The motive seems to be office rather than continuity in the interests of municipal administration.

1.15 It will be appropriate to elicit public opinion regarding the manner of elections and removal as well as tenure of the Mayor/Chairperson. Amendment Bills of 1989 which required a majority of the total House plus two-thirds majority of those present and voting for chairpersons of Panchayats and Municipalities to be removed by motion of no-confidence were intended to enable continuity in Municipal Administration and discourage frequent motions of no-confidence on flimsy grounds.

1.16 Another important aspect related to the election of Mayors and Municipal Chairpersons is who elects them. Where elections are indirect as in many States, the intention is that the Mayors will be elected by and from amongst the elected members of the municipality. In the case of the Panchayats, Clause (5)(b) of article 243C of the Constitution specifically states so. However, in the case of Municipalities, there is no such provision in article 243R. In States where MLAs and MPs are represented with voting rights a piquant situation arises as their votes have been the determining factor in the election and removal of chairpersons rather than the votes of the elected councillors. This is discussed in further detail in a subsequent chapter on MPs and MLAs.

Suggested Legal Changes

1.17 The suggested legal changes are:

(1) Article 243Q provides for a Nagar Panchayat for a transitional area, Municipal Council for a smaller urban area and a Municipal Corporation for a larger urban area. While clause (2) allows the States to take into consideration various other factors, given the very wide variance, it is desirable that a population classification is provided in the Constitution itself. Given the increasing rate of urbanisation, its density and economic factors, a Corporation should have a minimum population of 5 lakhs, a Municipal Council 50,000 and a Nagar Panchayat 20,000. Provision can be made to preserve previously existing municipalities.

(2) The proviso to article 243Q States that a municipality may not be constituted for an Industrial township under certain circumstances. This proviso did not figure in the Constitution Amendment Bill relating to the 73rd Amendment Act introduced in Parliament in July 91 or in the Bill as reported upon by the Joint Committee in July 92. This appears to be an after thought in response to some suggestions from certain quarters. The provision goes against the grain of decentralisation and local self-government. Hence, the proviso may be deleted.

(3) Article 243U (1) contains a proviso that where a municipality is superseded "it shall be given a reasonable opportunity of being heard before its dissolution". There is no corresponding proviso in article 243E relating to Panchayats. Hence, a similar proviso may be inserted.

(4) Whenever a Panchayat or a Municipality is superseded a report stating the grounds for such dissolution should be placed before the State Legislature. This will be a deterrent to treating supercession casually and resorting to it because of political expediency. This provision is on par with a report being placed before each House of Parliament in the event of a proclamation of President's rule in a State under article 356.

(5) In determining the number of municipal wards and in delineating them, there should be parity in the ratio between a seat and the population and such ratio should be uniform within a State among any category of municipalities such as Corporations, Municipal Councils and Nagar Panchayats:

(6) The term of the Mayors/Chairpersons should be co-terminus with the term of the municipality. Provision for this should be made in the Constitution itself.

(7) The procedure for removal of Mayor/Chairperson through motion of no confidence should be uniform. Here again a provision should be made in the Constitution requiring majority of the House and two-thirds majority of those present and voting.

(8) Municipal Chairpersons and Mayors should be elected only by and from amongst the elected members of the municipality.

B. Qualifications and Disqualifications for Membership in Municipalities

1.18 Article 243V of the Constitution provides that the disqualification for being chosen or for being a member of a municipality shall be the same as is applicable for the purposes of election to the Legislature of the State concerned. A State is free to stipulate other qualifications. All the States have made provisions in their respective Acts. Most States specify 21 years as the minimum age for contesting elections. The name should be in the electoral rolls and in the case of a reserved seat the candidate should belong to that category.

1.19 Regarding qualifications and disqualifications of candidates for elections to Parliament and State Legislatures, the Representation of the People Act, 1951 provides a general framework which has been broadly followed in most of the States for local elections also. Some additional qualifications prescribed by the States vary significantly as can be seen in the table in Annexure

1.1. In some States criteria like the two-child norm have been adopted and the impact of the same on candidates and voter reactions needs to be studied in detail. The Orissa evidence shows that the two child norm has not stood in the way of women candidates from contesting elections. Orissa's experience in the general elections for six urban local bodies in April 2000 confirmed this, wherein all seats reserved for women had multiple candidates contesting the seats.

1.20 Some disqualifications, as in Himachal Pradesh or Haryana barring all licensed architects, town planners, surveyors, etc., from contesting local elections merely because they are licensed by the Municipality may be carrying the notion of conflict of interest too far. It may be expected that the State laws will be modified in the context of experience.

1.21 Contesting simultaneously for a number of seats is a problem in some States. Rajasthan and Madhya Pradesh are two States where contesting for more than two seats is not allowed. This is in keeping with the stipulations for the Lok Sabha and Assembly polls. Failure to submit accounts of election expenditure is a disqualification in some States. The State Election Commissions have prescribed various norms in this regard as may be seen in **Annexure 1.2**. In Kerala, failure to submit accounts resulted in the disqualification of more than 12,000 candidates in the Panchayat polls.

1.22 Whatever may be the qualifications or disqualifications for contesting panchayat and municipal elections are, presently they are found to be scattered in different laws and regulations. A unified law for this purpose on the pattern of the Representation of the People Act of 1950 and 1951 is needed.

Suggested Legal Changes

1.23 The suggested legal changes are:

(1) Articles 243T and 243V contain identical provisions so far as disqualifications for membership in a panchayat or a municipality is concerned. The main principle followed is that the grounds of disqualification should be the same as applied for elections to the State Legislatures. State laws may make additional provisions. State laws may compile all provisions regarding qualifications and disqualifications for elections in a single law and in the meantime, State Governments should prepare a manual compiling existing provisions for public information.

(2) While SEC should have the authority to prescribe ceiling of expenses and code of conduct and while these may vary depending on the conditions of different States, State laws should clearly specify the powers of the SEC to disqualify candidates or set aside elections in the event of violations of those laws.

C. **Regularity of Elections**

1.24 The 73rd & the 74th Constitution Amendments clearly make elections to local bodies mandatory every five years. Two rounds of elections have already been held in the States of Andhra Pradesh, Madhya Pradesh, Haryana, Maharashtra, Gujarat, Kerala, Orissa, Andaman & Nicobar Islands, Rajasthan & Uttar Pradesh (See **Annexure 1.3**). In the States of Assam, Goa, Himachal Pradesh, Daman & Diu, Karnataka, Manipur, Tamil Nadu and Punjab and the National Capital Territory of Delhi and Union territory of Daman and Diu, elections were held once. Apart from the Union territory of Pondicherry, Bihar is the only State where local body elections have not been held so far. It has recently announced to hold Panchayat elections after 23 years. Jammu & Kashmir has recently adopted the 74th Amendment and has announced that the local body elections will be held in 2001. The 74th Constitution Amendment has not been applied to Mizoram, Nagaland and Meghalaya. There are no urban local bodies in the Union territories of Dadra & Nagar Haveli and Lakshadweep.

1.25 Elections to urban local bodies have returned about 73,000 representatives from about 3500 Corporations, Municipalities and Nagarpanchayats (See **Annexure 1.4**). The turnout during these elections has been in the range of 65 to 75 per cent which is much higher in comparison to the Lok Sabha and Assembly polls.

1.26 Though elections have been held in most States, their regularity continues to be a problem. In Uttar Pradesh, elections to over 58,000 Panchayats, 904 Intermediate Panchayats and 83 Zilla Panchayats were due in May 2000. Shortly before, the State Government promulgated an Ordinance postponing these elections to October 2000 on the plea that the delimitation process has not been completed due to creation of 12 new districts in the State. The Ordinance was challenged in the High Court through a Public Interest Litigation. The High Court quashed the Ordinance ruling that it violated the Constitutional provisions fixing a five year tenure and asked the Election Commission to hold elections as per Schedule. The State Government then challenged this ruling in the Supreme Court. Elections were then conducted in June 2000 only after the directions of the Supreme Court.

1.27 Similarly, in Haryana, Municipal elections which were due in February, 2000 were deferred due to the announcement of Assembly polls. In this case also the Supreme Court had to give directions to the State Government to hold elections to local bodies within a stipulated time. The elections could be held only in March and April 2000 after the Court's intervention.

1.28 In Andhra Pradesh, elections to Hyderabad and Rajahmundary Corporations and five Municipalities were not held as the exercise of delimitation of wards had not taken place. In the case of the Hyderabad Municipal Corporation, the High Court has directed to postpone elections till the Wards are delineated on the basis of the 1991 Census instead of 1981 Census (through WP No. 13097 of 1993 judgement on 29.12.1994). The Government of Andhra Pradesh has now issued a notification on delimitation of wards in the twin cities of Hyderabad and Secunderabad on the basis of the 1991 Census even though the 2001 Census has already been completed.

1.29 Earlier, a Division Bench of the Andhra Pradesh High Court had struck down an Ordinance promulgated by the State Government in February, 2000 seeking postponement of elections to Mandal and Zilla Parishads and ordered that elections be completed before 30th June, 2000. The State Government's contention was that on the basis of an unanimous resolution of the Andhra Pradesh Legislative Assembly, a Bill to amend the Constitution to allow State Governments not to have territorial constituencies for Intermediate and District Panchayats had been introduced in Parliament. Therefore, elections to such levels at that stage would result in unnecessary expenditure and complications and hence the Ordinance had to be issued. A writ petition was then filed by the State Election Commission, later joined by some NGOs challenging the validity of the Ordinance. The Andhra Pradesh Government filed a Special Leave Petition in the Supreme Court against the High Court's order. The Supreme Court has subsequently dismissed the SLP (SLP (Civil) No.7979 – 7986/2000) filed by the Government and has directed the State Government to complete the election process by March, 2001.

1.30 However, it is still uncertain whether elections would be held. Recently another Writ Petition (W.P. No. 17501 of 2000) has been filed in the Andhra Pradesh High Court challenging the method of allotment of seats to the Backward Classes without their population being ascertained on scientific basis. The High Court on 13th December, 2000 directed the State Government to collect data of BC population once again on a scientific basis before 1st May 2001 and hold elections on 31st May 2001. The High Court asked the State Election Commission to hold elections to Panchayats only after this process was over.

1.31 It is thus evident that elections to local bodies continue to be a problem even though the 73rd and 74th Amendments to the Constitution make elections to these bodies mandatory. Time and again, issues relating to reservation and delimitation have been cited as reasons for postponing local body elections by various States. In most cases, Public Interest Litigation and Court orders have been necessary to ensure elections. The Supreme Court in its judgement

dated 12.08.1997 (W.P. Civil No.719 of 1995) clearly stated that articles 243E and 243U on Panchayat and Municipal elections respectively are mandatory and not discretionary. To quote "failure to hold elections except in case of genuine supervening difficulties amounts to flouting the Constitution. Supervening difficulties have been adequately described such as natural calamities like flood, earthquake or extremely urgent situation prevailing in the State for which election cannot be held within the time frame.".

Delimitation of Constituencies

1.32 Delimitation of Panchayat and Municipal Constituencies has been cited as an excuse for delaying elections. This is because the responsibilities are not determined clearly. In Haryana, Madhya Pradesh, Uttar Pradesh, Rajasthan and Punjab, the task of delimitation of constituencies vests with the State Government. In Gujarat, Maharashtra, Kerala and West Bengal, the State Election Commission is the authority for delimitation of Constituencies.

1.33 The 73rd and 74th Constitution Amendments clearly vests the power to conduct local elections in the State Election Commission. The delimitation process forms an integral part of "conduct of elections". It is neither necessary nor appropriate for the State Governments to take up this responsibility. Besides, keeping in view that the process and outcome of delimitation has come into criticism in some States, it is better that this work is entrusted to the State Election Commissions, which are neutral and independent bodies.

1.34 It is also observed that in some States the delimitation exercise was taken up only when the local elections were due even though the process could have been initiated well before the elections. If the exercise is taken up only just before the elections, it also provides a reason for possible postponement of elections. The question that arises is that should not there be a provision to ensure that the delimitation process is conducted at least six months or one year before the expiry of the term of local bodies. The formation of new districts or changing of administrative boundaries is another factor requiring fresh delimitation and resulting in possible delay. It is pertinent to mention that in the country as a whole delimitation of Lok Sabha and Assembly Constituencies has not been done since 1976 and elections have been held on the basis of the constituencies delimited at that time the insistence on fresh delimitation for local elections appears to be motivated in some cases and used as ploy for delaying elections.

Reservation

1.35 Reservation and rotation of reserved constituencies and the division of responsibilities in this regard is another reason for delays. The responsibility vests in the State Government in Madhya Pradesh, Rajasthan, Andhra Pradesh, Uttar Pradesh, Tamil Nadu, Karnataka, Haryana and Punjab and the State Election Commission has no role to play. On the other hand in Maharashtra, Gujarat, Kerala and West Bengal, the State Election Commission is responsible for the reservation arrangements.

1.36 In Gujarat, the State Government fixes the number of seats including those to be reserved for Scheduled Castes, Scheduled Tribes, Backward Classes and Women. After the seats have been quantified, allotment of reserved seats to various electoral wards is the responsibility of the State Election Commission. Seats are reserved on the basis of the percentage of population of Scheduled Castes and Scheduled Tribes in different constituencies in a descending order. The reserved seats are allotted by rotation to different constituencies. A note describing the arrangements in Gujarat in some detail is at **Annexure 1.5**. The procedure in Maharashtra is explained in **Annexure 1.6**.

1.37 In Rajasthan and Madhya Pradesh, the seats for Women and Backward Classes are allotted by lottery. In Uttar Pradesh, though seats are reserved by rotation, the procedure has

been changed from one election to another. Rotation of seats during the first elections in 1995 was in descending order but in the later elections of 2000, this was done in the ascending order.

1.38 In Andhra Pradesh, it is the State Government which notifies the reservations and unless this is done, the State Election Commission is not able to issue the election notification. Because of this, the State Election Commission had to approach the Court to direct the State Government to notify the reservation. Apart from the issue of the Ordinance mentioned earlier, this was one of the important matters to be considered by the Court.

1.39 Whatever may be the procedure for reservation and rotation, its impact is also to be considered when the rotation takes place during every election. A person elected on the reserved seat does not get an opportunity of occupying the same seat for a second term. This proves to be a disincentive for members to work hard for their constituency. It is particularly disadvantageous to women and fresh entrants to build up their capacity and experience as elected representatives. The reserved seats of a constituency may be continued for a fixed period and linked to delimitation on a periodical basis such as the Census.

Suggested legal changes

1.40 The suggested legal changes are:

Ensuring regular elections

1.40.1 Articles 243E and 243U of the Constitution contain identical provisions. Clause (1) of article 243E states that every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer. Similarly, clause (1) of article 243U states that every municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting. The provisions are clear and unambiguous and hence, there is no scope for any other interpretation. Clause (3) of article 243E and that of 243U further State that elections to constitute a Panchayat and a municipality respectively shall be "completed before the expiry of its duration specified in Clause (1)"

Both articles 243E and 243U, in sub-clause (1) respectively contain a provision for dissolution of panchayat or municipality. Here again sub-clause (b) of clause (3) in both the articles stipulate that elections have to be completed "before the expiration of a period of six months from the date of its dissolution."

To reinforce the existing provisions in the Constitution, the following additional stipulations may be considered:

(a) It shall be the duty of a State and the Union (in case of panchayats and municipalities located in Union territories) to ensure the completion of elections as stipulated.

(b) It should also be duty of the State Election Commissioner to ensure this and in the event of possible delay make a report to the Governor of the State drawing his attention to the problems and suggesting remedial action to fulfill the requirements of the Commission.

(c) Article 243K(I) and article 243ZA(I) State that the "superintendence, direction and control of the preparation of electoral roles and the conduct of all elections to the panchayats/municipalities shall be vested in a State Election Commission." This is a composite set of responsibilities. The preparation of electoral roles and the conduct of elections involve several processes and actions which are closely inter-related. The words, "superintendence, direction and control" are comprehensive and unambiguous and do not permit any artificial division. Clause (4) of 243K and Clause (2) of 243ZA do provide for a State Legislature to make provisions with respect to all matters relating to interaction with these elections. However, this has to be subject to the provisions of the

Constitution and can relate only to processes to be followed and guidelines for this purpose so that such processes serve public interest and ensure free and fair elections. They do not permit splitting up of the composite responsibilities as stated in articles 243K and 243ZA. However, as experience indicates, certain important parts of these responsibilities such as delimitation of territorial constituencies or reservation of seats or rotation of such reservation among constituencies have been assumed by some State Governments. The effect of this has been to enable these State Governments to intervene in the composite and integrated process of conducting elections and thereby hold up the same if they so chose to do. Articles 243K and 243ZA may, therefore, be suitably amended to specify that the responsibility for the conduct of elections shall include all preparatory steps for the same including the electoral roles, delimitation, reservation, rotation and matters connected therewith and the responsibility for the same shall vest with the State Election Commission.

Electoral Rolls and Delimitation

1.40.2 (a) Under articles 243K and 243ZA, the preparation of electoral rolls is the responsibility of the State Election Commission (SEC). The general practice has been for the SECs to adopt the electoral rolls available for the Assembly and Lok Sabha elections. In some cases, however, the electoral rolls for the local elections are prepared afresh and the two rolls may differ. The Constitution should specifically stipulate a common electoral roll. The processes for preparing the roll as also its periodical revision should be uniform throughout the country.

(b) The Election Commission of India has been evolving over a period of time a system whereby each polling station in an Assembly constituency has a unique identity which is linked to the roll of electors using that polling station. It is possible that panchayat and municipal elections may require more polling stations. If so, these additional polling stations should be extensions or sub-units of the main polling station. This will ensure a 'building block' approach for elections in the country whereby the smallest unit will be a polling station on a sub-unit theory. A certain number of these will form a 'panchayat ward' or a 'municipal ward' which in turn will be grouped into panchayats and municipalities or Assembly segments and Lok Sabha constituencies. The voter is the same. The relevant R.P. Act and State laws should specify that common polling stations should be used for elections to local bodies, State Legislatures and Parliament.

(c) While delimitation of the constituencies for panchayat and municipal elections should be under the control and direction of the SEC, the Constitution should stipulate that such delimitation should be adjusted after every census and not for every election. This will be in keeping with articles 82 and 170 of the Constitution requiring readjustment of Assembly and Lok Sabha Constituencies.

(d) The State laws should provide guidelines for the delimitation work such as parity in the ratio between the population of a territorial constituency and the number of seats within the same class of panchayats or municipalities. The extent of permissible variations should also be mentioned. Parity as a requirement is already stipulated in the proviso to article 243C so far as Panchayats are concerned but is missing in article 243R relating to municipalities.

(e) State laws should specify that changes in the administrative boundaries of districts, sub-divisions, taluks, police stations, etc., should not be made within six months prior to a panchayat or a municipal election.

Reservations

1.40.3 (a) Articles 243D and 243T contain identical provisions so far as reservation of seats in panchayats and municipalities for SC/STs and women are concerned. However, there are some ambiguities about the rotation of such reserved seats. The words used in both the articles are "may be allotted by rotation". However, in the second proviso to article

243D regarding reservation of the offices of chairpersons the words used are "shall be allotted by rotation". The Constitutional provisions also do not specify the frequency of rotation. Moreover, in clause (4) of article 243T there is no stipulation for rotation. To remove ambiguities, articles 243D and 243T should be suitably amended to provide for rotation and changes only at the time of delimitation and not in between.

(b) State laws should, however, provide the guidelines for the process of reservation which should ensure transparency and adequate opportunities for eliciting voter response.

(c) Clause (6) of article 243D and clause (6) of article 243T enable a State Legislature to provide for reservation of seats as also offices of chairpersons in panchayats and municipalities in favour of backward class of citizens. Neither of the articles stipulate any ceiling for the total number of reserved seats and reserved offices. Since not less than one-third of total seats has been specified as the minimum for women; the reservation additionally made for backward classes can take a large proportion. To remove ambiguities the overall total of reserved seats and reserved offices should be specified in the Constitution.

D. State Election Commissions

1.41 Articles 243K and 243ZA stipulate that the "superintendence, direction and control for the preparation of electoral roles and the conduct of all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor." These articles further State that the SEC shall not be removed from his office except in like manner and on the like grounds as of a Judge of a High Court and the conditions of service shall not be varied to his disadvantage after his appointment. The provisions are similar to those contained in article 324 regarding the Chief Election Commissioner. Both the CEC and the SEC are viewed as Constitutional Authorities. While the process for their removal is indicated, the Constitution is silent on the process of appointment itself. In the case of the CEC and other Election Commissioners, the Parliament can make provisions by law regarding their appointment, the tenure of office and conditions of service. In the case of the State Election Commissioner, the State Legislature may make similar provisions.

Setting up of SECs

1.42 There has been some debate in the country so far as the procedure for appointment of the CEC and terms and conditions of his service are concerned. There is no denying the fact that the office of the CEC has been filled by persons of high integrity successively. In particular, the former CEC, Shri T.N. Seshan helped to establish in the public mind the potential strength of the Election Commission of India derived from its neutrality and integrity. The present CEC and his fellow commissioners have also helped considerably in widening public awareness about the role and scope of the Election Commission's responsibilities and have made important suggestions from time to time to focus attention and initiatives for electoral reforms.

1.43 Articles 243K and 243ZA have kept the Election Commission of India as an organisational model. The successful conduct of local elections which has been done twice in several States and at least once in several others in a fair and transparent manner has demonstrated the usefulness of these provisions in entrusting elections to a neutral and independent authority. The fact that the turnout of voters in the local elections in many States has been about 65 to 70% also demonstrates strong interest that the people have in local issues and local self-governance. The democratic structure of the country is no longer limited only to the Parliament and the State Legislatures. With more than three million elected representatives from the rural and urban local bodies, the number of elected representatives of the people has enormously increased. This is an important beginning of what can be a highly representative system of democratic governance in the country. It is, therefore, essential that the machinery for organising the local elections is adequately strengthened.

1.44 In case of appointments of the State Election Commissioner under the Constitution, the Governor of the concerned State has been made the appointing authority of the incumbent and the Legislature of the State has been authorised to make provisions by law regarding the conditions of service and tenure of office of the State Election Commissioner. There are wide variations regarding the qualifications laid down for the appointment of State Election Commissioners and service conditions like tenure of office, maximum age limit, etc., in different States. The position, as obtained in this regard in most of the major States in the country is can be seen in the following table:

Table 4

State Election Commissioners in Different States

Name of State	Tenure	Age limit	Qualifications	Status
Assam	4 years	62 Years	A person having put in minimum 25 years of service in administrative. judicial or legal service of the State or Central Government.	**Status:** Equal to that of the Chairman, Assam Public Service Commission. **Scale:** Last pay drawn in the Government minus pension
Bihar	3 years	62 Years	Not below the rank of the Additional Secretary to Government of India or equivalent post in the State Government.	**Salary:** Same as in Government service minus pension.
Haryana	5 years	65 Years (minimum age: not below the age of 55 years)	A Judge of High Court or a person who has served the Government in the rank of a Commissioner for at least 5 years.	**Salary:** Same as in government service minus pension
Himachal Pradesh	5 years	65 Years	Not below the rank of Additional Chief Secretary or equivalent position	**Salary:** of a Judge of a High Court minus pension
Karnataka	5 years	62 Years.	No qualification is prescribed	**Salary:** Same as he was drawing in the Government at the time of his appointment as State Election Commissioner or Rs.6500/- per month (old scale) which-ever is higher minus pension.
Kerala	4 years	62 Years	No qualification is prescribed.	**Status:** equal to the Chief Secretary of the State. **Salary:** Rs. 8000/- per month (old scale) minus pension.
Madhya Pradesh	6 years	62 Years	A person who has served at least for 2 years as Additional Secretary to Govt. of India or equivalent post.	**Salary:** Rs. 8000/- per month minus pension.
Maharashtra	5 years		A person who has held	**Salary:** Rs. 7600/- p.m. (also a

Name of State	Tenure	Age limit	Qualifications	Status
			a post not lower in rank of a Principal Secretary to the State Government.	provision of pay protection)
Orissa	5 years	62 Years	Retired Judge of the High Court or retired District Judge or a serving civil servant.	**Salary:** Rs, 20,450/- per month minus pension or last salary drawn, which ever is higher, Other facilities as are made available to the Chairman, State Public Service Commission
Punjab	5 years	64 Years	Not below the rank of Financial Commissioner or Principal Secretary to Government who has served at least for 2 years on that post or a serving or a retired judge of a High Court	**Salary:** equal to that of a High Court Judge.
Tamil Nadu	2 years (eligible for re-appoint-ment for two successsive terms subject to a max. of 6 years	62 Years	Not below the rank of Secretary to Government.	As admissible to a Serving Judge of a High Court
Uttar Pradesh	5 years	65 Years	Joint Secretary or 3 in the Central Government and must have held the post of District Magistrate or Divisional Commissioner and a senior administrative post in the Secretariat	A person appointed as State Election Commissioner shall be paid pay and allowances as admissible to him in his parent department.
West Bengal	5 years	65 Years	A person having sufficient experience in the affairs of Union or any State Government in an administrative post	**Salary:** Rs. 8000/- (old scale) minus pension.

It is evident from the above that there are great variations in the qualifications and service conditions of the State Election Commissioner from State to State. As regards the tenure of office, it is seen that it varies from 2 years (Tamil Nadu) to 6 years (Madhya Pradesh). However, most of the States have a tenure of five years.

Notification of elections

1.45 In Assam, Madhya Pradesh, Maharashtra, Andhra Pradesh and Gujarat the State Election Commission issues the notification for elections on its own. In Goa, the State Election

Commission issues the notification in consultation with the State Government. In Uttar Pradesh, Rajasthan, West Bengal, Kerala and Orissa, the State Government issues the notification on the recommendation of the State Election Commission. In Haryana, for elections to the Urban Local Bodies the State Election Commission issues notification on its own, while for Panchayat elections the notification is issued in consultation with the State Government. In Rajasthan, for municipal elections, the State government on recommendation of SEC issues notification. Simultaneously, the SEC also issues the notification. For Panchayat elections, the District Election Officer issues the notification as per schedule fixed by the SEC. While in all cases some form of consultation takes place between the SEC and the State Governments. There is no reason why a uniform procedure cannot be followed.

Single election machinery

1.46 The preparation of electoral rolls in a unified manner using the Panchayat and the Municipal Wards as the basic building block has been discussed in the previous section. The need to emphasize and reinforce the composite nature of electoral tasks from preparation of rolls to the actual conduct of election has also been stressed. At present, the Election Commission of India is responsible for the conduct of all elections to Parliament and to the Legislature of every State and all elections to the offices of President and Vice-President held under the Constitution. Article 324(6) further provides that the President or the Governor shall make available to the Election Commission such staff as may be necessary for the discharge of its functions. The practice so far has been for every State to have a Chief Electoral Officer (CEO) who is appointed by the State government. Normally he may be entrusted with other works as well. But during the period of elections the CEO functions very much under the supervision and direction of the Election Commission.

1.47 In the case of local elections the State government likewise makes available to the SEC the staff necessary. It is common knowledge that the actual work relating to elections, whether it is preparation and revision of electoral rolls, dealing with nominations, setting up of polling stations or the actual conduct of the elections, a vast army of returning officers, police and other government personnel are deployed for the purpose. In effect, therefore, both the CEO and the SEC have to depend on the same personnel.

1.48 Since independence, general elections to the Lok Sabha have been held 13 times and elections to different State assemblies a few hundred times. Now the local elections have also to be added to this already large number. By-elections as also elections to various positions of chairpersons in different States will further add to what is already one of the largest set of electoral responsibilities anywhere in the world. Elections at different levels should, therefore, be regarded as a regular feature of democratic structure of the country.

1.49 It may, therefore, be considered that since we have in the SEC a replica of the Election Commission of India in every State, the responsibility for conducting all elections in the State both for the State Legislature and the Local Bodies should be vested in the SEC. This will enable an independent constitutional authority at the State level to attend to all matters relating to elections on a regular and continuous basis. The relationship between the SECs and the CEC, Election Commission of India can be developed through uniform procedures for preparation of electoral roles, delimitation of constituencies, rotation of reserved seats, dealing with nominations, conduct of polls, etc. In the past two to three years, the CEC has taken the initiative to meet the State Election Commissioners periodically and a process of active collaboration has already begun. The establishment of a common electoral machinery with the Election Commission of India providing over all direction and control at the time of elections within which the SECs will carry out that tasks appears to be a logical outcome. The matter deserves debate and consideration.

Suggested Legal Changes

1.50 Some specific provisions should be added to the Constitution as follows:

(a) The State Election Commissioner should be appointed by the Governor on the recommendations of a group comprising the Chief Minister, the Speaker of the State Assembly and the Leader of the Opposition. This would make the selection impartial in the eyes of all concurred.

(b) The State Election Commissioner should have a fixed term of 5 years.

(c) In rank and status the State Election Commissioner should be equal to a Judge of the High Court.

(d) The broad qualifications for position of State Election Commissioner may be specified in the Constitution itself or in the laws of the State. Since the conduct of elections is a major logistical exercise, administrative experience should be stressed.

(e) Notification for all elections to Panchayats and Municipalities should be issued by the SEC.

(f) SEC should be the single and common electoral authority in the State for all local body elections and elections to the State Legislatures. The SEC will also carry out the elections to Parliament under the supervision and control of the Election Commission of India. What is envisaged is a strong link between the State Election Commissions and the Election Commission of India so that the Election Commission of India can reinforce the autonomy of the State Election Commissions, support their functioning with expertise and technical help and enable the whole election machinery of the country to emerge as an integrated system.

E. Wards Committees and Proximity to Citizens

1.51 Existing provisions in most State laws do not facilitate any effective participation of the people themselves in the governance of their cities. Proximity between the people and their representatives is essential for securing accountability. The provision for Wards Committees in the 74th Constitutional Amendment is designed to meet this need. In the 65th Constitutional Amendment Bill of 1989, passed by the Lok Sabha but defeated in the Rajya Sabha, it was provided that for Municipal Councils (with a population range of twenty thousand to three lakhs), a Wards Committee should be constituted comprising two or more Wards. In a Municipal Corporation (with a population of more than three lakh), the Wards Committee shall consist of one or more Wards. It was clear that grouping of wards would be needed only in Municipal Council areas. The Bill introduced by the government of V.P. Singh left the entire matter to the discretion of the State government. The Bill introduced by the Narasimha Rao government also remained silent on the issue. But when the Joint Parliamentary Committee considered the Bill it argued that "in the larger municipal bodies the citizens do not have easy access to the elected representatives since the ward size is very large. The Committee, therefore, is of the view that in Municipalities having a population of 3 lakhs or more, Wards Committees should be constituted". The JPC also recommended that while the Councillor representing the ward should be the chairperson of such a committee, the details regarding its composition, territorial area and the manner of filling the seats can be left to the State legislatures.

Provision in the 65th Constitution Amendment Bill

1.52 The 65th Constitution Amendment Bill had also provided that in Municipal Corporations a Zonal Committee should also be provided at an intermediate level, between the Wards Committees and the corporation. The Bill left it to the States to determine the territorial area of a Zonal Committee but stipulated that the Chairpersons of all the Wards Committees within that area should be members of the Zonal Committee. The 65th Constitution Amendment Bill thus envisaged a two-tier set up of Wards Committees and a Municipal Council for smaller urban areas and a three tier set up of Wards Committees, Zonal Committees and Corporation for larger

urban areas. This was to ensure decentralisation not only at the city level but within the city as well. The provision also enabled greater proximity between the citizens and the elected representatives and was similar to the three tier arrangements envisaged for the Panchayat in the 64th Constitution Amendment Bill.

1.53 The JPC recommendations, while leaving considerable discretion for the State Governments in regard to the number and composition of the Ward committees also left it open to the States to constitute committees at any other level. Though the JPC did not name this as a Zonal Committee as the 65th Amendment Bill did, it was expected that this would be so. However, what has happened is that many States have taken advantage of the ambiguity in the provisions and have set up Wards Committees for groups of many wards which in effect are Zonal Committees. In effect, a two tier set up has been provided even in large corporation areas requiring a three tier arrangement.

Varied Arrangements in the States

1.54 At one end of the spectrum, in Kerala, there is a Wards Committee for every Ward. The elected Councillor of the Ward concerned is the Chairman of the Wards Committee. The Committee consists of not more than 50 persons nominated by the Chairperson of the Municipality in consultation with the Councillor. The members of the Ward Committee are drawn from various categories such as residents associations, doctors, teachers, etc. and these categories are mentioned in the Act. The Wards Committee will meet at least once in three months. The Secretary and the Heads of Departments in the Municipality shall attend the meetings of the Wards Committee. The Committee will prepare and supervise the development schemes for the Ward, encourage harmony and unity among various groups, mobilise voluntary labour for social welfare programmes, give assistance for identifying beneficiaries for the implementation of welfare and development schemes related to the Ward. This is besides assisting timely collection of taxes, fees and rents for the Council. The duration of the Wards Committee shall be for five years.

1.55 In Maharashtra, on the other hand, Wards Committees have been set up for groups of wards. In the Greater Mumbai Corporation there are 221 municipal wards. These wards have been grouped into 16 Wards Committees. Similarly, in Pune, Navi Mumbai and Pimpri Chinchwad, wards have been grouped. The wards committee comprises all the councillors from the concerned wards and one to three representatives of NGOs in the area as nominated by the Corporation.

1.56 West Bengal is one other State where, like Kerala, Wards Committees have been set up for each municipal ward. In the case of the Calcutta Corporation, in addition to the Wards Committees, the Borrough Committees which are for groups of contiguous wards have been in existence for a long time. These are in effect a substitute for the Zonal Committees. Calcutta thus has a three tier, decentralised arrangement. Though the actual work of Wards Committees has been hampered due to political problems, West Bengal has accepted the need for decentralisation within a city administration and enhancing proximity to the citizens. It has, therefore, provided that apart from the Calcutta Corporation, Wards Committees may be formed in the Municipalities as well even though the population of such municipalities may be less than three lakhs. The Ward committees will consist between 4 to 14 members depending on the population of the ward. The West Bengal Municipal Act, 1993 has been amended to incorporate a provision regarding composition and functions of a Wards Committee for each ward of a Municipality.

1.57 In the other States the provisions vary considerably. In Chennai, the 155 municipal wards are grouped into ten Wards Committees, each representing a population of close to four lakhs. Bangalore's Wards Committees cover an average population of about two lakhs. In effect, these are Zonal Committees and not Wards Committees. Similarly, in the States of Andhra Pradesh & Uttar Pradesh, every Wards Committee is to contest in not less than five Wards in a Municipality. In Himachal Pradesh, Wards Committees are to be constituted for not less than ten

Wards in the Municipal Corporations. The Madhya Pradesh, Haryana and Tamil Nadu legislations only specify that Wards Committee shall be constituted for Municipalities with a population of three lakh or more.

Proximity as an Issue

1.58 A major objective of providing for Wards Committees in the 74th Constitution Amendment is that it enables closer interaction between the people and their elected representatives and thereby more sensitive responses to local needs and accountability of the elected persons to their Constituencies could be obtained. The setting up of Committees for groups of wards with large populations but calling them as Wards Committee in name only, defeats the basic purpose of proximity and accountability. By restricting the membership only to elected councillors as in Andhra Pradesh or allowing a sprinkling of NGOs as in Bangalore or Mumbai the representative character of these committees is further vitiated. Even in Kerala and West Bengal where provisions have been made for a committee for each ward, the principle of election has not been accepted. The preference appears to be for selection or nomination rather than election.

1.59 This is in sharp contrast to the arrangement for the Panchayats. Whether at the Gram Sabha, Village Panchayat or Intermediate level Panchayat, the emphasis in the 73rd Amendment is on increasing the number of elected representatives from territorial constituencies at different levels so that locally elected people can participate better in locally relevant matters. In the urban areas, on the other hand, there appears to be a strong fear of allowing such elective arrangement. If an urban citizen can be trusted to elect an MP, an MLA and a Councillor can't he be trusted to elect members of a committee for his ward or neighbourhood?

1.60 While the setting up of Wards Committees is an important requirement of the 74th Constitution Amendment, the responsibilities and resources assigned will be the real measure of implementation. In the case of Kerala and West Bengal the tasks to be performed by these committees have been elaborated in the Rules. Orders have also been issued for the Corporation/Municipal staff to be involved in their work in addition to some financial allocations within the city budget. In the case of Maharashtra, though the Wards Committees are in effect Zonal Committees some specific functions have been assigned. Accordingly, Section 50(TT) and Section 29A have been inserted in the Mumbai Municipal Corporation Act and Mumbai Provincial Municipal Corporation Act applicable to the municipal Corporations of Mumbai, Pune, Navi Mumbai and Pimpri Chinchwad. The Committees are to deal with grievances of local residents regarding supply of water, disposal of sewage and solid waste, repairs of roads, maintenance of street lights, public sanitation, etc. The Corporations have also made arrangements for Municipal staff with necessary powers and funds to implement the decisions of the Wards Committees.

1.61 While some beginnings have been made, it is clear from the evidence available that the Constitutional provisions regarding Wards Committees have been acted upon only to a very limited extent. Even in the nation's capital of Delhi, only Zonal Committees for groups of 10 to 12 municipal wards have been formed comprising exclusively of the Councillors of the Wards. The Government of National Capital Territory of Delhi under the initiative of the Chief Minister has commenced a scheme called 'Bagidari' seeking to mobilise in the city's neighbourhoods, support and participation of NGOs and individuals. But the programme remains informal and by and large outside the structure of the Municipal Corporation of Delhi.

Suggested Legal Changes

1.62 The suggested legal changes are:

(a) Wards Committees should be mandatory for each of the ward in all Municipal Corporations with a population of three lakhs or more, to comprise of persons chosen by direct election from the territorial area of the Ward. The Chairman of the Committee will be the Councillor elected from the Ward.

1208 LJ&CA/2002—18B

(b) The State laws may determine the number of persons to be so elected but there should be parity, within the city in the ratio between that number and population of a ward.

(c) State laws may also enable Wards Committees to co-opt such residents of a ward who are knowledgeable and can assist the work of the Committee.

(d) In all Corporations with a population of six lakhs and more, Zonal Committees at a level between the Wards Committees and the Corporation Council should be formed. State laws may determine the number and area of such Zonal Committees. The Councillors of all the municipal wards represented in that area shall be members. In addition, one other person from each of the Wards Committees elected by and from amongst the elected members of that Committee shall be a member of the Zonal Committee.

(e) State laws may determine the manner in which elections to the Ward and Zonal Committees are to be held, their functions and responsibilities and the allocation of funds to carry out the same.

(f) Article 243S should be amended suitably to incorporate the proposals made in items (a) to (e) above.

CHAPTER 2

FUNCTIONAL AND FINANCIAL DOMAIN

A. Functional Domain

2.1 The various reports on the progress of implementation of the 73rd and the 74th Constitutional Amendments as well as some scholars have commented that the position in regard to the functional domain of the local bodies particularly that of the municipalities has become worse after the Amendment rather than earlier. In the pre-independence period the functions assigned to the Municipalities were broadly similar in different States. Laws in almost all States envisaged functions such as water supply, drainage, sanitation, building control, municipal road and street lighting, municipal markets, etc as falling within the domain of a Municipality. In some States public health functions like hospitals as also primary education were included. There was also a general recognition that a Corporation or a Municipality was "in-charge" of the city or the town concerned.

2.2 In the period after independence, however, there has been a steady diversion and diminution of responsibilities in the sphere of municipal functions. Many of the functions were transferred to Development Authorities and parastatal organisations. The phenomenon of frequent supersession of elected municipalities added to the problem. By the end of the 1970s, State level water and sanitation boards as in Uttar Pradesh, Tamil Nadu, Maharashtra, Gujarat and Andhra Pradesh had come into existence. City development or special authorities were also established in most large cities of the country. However, in course of time most of these non-municipal bodies became afflicted with the same maladies such as corruption, unresponsiveness, financial mismanagement, lack of accountability, political interference, etc. which have been viewed in the past as problems exclusive to municipalities. Barring a few most municipalities and corporations in the country, the municipal bodies were left to deal with non-remunerative and routine functions like sanitation and garbage removal. The course of all these events and consequent decline of the Municipalities and Corporations has been extensively documented elsewhere. Suffice it to say that a widely held perception in the public mind is that what is urban is municipal and what is municipal is not worthy of attention'.

2.3 It was expected that the 74th Amendment would reverse this trend and once again entrust the range of responsibilities for the upkeep and development of towns and cities to municipalities and corporations. Articles 243G and 243W of the Constitution provide for the State laws to endow the Panchayats and Municipalities "with such powers and authority as may be necessary to

enable them to function as Institutions of self government". The 11th and the 12th Schedules listing 29 and 18 items respectively were added to the Constitution. It is important to note that neither of these Schedules are exhaustive; nor can they be. They are broad headings signifying a whole variety of functions. In essence, therefore, the Schedules are illustrative.

2.4 However, it has been argued that they are restrictive, they are not mandatory and it is not incumbent on the States to entrust the functions and responsibilities under these Schedules to the local bodies. At best, this is a superficial view and at worst a ploy to deflect or circumvent the intent of the Constitution. The 11th and the 12th Schedules are an integral part of the Constitution and have the same status and force as other Schedules. Further more, as part of the 73rd and 74th Amendments they have also been ratified by the required number of States. The country need not have gone through the elaborate process of amending the Constitution and ratifying the same if the Schedules are regarded as decorative elements to be observed only as per convenience.

2.5 Having said this, however, it is pertinent to note that in content and description the 12th Schedule leaves much to be desired. It may also be mentioned that in the 65th Amendment Bill of 1989, the 12th Schedule was a larger list incorporating the obligatory as well as several of the discretionary functions already assigned to municipalities in the various State laws. Several new items like welfare of the weaker sections, women and child development, family welfare, urban electrification, non-conventional energy, urban poverty alleviation, public distribution, etc. were also included. In the case of the 73rd Amendment relating to panchayats the 11th Schedule which had been prepared earlier as part of the 64th Amendment Bill was retained. However, in the case of the Municipalities the 12th Schedule was prepared afresh. Some items such as urban housing, heritage conservation, city passenger transport, etc. were removed. Some items such as non-conventional energy, adult education, family welfare or women and child development which were considered legitimate activities for panchayats and included in the 11th Schedule were excluded in the case of municipalities. The anomalies between the two Schedules should be recognised and their existence as two separate Schedules needs to be reviewed. Most of the items are similar and it will be far more forceful and useful if a common schedule applicable to both rural and urban local bodies is formulated.

2.6 It was expected that after the 74th Amendment the different State laws would be modified or replaced to bring them into conformity with the constitutional provisions especially in regard to the functional domain as indicated in the 12th Schedule. But only a few States have taken the opportunity to go through this exercise. The Kerala Act is by far the most elaborate list of functions assigned to the Municipalities. Under Section 30 of the Kerala Municipality Act, 1994, 165 functions into 29 groups of items have been transferred to the local bodies through the First Schedule to the Act. To ensure clarity, the functions have been classified as mandatory, sector wise and general functions. All urban local bodies have been given greater responsibilities in their traditional areas of work such as all educational institutions upto the high school, all health institutions upto the level of block hospitals, the entire ICDS system in urban areas, roads other than highways and major district roads, SC/ST hostels, etc. In addition, economic development functions like improvement of agriculture and animal husbandry, development of small-scale industries, anti-poverty programmes, etc. have also been entrusted to the Municipalities. They are also responsible for selecting beneficiaries for the various social welfare pension schemes of government covering agricultural labour, unemployed youth, widows, old age destitute, handicapped, etc. A major function entrusted to the Municipalities in Kerala is planning and implementation of various developmental projects in the productive, infrastructure and social service sectors.

2.7 West Bengal, Tamil Nadu, Maharashtra and Gujarat are some other States where previous municipal laws were comprehensively amended. Haryana, MP and Punjab have also followed suit recently. However, changes in the laws alone do not ensure the transfer of functions and responsibilities. The table below presents an overview of the position in 13 States. It is important to mention that this table alone will not give the complete picture. This is because

where a particular function listed in the 12th Schedule is shown as 'Y' meaning yes and therefore, assigned to the Municipality, there could still be several restrictions in the exercise of that function. Similarly where another item is shown as 'N' and therefore, not assigned to a Municipality, there could still be some part of that function discharged by a Municipality. The overall situation, therefore, reflects considerable variation in detail.

Table 5

Functional Domain of Nagarpalikas – A Comparison

12th Schedule Items	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Andhra Pradesh	N	N	N	Y	N	Y	N	Y	Y	N	N	Y	N	Y	N	Y	N	Y
Gujarat	N	N	N	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y
Harnaya	N	N	N	Y	Y	Y	Y	N	N	Y	N	Y	N	Y	Y	Y	Y	Y
Himachal Pradesh	N	N	N	Y	Y	Y	Y	N	N	N	N	Y	N	Y	Y	N	Y	N
Karnataka	Y	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Kerala	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Madhya Pradesh	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	Y
Maharashtra	N	N	N	Y	Y	Y	Y	N	N	N	Y	N	Y	Y	Y	Y	Y	Y
Rajasthan	N	N	N	Y	Y	Y	Y	N	N	N	N	N	N	Y	Y	Y	Y	Y
Tamil Nadu	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Uttar Pradesh	Y	N	N	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
West Bengal	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Delhi	N	N	Y	N	N	Y	N	N	N	N	N	Y	N	Y	Y	Y	Y	Y

Y – Yes, assigned to Municipalities N – No, not assigned to Municipalities

Items listed in the 12th Schedule to the Constitution:-

1. Urban planning including town planning.
2. Regulation of land use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation, conservancy and solid waste management.
7. Fire Services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of the weaker sections of the society including the handicapped and the mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremation grounds and electric crematoriums.
15. Cattle Pounds, Prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, bus stops, public conveniences.
18. Regulation of slaughterhouses and tanneries.

2.8 The process of assigning various functions thus becomes as important as the substance. The Kerala Act clearly says that functions are to be assigned by law and once so assigned can be withdrawn or modified only by a similar law. This is an important aspect because in many States, the assignment of functions is done by regulations or Government Orders and even if the initial assignment is by a State law, they are made subject to the rules and regulations as may be specified by the Government. The functional domain, therefore, becomes uncertain and variable at the discretion of the Government in power. It is interesting to note that while moving the 73rd Amendment Bill in December, 1992, the then Rural Development Minister stated in the Lok Sabha, "we intend to inscribe in the Constitution certain core elements of grassroots democracy to take them beyond the pale of changing political expediency.". But this has not happened. Even in the limited experience since the 73rd and the 74th Amendments became law, there have been several agitations on behalf of both the panchayats and urban local bodies demanding from the State Governments the functions listed in the 11th and 12th Schedules to be assigned to them. Very recently, the All India Council of Mayors has also moved the Supreme Court seeking a direction to the State Governments in this regard.

2.9 **Functions, functionaries and finances have to go together for any process of devolution to be meaningful.** Here again, except in Kerala where elaborate arrangements have been made to transfer the Institutions, and staff along with functions, in other States the process has been halting. The issue of finances is dealt with in some detail in the subsequent chapter.

<u>Suggested legal changes</u>

2.10 The suggested legal changes are:

(a) A common Schedule of functions for both rural and urban local bodies is desirable. The existing 11th and the 12th Schedules which have several common items should be integrated. (see **Annexure 2.1**)

(b) This integrated Schedule should not be illustrative only, but should be mandatory. It should be on par with the lists in the Seventh Schedule in status and in the exercise of legislative and Executive powers, which should be co-extensive with the subject, listed in the Schedule.

(c) The assignment of functions should be by substantive law rather than by rules and regulations.

(d) The law should also provide for the transfer to the Municipalities of organisations, funds and staff who were previously responsible for discharging the functions being assigned. The local bodies should have full control over its staff including those transferred to them. <u>Functions, functionaries and funds should go together.</u>

B. Financial Domain

2.11 It has been observed that the mismatch between functions and finances and near bankruptcy in many situations have been recurring features of municipal body finances in the country. The Constitution, even after the 74th Amendment does not provide for an autonomous domain of tax or revenue raising powers to municipalities. These continue to be determined and regulated by the State Governments. The State Governments specify the taxes that the Municipalities can levy and collect which are taken from the State List in the 7th Schedule. Historically these taxes have included taxes on lands and buildings, taxes on entry of goods into a local area for consumption, taxes on animals and boats, taxes on entertainment, taxes on professions, trades, etc. There are significant variations between the States. Since there is no distinct tax domain of the Municipalities as such, the control of the State Governments in determining the tax, tax rates or even tax exemptions is significant. The Punjab Government has recently abolished the levy of taxes on properties for domestic use. Within Rajasthan, several municipalities do not levy property taxes.

Background

2.12 Though the Constitutional Amendment exercise provided an opportunity, neither the 73rd nor the 74th Amendment attempted any new formulation of the financial domain of the local bodies. Article 243X merely reconfirms the previously existing position by stating that the Legislature of a State may, by law, authorise a municipality to levy and collect property taxes, duties, tolls and fees in accordance with such procedures and subject to such limits as may be specified in the law. The other provisions in the article regarding the assignment of taxes, grants-in-aid from the Consolidated Funds of the State or Constitution on behalf of the Municipalities are also not new.

2.13 However, the stipulation for mandatory State Finance Commissions (SFCs) under article 243Y to review the financial position of the Municipalities and make recommendations regarding distribution between the States and the Municipalities of the proceeds of the taxes, criteria for grants-in-aid, measures needed to improve the financial position of the Municipalities, etc. may be regarded as an innovative and significant feature of the Amendment. Unfortunately the provision lacks teeth and substance because there is no divisible pool of tax resources between the States and the Municipalities. Articles 268 to 275 of the Constitution contain various provisions about the distribution of revenues between the Union and the States. Distinct categories such as duties levied by the Union but collected and appropriated by the State (article 268), taxes levied and collected by the Union but assigned to the States (article 269), taxes levied and collected by the Union and distributed between the Union and the States (article 270), grants-in-aid in lieu of export duty (article 273), etc. provide a comprehensive frame work. No similar attempt was made to devise such an arrangement so far as the States and the Municipalities are concerned. It was left to the State Finance Commissions to suggest such a divisible pool if the SFC was so inclined and if at all its terms of reference given by the State government allowed it.

First Generation SFCs

2.14 After the 74th Amendment between 1994 and 1997, a total of 22 SFCs were set up. The composition of the State Finance Commissions itself did not follow any specific pattern nor was there any criteria provided for in a separate Act as in the case of the Finance Commissions set up by the Government of India under article 280. The terms of reference of the SFCs were also in most cases a mere repetition of the provisions of article 243Y of the Constitution. Since funds and functions were to go together there was an opportunity for the SFCs to review the existing situation and recommend a functional domain which would better serve public interest and also be financially viable. But most of the SFCs did not touch on the subject at all. The table below summarizes the recommendations of 15 SFCs.

Table 6

Recommendations Regarding Transfer of Funds State to Urban Local Bodies

Andhra Pradesh	39.24% of State tax and non-tax revenue to all local bodies
Assam	2% of State tax for local bodies, both rural and urban
Himachal Pradesh	An amount equal to Rs.12.2 crore as grants in lieu of octroi for 1996/97, to rise to Rs.17.9 crore in 2000/01.
Delhi	9.5 per cent of the total tax revenue of the State with MCD getting 96.85 per cent and NDMC 3.15 per cent.
Karnataka	5.4% of the total non-loan revenue receipt for meeting the plan and non plan expenditure
Kerala	40% of State plan funds for plan scheme and 1% of State revenue be transferred to the rural and urban local bodies in proportion to their population
Madhya Pradesh	8.67% of the tax and non-tax revenues of State government
Maharashtra	25% to 100% of entertainment taxes collected from municipalities of different grades, 25% of vehicle tax and 10% of professional tax are recommended shares for local bodies
Manipur	Maintenance grant equal to Rs.88.3 lakhs to accrue to municipalities in 1996/97.
Orissa	Rs.179.5 crore is the projected transfer (grant) to urban local bodies between 1998/99 and 2004/5
Punjab	20 per cent of the net proceeds of five State taxes, to be shared with the Panchayats and Municipalities
Rajasthan	2.18 per cent of the net proceeds to the local bodies. The division of these proceeds between rural and urban should be in the ratio of 3:4:1
Tamil Nadu	8 per cent of the total revenue from all State taxes excluding the entertainment tax, of which 15 per cent as equalisation and incentive fund in the ratio of 60 : 40 and 85 per cent in the ratio of 55 : 45 among rural and urban local bodies.
Uttar Pradesh	7% of the net proceeds of State's total tax revenue should be transferred to urban local bodies
West Bengal	16% of the net proceeds of all taxes collected by the State should be transferred to local bodies

2.15 Out of the 22 reports submitted by the SFCs only 4 have been accepted without modifications, 10 with modification, 3 are still under consideration and in 5 no action has been taken. Though article 243Y requires the recommendations of the SFC to be laid before the Legislature of the State with the Action Taken Report in most cases acceptance has been limited only to a few items. Most of the Commissions have dealt with the expenditure needs and forecast on the basis of current practice. Very few have taken a total view of development needs and financial requirements. Regarding revenue assignments, the SFCs have generally supported more autonomy for the local body in determining the rates. With regard to plan funds, however, some States like Kerala and West Bengal have recommended an allocation from 40 to 60% of State plan to rural and urban local bodies.

11th Finance Commission

2.16 Against this background, the setting up of the 11th Finance Commission in July, 1998 under the Chairmanship of Dr. A.M. Khusro and the terms of reference specified for the same acquire significance. It is very important to note that until the 73rd and the 74th Amendments the Finance Commission set up by the President was not required to enter into the area of local body finances at all. The Finance Commission had its mandate and its hands were full in dealing with the distribution of tax proceeds between the Union and the States and related matters. The provision for setting up State Finance Commissions was no doubt inspired by the model of the

Central Finance Commission. However, neither the 64th nor the 65th Amendment Bills which were the pre-cursors of the 73rd and the 74th Amendments provided for any links. That the reports of the SFCs could be used as an input by the CFC was an idea inspired by the Joint Parliamentary Committee.

2.17 The Committee took note of the fact that though the 8th and the 9th Finance Commissions set up by the Centre had deliberated on the nature and magnitude of the problem and also came to the conclusions that local bodies needed financial support no recommendations were made as, in their view, the Planning Commission was the appropriate body to deal with these problems. The JPC, therefore, reached the conclusion that while the Planning Commission and the Finance Commission were seized of the problem intellectually, in the absence of a constitutional mechanism, recommendations for assistance would continue to be sporadic and *ad hoc*. The Committee therefore, wanted the mandate of the Central Finance Commission to specifically include consideration of measures for augmenting the Consolidated Funds of the State to supplement the resources of the Municipality. Accordingly the Committee recommended a new clause to be added to amend article 280 of the Constitution. This amendment suggested by the JPC for urban local bodies was considered relevant for the rural local bodies as well. Accordingly sub-clause (bb) and sub-clause (c) were added to clause (3) of article 280 requiring the Finance Commission at the Centre to take note of the recommendations of the SFCs in recommending measures needed to augment the Consolidated Fund of States to supplement the resources of local bodies.

2.18 However, when the 10th Finance Commission was set up in June 1997 chaired by Shri K C Pant, no SFC had been set up. The Commission felt that there was no duty cast upon it to make recommendations in terms of article 283 (bb) and (c). Nevertheless, the Commission recommended an *ad hoc* award of about Rs.4400 crores for Panchayat and Rs. 1000 crore for Municipalities. In the case of the 11th Finance Commission chaired by Dr A M Khusro, the terms of reference were sufficiently large. The Commission also authorised major studies about local body finances by the National Institute of Rural Development and the National Institute of Public Finance and Policy (NIPFP).

Present Situation

2.19 The NIPFP study presents by far the latest picture in regard to municipal revenues and expenditure. The salient features are given below:

- Per capita revenue receipts of municipalities in 1997-98 was estimated at Rs.821.5. However, this figure drops down to Rs.421 if the income of large municipalities with over one million population is considered.
- The total resources generated by all municipalities in the country was Rs.17785 crores. This, however, amounted to less than 17% of the own resources of all the States put together.
- Of the total municipal revenues, nearly 82% were internally generated revenues. This belies the popular perception that municipalities across the country depended overwhelmingly on grants.
- On the expenditure side per capita municipal spending was Rs.747. Here again the figure would drop down to Rs.372 if the million plus cities are excluded.
- The total municipal spending was approximately Rs.19542 crores which amounted to only 10.2% of the total revenue expenditure of all the States combined. Here again the large city overshadows the rest.
- The revenue expenditure of Bombay Corporation alone represents 13% of the total municipal expenditure of the country.

The overall position in regard to the country, however, does not convey very large and serious interState differences in regard to both revenue and expenditure. The tables below on the Composition of Revenue and Expenditure indicated the position in respect of 19 States covered in the NIPFP study.

Table 7

Composition of Municipal Revenues (%) (1997/98)

State	Own resources	Tax Receipts	Non-tax Receipts	Shared revenue	Grants	Others
Andhra Pradesh	51.17	36.37	14.80	33.56	13.03	2.25
Assam	59.08	23.24	35.84	0.00	23.37	17.55
Bihar	52.77	36.86	15.91	2.99	40.31	3.93
Gujarat	87.45	79.74	7.71	0.18	11.10	1.27
Haryana	80.51	42.80	37.71	13.44	3.95	2.09
Karnataka	43.18	18.12	25.06	5.67	43.62	7.53
Kerala	70.32	44.69	25.63	20.65	4.74	4.29
Madhya Pradesh	47.34	22.61	24.73	11.88	39.90	0.88
Maharashtra	95.40	65.44	29.96	0.53	3.84	0.23
Orissa	67.12	46.92	20.20	0.93	28.59	3.36
Punjab	89.02	69.60	19.42	6.14	3.81	1.03
Rajasthan	89.80	62.90	26.90	0.17	9.30	0.74
Tamil Nadu	44.34	21.21	23.13	21.93	29.49	4.24
Uttar Pradesh	19.44	13.50	5.95	0.36	79.14	1.06
West Bengal	59.33	36.51	22.82	5.05	30.53	5.10
Himachal Pradesh	25.86	15.27	10.59	0.00	72.04	2.09
Manipur	98.29	90.42	7.87	0.20	0.15	1.35
Meghalaya	46.27	37.66	8.62	0.00	40.09	13.63
Tripura	42.92	27.31	15.61	0.00	33.74	23.34
	82.78	**56.40**	**26.38**	**4.05**	**11.99**	**1.19**

Table 8

Composition of Revenue Expenditure (%) (1997/98)

State	Wages and salaries	Operation and maintenance	Interest and Debt	Others
Andhra Pradesh	49.21	49.60	0.24	0.95
Assam	42.43	54.14	1.90	1.53
Bihar	1-77.21	21.13	1.03	0.63
Gujarat	53.20	30.02	6.30	10.48
Haryana	48.76	44.49	0.00	6.75
Karnataka	20.93	78.11	0.48	0.48
Kerala	55.04	34.57	5.19	5.20
Madhya Pradesh	51.01	37.67	0.61	10.71
Maharashtra	61.50	13.29	9.89	15.31
Orissa	38.30	21.61	0.00	40.09
Punjab	52.46	28.68	4.27	14.59
Rajasthan	-	-	-	-
Tamil Nadu	49.13	47.49	2.53	0.86
Uttar Pradesh	69.18	29.62	0.00	1.20
West Bengal	71.09	18.52	1.01	9.38
Himachal Pradesh	46.98	52.32	0.00	0.71
Manipur	70.69	8.73	0.00	20.58
Meghalaya	52.28	30.37	0.00	17.35
Tripura	56.64	1.15	2.26	39.95
	60.34	**20.00**	**7.17**	**12.51**

2.20 Though such detailed and comprehensive data was available before the 11th Finance Commission and its terms of reference were wide enough to address the subject, the Commission has chosen to make only an *ad hoc* awards of Rs. 1600 crores for rural local bodies and Rs. 400 crores for urban bodies. This is a much lower figure than whatever the 10th Finance Commission made on an *ad hoc* basis. However, the Commission has made a number of other recommendations which are of significance to municipal finances. These are identified below:

(a) The levy of taxes on land/farm income to strengthen the resource base of the local bodies and also to augment the Consolidated Fund of the States.

(b) Surcharges and cess on State taxes.

(c) Profession tax under article 276 to be levied by all the States and the rates to be revised upwards.

(d) The ceiling of Rs.2500 per annum fixed by a Constitutional Amendment in 1988 to article 276 (2) should also be revised. Parliament should be empowered to fix this ceiling on the basis of prevalent economic situation without going in for a Constitutional Amendment every time.

(e) Property and house tax laws, assessment and collection of machinery to be substantially improved. (The wide variance in levels of property tax may be seen in **Annexure 2.2**)

(f) User charges to be revised periodically with local bodies being given the power to fix the rates.

(g) Transfer of funds and functions to local bodies should be made by law and changed only by law rather than by regulations and government orders.

(h) The number of centrally sponsored or State sponsored schemes in matters usually dealt with by local bodies should be reduced and the implementation machinery for the same integrated with the set up of the local bodies.

(i) The setting up of the SFCs should be so timed as to make their inputs available in time to the CFC. The Finance Commission should be empowered to make its own assessment in cases where SFC reports were not forthcoming or SFCs had not been set up.

2.21 The 11th Finance Commission has also suggested that the C&AG should be involved in setting up an Accounts system for the local bodies as also the audit of the same. Given the existing work load of the CAG and the considerable variance in the internal structure and staff of rural and urban local bodies it is to be considered whether this is feasible. Besides articles 243J and 243Z envisage that State laws should make the provisions for maintenance and audits of accounts. The CAG's involvement at all levels in this regard may be construed as centralisation rather that decentralisation.

Suggested Legal Changes

2.22 The suggested legal changes are:

(a) The concept of a distinct and separate tax domain for municipalities should be recognised. This concept should be reflected in a list of taxes and should form part of the common schedule of functions and responsibilities for local bodies or in the event it is decided to continue with the 11th and 12th Schedules as separate, the tax domain should figure in the relevant schedule. Carving out items from the existing State lists such as item 49 (taxes on land and buildings) and item 52 (taxes on entry of goods into a local area for consumption) should not be difficult.

(b) Similarly, the concept of a divisible pool of taxes which can be shared between the Union, the States and the Municipalities should also be recognised similar to the provisions in articles 268 to 274. There should be categories of taxes and other levies specifying who will collect the same and how it will be distributed between the 3 levels.

(c) In case of taxes and levies, the proceeds of which are to be shared with municipalities, prior consultation will be required before any modification is made in the scope of the tax or its rates.

(d) Article 276 on taxes on professions, trades and employment should be amended as suggested by the 11th Finance Commission. The ceiling should be specified by Parliament from time to time rather than requiring amendments to the Constitution.

(e) State laws should provide for composition of the State Finance Commission and the criteria for its membership similar to the provisions in the case of the Finance Commission set up by the President under article 280.

(f) State laws should provide for the establishment of the SFCs in a periodical manner and determine a time schedule for the same so that the work and output of the SFCs are synchronised suitably with the Central Finance Commission.

(g) Articles 243-I and 243Y should be amended to ensure that the Action Taken Report by the Government is laid before the State Legislature within six months of the submission of the SFC recommendations.

(h) Sub-clauses (bb) and (c) of clause (3) of article 280 should be amended so that the Central Finance Commission while taking into consideration the recommendation of the SFCs, is not circumscribed by the same.

(i) State laws should also provide for establishing and maintaining a financial database as suggested by the 11th Finance Commission.

(j) State laws should specifically empower municipalities to borrow.

(k) State laws should also provide for the preparation and adoption of municipal budgets in a transparent manner in keeping with the public right to information.

CHAPTER 3

DISTRICT PLANNING COMMITTEES, METROPOLITAN PLANNING COMMITTEES AND ORGANIC LINKS BETWEEN MUNICIPALITIES AND PANCHAYATS

A. District Planning Committees

3.1 The constitution of District Planning Committees (DPCs) is mandatory under article 243ZD of the Constitution and is a common item for both Panchayats and Municipalities. The District Planning Committees are to take up integrated planning for urban and rural areas in the District. As urbanisation increases, the need for such an integrated planning will become more important. Town and the country have to share the various physical and economic resources of the district such as communications, water resources and market places. Allocation of water for irrigation, drinking or industry is already a contentious issue in many districts. Dealing with each other's wastes is another serious problem. The sugar mill and distillery wastes of numerous small, medium and large units in western Uttar Pradesh, or the textile and dyeing units in Rajasthan, Gujarat or Andhra Pradesh fouling and poisoning water courses are a well known phenomenon. Municipal solid wastes-be they chemicals, plastics, hospital wastes or other debris-spill over into the countryside and find their way into neighbouring streams. Agricultural lands at the fringe of towns, large or small, are increasingly prone to conversion. These are problems that need understanding and response, not in a distant State headquarter but within the local area. The district needs a platform to umpire and resolve these issues. The Zilla Parishad and District Planning are an important process for this purpose. Planning should be an obligatory function of panchayats and municipalities. Such plans at the local level are the building blocks for a district plan. District Planning itself should be an integrating process.

Composition

3.2 While the composition of the DPC and the manner in which the seats are to be filled have been left to the States, article 243ZD stipulates that four-fifths of the total number of members of DPC will be elected by, and from amongst, the elected members of the Panchayat at the district level and of the municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district. The rest are to be nominated.

3.3 While most States have made enabling acts to constitute District Planning Committees, very few have actually constituted them. This is because of both political apprehensions and bureaucratic problems. First is the fact that the provisions on District Planning are to be found in the 74th rather than in the 73rd Constitutional Amendment. Rural Development departments in the various State Governments have traditionally regarded district level planning as falling in their domain but since they find that the provisions for the DPC are now a part of the 74th Constitutional Amendment, under the Part IXA relating to Municipalities, their reaction sometimes has been that these Committees are the concern of the Urban Development or Municipal Affairs department in the State. These departments, on the other hand. do not have a clue about the objectives and purposes of the District Planning Committee and expect that some other department like Planning, will take care of it. The result is that the item often became orphaned between disinterested departments. The political apprehension is about the DPC emerging as a dominant body deciding on public investments and thus reducing the influence and patronage of State level political leaders.

DPC and Zilla Parishad:

3.4 A second unresolved issue has been the relationship between the Zilla Parishad and the DPC. The amended Constitution envisages the DPC as a stand alone entity. While article 243ZD provides for members of a DPC to be elected by and from amongst the elected members of the Zilla Parishad and of the municipalities in the district, it does not specify the relationship between the Zilla Parishad and the DPC. It is pertinent to mention here that this aspect was well understood and specifically addressed in the 65th Amendment Bill, 1989. Article 243Y proposed in that Bill stipulated that the DPC should be constituted "in every Panchayat at the District level". Proposed clause (3) of the article also laid down that the "Chairperson of the Panchayat at the district level shall be the chairperson of the Committee". The locus and stewardship of the DPC as part of the district panchayat or Zilla Parishad was thus established beyond doubt. Unfortunately, article 243ZD of the Constitution as enacted has allowed serious ambiguities to persist.

3.5 The State Governments have, therefore, been left to draw their own interpretations. In Assam, Karnataka. Kerala, Rajasthan and West Bengal the State laws envisage the DPC as a part of the Zilla Parishad. The Chairperson of the Parishad is also designated as Chairperson of the DPC. In Madhya Pradesh, a Minister of the State Government is the Chairperson of the DPC and is expected to lead and guide district planning with the help of the district administration. The Chairperson of the Zilla Parishad is a Vice-Chairman. Gujarat and Maharashtra have long had District Planning and Development Committees with a minister of the State Government as the Chairperson. The view of these two Governments has been that these district committees are an adequate substitute for the DPCs. The table below indicates the varied arrangements in different States.

Table 9

Composition of District Planning Committees in various States

State	Total Members	Elected Members	Nominated Members	Chairperson	Secretary
Kerala	15	12	03	President of the Zilla Parishad	District Collector
Madhya Pradesh	15-25	Four-fifths	One-fifth	Minister nominated by the State Govt.	District Collector
Maharashtra	30-50	Four-fifths	One-fifth	Minister nominated by the State Govt.	District Collector
West Bengal	10-100 depending on size of the district	Four-fifths	One-fifth	President of the Zilla Parishad	District Magistrate
Rajasthan	25	20	5	President of the Zilla Parishad	Chief Planning Officer of ZP
Uttar Pradesh	20-40	Four-fifths	One-fifths	Minister nominated by the State government	Chief Development Officer of the District
Karnataka		Four-fifths	One-fifth	President of the Zilla Parishad Mayor/Municipal President of District Hq. Vice Chairman	CEO of Z.P.
Tamil Nadu		Fourth-fifth	One-fifth	Collector; ZP President Vice Chairman	CEO of District Panchayat

3.6 The designation of a Minister as the President of the DPC virtually makes it an extension of the State Government and goes against the intent of the Constitution. It also defeats the principle of decentralisation. Even before independence District Boards were perceived and set up as important centres of decentralisation. In Karnataka, Maharashtra, Gujarat and Rajasthan, the Zilla Parishads set up during the first initiatives of decentralisation enjoyed considerable autonomy and powers. The District is the first major level where the demand for local autonomy and the desire for State control are likely to come into conflict. Similar fears surfaced during the 1970s when the Zilla Parishad became prominent and powerful in Karnataka, Gujarat and Rajasthan. These fears and apprehensions continue to hold sway and if the highly varied arrangements in the different States continue to prevail, the Constitutional intent in establishing district level panchayats and district planning process will be defeated. To quote "Panchayati Raj without district planning might be a somewhat hollow shell, even as district planning without Panchayati Raj would be unrepresentative". This observation of Late Rajiv Gandhi was only a reflection of the consensus held by stalwarts of the panchayat movement like Ashok Mehta, Abdul Nazir Sab. Ramkrishna Hegde or Nirmal Mukherji.

3.7 In the case of Madhya Pradesh it has been claimed that the District Planning Committee is really a step forward towards the establishment of a district government. The DPC has been given the powers to supervise and monitor district level schemes undertaken by different departments of the Government. Amended in 1999, the DPC Act of 1995 has also given to it the powers of administrative approval and financial sanctions subject to some limits. The DPCs have also been entrusted some other functions previously performed by the State Government in respect of urban areas such as delimitation of municipal wards, land acquisition, etc. However, in keeping a Minister of the Government as the Chairman of the DPC and the District Collector as

the Secretary, the DPC has emerged as a body distinct from the Zilla Parishad exercising more powers on behalf of the State Government. It is not the intent of the Constitution that the DPC should emerge as a super body at the district level dominating even the Zilla Parishad. To that extent the intent and working of the DPC in MP needs careful watching.

District Planning Process

3.8 The extensive arrangements for decentralised planning which have been made in Kerala particularly in the case of Panchayats at different levels have been well documented and discussed in various sources. So far as the DPC is concerned the State Planning Board and the NGOs have also helped to identify and provide district level resource persons with the required professional background. The DPCs guide the intermediate and village level panchayats in the preparation of their own plans and the approval of the plan is the responsibility of the DPC though it cannot change the priorities determined by the PRIs in the district.

3.9 In October 1998 Maharashtra enacted a separate District Planning Committee Act. The Act provides for a Minister of the State Government to be the Chairperson of the DPC with the President of the Zilla Parishad, its CEO, the Divisional Commissioner and the Collector of the District as ex-officio members. The Act also stipulates that the Collector shall be the Member Secretary. The Maharashtra Government has thus confirmed its past approach prior to the Constitutional Amendment, of treating Zilla Parishads as just one of the local bodies rather than a body which should take the lead in district planning.

3.10 In West Bengal, the organisational arrangements are similar to those in Kerala though there has been no supporting programme for identifying resource persons and training PRI and Municipal staff in planning. West Bengal has also revived a previous practice of District Planning and Development Co-ordination Committee (DPDCC) presided over by a Minister of the State Government. Though the President of the Zilla Parishad continues to be the Chairman of the DPC, the DPC is expected to consult the DPDCC. Here again the arrangement appears to be a dilution of the position of the Zilla Parishad.

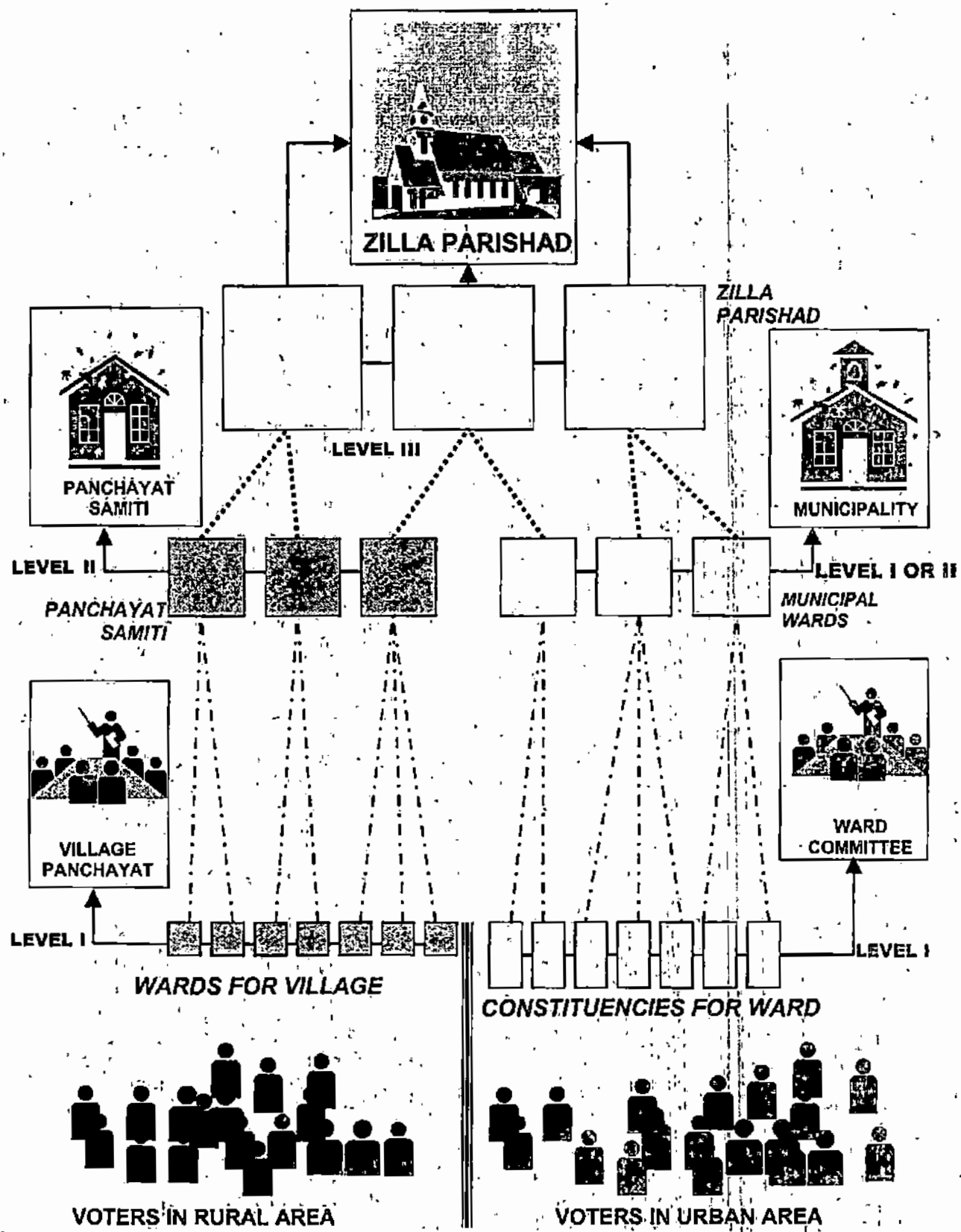
3.11 In Rajasthan, DPCs have been formed in all the districts with the President of the Zilla Parishad as the Chairperson and the Chief Planning Officer of theDistrict who is a functionary of the Zilla Parishad as the Secretary. In UP and Karnataka the DPCs have been set up but they are not functional. In Tamil Nadu until recently the DPC was perceived and operated as a non PRI body with the Collector as the Chairman and the Zilla Parishad President as the Vice Chairman. Recently, the position has been changed with the President of the District Panchayat designated as the Chairman of the DPC.

3.12 The highly varied organisational and operational arrangements for the DPC confirm the fact that the provisions of the Constitution have remained very poorly understood and very badly implemented. Where the DPC has not been located within a Zilla Parishad the ownership of the process itself has been left to doubt. The induction of a State Government Minister appears to be a deliberate attempt to dilute the position of the district level panchayat and forestall possible attempts of that panchayat to assert its preeminence as a distinct body of elected representatives. The operational arrangements for the preparation of a district development plan and merely forwarding it to the State Government also reduces it to a paper exercise. If, on the other hand, district level planning becomes multi sectoral and inter-departmental and also covers project allocation, monitoring and supervision and if that district level planning becomes a part of the Zilla Parishad's responsibilities it would undoubtedly enhance the Parishad's power and influence.

3.13 As presently worked, the Panchayat at the District level or the Zilla Parishad is construed as a Zilla Rural Parishad. The reality is that a District is an important administrative entity and its jurisdiction covers both the rural and the urban. Its composition should reflect the character of the district as a whole. Its territorial constituencies should, therefore, comprise all parts of the district.

Such a Parishad will truly be a Panchayat representing the district as a whole. District Planning has to be one of its firm and continuing responsibilities.

3.14 The Panchayats at the district level, in other words, the Zilla Parishad is to be composed principally of representatives elected from territorial constituencies. As suggested above these territorial constituencies should cover the district as a whole. We have suggested in an earlier section [see para 1.40.2 (b) above] the need to adopt a building block approach in the preparation of the electoral rolls as well as the composition of both panchayats and municipalities. The basic electoral unit will, therefore, be the territorial wards which elect representatives to the village panchayat. A certain number of these panchayat wards can then be grouped into wards for intermediate level panchayats i.e. panchayat samitis. For urban areas we have urged earlier, the formation of Wards Committees for each municipal ward or groups of wards to comprise representatives elected from territorial constituencies into which a municipal ward area will be devised. This will be the basic building block. A certain number of these blocks can then be grouped into a municipal ward. If there are no Wards Committees comprise of representatives elected for this purpose, then the municipal ward itself becomes the building block. The territorial constituencies of the Zilla Parishad will then be a grouping of panchayat samiti as well as municipal wards. In delimiting the panchayat samiti wards the State laws should provide that any given village panchayat should form part of a panchayat samiti wholly and not be split. Similarly the constituencies for Wards Committees will be grouped in their entirety within a given municipal ward. By the same principle a panchayat samiti ward or a municipal ward should form part of a Zilla Parishad constituency wholly and not be split. A schematic diagram is placed below to illustrate the suggested arrangement.



SUGGESTED ARRANGEMENT OF ZILLA PARISHAD

1208 LJ&CA/2002—19A

Note:

Some explanation about the arrangement may be useful. At the basic level there are voters in the rural and urban areas. A certain number of rural voters usually ranging from 500 to 1000 are listed in the electoral roll organised for each panchayat ward. This is the territorial constituency from which a representative is elected for the Village Panchayat. We may call this constituency as Level I. This is the basic building block in the electoral system. A certain number of these Level I constituencies will be grouped into another territorial constituency for the panchayat at the intermediate level usually called the Panchayat Samiti, the Block Panchayat or the Kshetra Panchayat. The ward of a Panchayat Samiti which may be called as Level II will be much larger and will comprise several Level I panchayat wards. Similarly in the case of urban areas, the urban voters will be grouped into a Level I territorial constituency. In small towns this may be a Municipal Ward from which a councillor is elected by the voters. In larger cities where Wards Committees are set up whose members are elected from different areas of the municipal ward, each of this area will be a portion of the ward. Thus, the Level I constituency may be either the territorial constituency for a wards committee or a municipal ward itself.

According to the present proposal the Zilla Parishad should be composed of representatives from territorial constituencies organised for this purpose. These constituencies may be called Level III. These constituencies will be even larger than Level II and will comprise several of them. A level III Zilla Parishad constituency in some cases may consist entirely of level II Panchayat Samiti Constituencies or in some cases Level II Municipal Ward constituencies or in some cases a combination of the two. The main principle will be a broad parity in the population seat ratio between the various Zilla Parishad constituencies.

A Zilla Parishad set up by such an arrangement will obviously reflect the character of the district. In a predominantly rural district the Zilla Parishad ward will be mainly rural. In a predominantly urban district, they will be otherwise. In districts which are partly urban the number and character of the Zilla Parishad wards will also reflect this partly rural character.

MPs/MLAs and DPC

3.15 The representation of MPs and MLAs is a related item. Both the 73rd and the 74th Amendments specifically enable State Legislatures to provide for their representation in Municipalities and Panchayats. It makes far more sense and can be of much more value if the participation of MLAs and MPs is secured in District Planning. Two alternatives can be considered in this regard. One is for the MPs and MLAs to be the honoured invitees of the DPC and contribute to its deliberations without having to be its formal members. The alternative is to provide for their representation in the DPC by specifying its composition.

3.16 At present under article 243ZD, four-fifths of the total number of members of DPC are to be elected by, and from amongst, the elected members of the Panchayat at the district level (the Zilla Parishad in other words) and of the Municipalities in proportion to the ratio of the rural and urban populations. This component can be changed to three fifth of the total number. One fifth can be elected by and from amongst the MLAs and MPs from the district. Out of these the number of MPs can be fixed as two. The participation of the MPs and MLAs should be in person and not through agents as allowed in M.P. The remaining one fifth of the DPC members should be the representatives of such organisations and institutions as the State Government may consider necessary for carrying out the functions assigned to the DPC. This is important because within a district there will be important institutions representing industry, trade and commerce, NGOs, professionals, etc., who will be in a position to make valuable contributions to the process of district planning. At present, article 243ZD does not contain a provision for this purpose. So far as officials of the Government and Government's agencies are concerned, they should be nominated by the State Government, ex-officio, to participate in the DPC but without being formal members.

1208 LJ&CA/2002—19B

Suggested Legal Changes

3.17 The suggested legal changes are:

(a) As per the definitions given in article 243, 'district' means a district in a State while 'Panchayat area' means the territorial area of a Panchayat. The Panchayat at the district level should, therefore, be for the district as a whole instead of the rural areas only. The definitions under article 243 should be amended accordingly. Clause (1) of article 243 ZD should be amended to stipulate that the District Planning Committee shall be constituted within the Panchayat at the district level or Zilla Parishad.

(b) Sub-clause (d) of clause (2) of article 243 ZD should be amended to provide for the Chairperson of the Panchayat at the district level to be the Chairperson of the District Planning Committee. The Chairperson of the largest Municipality in the District should be the Vice-chairman.

(c) In clause (1) of 243ZD, the words "consolidate the plans prepared by the Panchayats and Municipalities in the district" should be omitted so that the DPC's main task of preparing a draft development plan for the district is not contingent or dependent on individual plans prepared by the Panchayats and the Municipalities. However, clause (3) of article 243ZD can provide that in preparing the development plan the DPC will have regard to such plans as are prepared by the Panchayats and the Municipalities. Zilla Parishad should help panchayats and municipalities to prepare these plans which will serve as building blocks for preparation of Development Plan for the district.

(d) Article 243ZD should also contain a provision to enable the State laws and State Governments to entrust additional responsibilities as monitoring of development schemes and programmes in the district, co-ordination of their implementation including powers to modify sanctions to ongoing schemes subject to limits.

(e) The Zilla Parishad should be the technical and administrative secretariat for the DPC independent of and distinct from the District Collector or the District Magistrate.

(f) The State laws should provide for association and involvement of government and non-government agencies and professionals in the DPCs. MPs, MLAs and Ministers desiring to participant in the District Planning Committee should be welcome as invitees.

(g) State agencies, district agencies and district administration should assist the DPC with data and technical know-how in preparation of the development plan for the district. State laws should provide for this.

(h) Where Metropolitan Planning Committees (MPCs) are required to be set up, State laws and regulations should determine the functional and territorial jurisdiction of the DPCs as distinct from the MPCs. Where Metropolitan Planning Committees exist for predominantly urban districts, they should be deemed as DPCs, as no separate DPC is necessary.

B. Metropolitan Planning Committee

The rationale

3.18 According to the 1991 Census, we have 23 metropolitan areas in this country each with a population of 10 lakhs or more. When the Census figures 2001 are released, the number of such cities is likely to exceed 40. These areas are agglomerations administered by several municipalities. Even Greater Mumbai though it is called by that name does not cover all of the Mumbai Metropolitan area. Thane, Bhiwandi, Ulhas Nagar or Navi Mumbai are all different Corporations. These multi-municipal urban agglomerations have reached their present dimension

and configuration over a period of time. Growth has overrun traditional boundaries. Initially the boundaries of the central city could be extended two or three times as in the case of Mumbai but after that, such extensions were resisted. Surrounding municipalities were not prepared to give up their jurisdictions. The Calcutta Metropolitan area now comprises three corporations, thirty-four municipalities and numerous non-municipal urban localities. The metropolitan areas of Chennai, Bangalore, Mumbai and Hyderabad cover ten to thirty municipal jurisdictions. In Delhi. nominally there are only three-the Cantonment, the NDMC and the Delhi Municipal Corporation (MCD). But the MCD itself is a leviathan covering nearly 1600 sq. km and stretching across vastly different localities such as Shakur Basti, Rohini and Greater Kailash. World experience has shown that devising a system of governance reconciling local autonomy with a metropolitan perspective has not been easy. Their size, the scale and complexity of problems, are formidable. Because the tasks are numerous, multiple organisations for their discharge become inevitable. Besides many of these mega cities are also the seat of Central or State Governments and their presence is conspicuous.

3.19 While the municipal corporations or the municipalities comprised in these agglomerations may be zealous of their respective domain, the agglomeration itself needs a metropolitan wide perspective, planning, advocacy and action, Sources of water, disposal of waste, traffic and transport, drainage, abatement of air pollution, etc., are examples of items where one city corporation or the municipality alone cannot achieve much in isolation. The B.E.S.T which is part of the BMC for instance, however, competent it may be, cannot do much about public transport in Mumbai if the Ministry of Railways handling the suburban system does not subscribe to a common plan. The Government of India's Ministry of Environment or Maharashtra's State Pollution Control Board cannot do much to mitigate pollution without BMC's active collaboration. Above all, the maintenance of the infrastructure to keep the mighty economic machine of Mumbai going is a task requiring much interaction and collaboration between the Central, State and local governments, the public and the private sector, industry, commerce and the citizenry. The Metropolitan Planning Committee was envisaged as an inter-institutional platform for similar purposes.

3.20 Metropolitan areas are also the main engines of growth and economy in the country. Urban transport. water supply, waste management., police, public health,. etc., require metropolitan level planning, implementation and coordination. Besides the scale of services needed in these metropolitan areas is huge and it is not possible for City corporations or Municipalities to address all of them. The suburban railways or metropolitan transport systems as in Calcutta. Mumbai or Chennai are handled by the Ministry of Railways. The ports in these cities have a separate set-up. Metropolitan Development Authorities or Departments of Metropolitan Development in the State Government cannot be an adequate answer for these multi-municipal problems. Since the 74th Constitution Amendment, Mayors and Municipal Chairpersons are moving increasingly to assume executive leadership for managing their respective areas. A bureaucratic set up cannot bring these elected representatives and leaders together at the metropolitan level.

Background to the Constitutional provision

3.21 That is why, article 243ZE in the 74th Constitution Amendment provides for the Metropolitan Planning Committee (MPC). It is pertinent to mention that while the 65th Amendment Bill contained this provision, the Bill relating to 73rd Constitution Amendment introduced by the Narasimha Rao government did not do so. It was the Joint Parliamentary Committee, which revived the provisions for a Metropolitan Planning Committee and based on its recommendation. Article 243 ZE became a part of the 74th Amendment. The rationale is well expressed in the Report of the Joint Committee and is reproduced below:

"There are twenty-three metropolitan cities in the country where the metropolitan area would encompass not only the main City Corporation but also a number of other local bodies, both urban and rural, surrounding the main City Corporation.

By the end of the century, this number may rise to about forty-five. To ensure that there is an orderly development of the vast area, proper plans need to be drawn up in association with the plan of the main city. Considerable investments in these cities are also undertaken by Central and State government agencies. It is necessary to coordinate these investment plans with the development plans and requirements of the metropolitan city."

"There is, therefore, need for a suitable planning mechanism which would take care of the interaction between the various local bodies, both rural and urban in such metropolitan areas. At present, the system that is adopted in many metropolises is the creation of a metropolitan development authority. The functions assigned to the metropolitan development authority differ from case to case. In some cases, they are only planning bodies while in some cases they take on executive function, particularly of major schemes. Further, at present, these bodies are not democratic institutions. The Government nominates them. The Committee therefore, feels that there should be a provision for constitution of a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole. In order to impart a democratic character to the said Committees not less than two-thirds of the members of such Committees should be elected by, and from amongst, the elected members of the municipalities and Chairpersons of the Panchayats in the metropolitan area in proportion to the ratio between the population of the municipalities and of the Panchayats in that area. The other details relating to composition of the said Committees, the manner of filling the seats therein, the representation in such Committees of Government of India and the Government of the State and other organisations and institutions, the functions relating to planning and co-ordination for the Metropolitan area to be assigned to such Committees and the manner in which the Chairpersons of such Committees shall be chosen may be left to the State Legislatures."

3.22 The Joint Parliamentary Committee accordingly recommended the insertion of a new provision-article 243ZE for establishing an MPC and a new clause in article 243P which defines a metropolitan area as 'an area having a population of ten lakhs or more comprised in one or more districts and consisting of two or more municipalities'. The multi-municipal character is, therefore, an essential requirement of a metropolitan area. Prima facie there are twenty-five such urban agglomerations according to the 1991 census. With a population of ten lakhs or more located in the States of Andhra Pradesh, Tamil Nadu, Kerala, Gujarat, Maharashtra, Rajasthan, Madhya Pradesh, Punjab, Uttar Pradesh, Bihar and West Bengal. So far as these States are concerned, the MPC is a constitutional requirement. However, as in the case of the DPC, while conformity legislation or enabling laws have been passed by more or less reproducing the language of the Constitutional Amendment not a single State has set up an MPC so far.

Failure to set up MPCs.

3.23 The reasons for this sorry State of affairs are a mixture of bureaucratic confusion about the purpose and role of the MPC, lack of political interest and, most importantly, the fear of the Development Authorities, which exist in most of these twenty-three cities that their domain will be undermined. While the Calcutta Metropolitan Development Authority itself was brought about in special circumstances-more for mobilizing funds and coordinating implementation-most of the development authorities in the other cities were inspired by the Delhi Development Authority model of large scale land acquisition, real eState development and housing construction. Eventually these bodies became conspicuous empires of public works and patronage as in Bangalore, Hyderabad or Jaipur. The creation of these authorities was no doubt facilitated by the fact that most of the city corporations concerned were under supercession as was the case in Chennai and Calcutta. In the case of greater Bombay consistent opposition from the Corporation limited the BMRDA mandate to some broad areas of planning control and coordination and selected real eState activities. The Calcutta Authority also eventually became a huge amalgam of

public works. State Governments have been rather apprehensive about the large staff which these development authorities have acquired over a period of time, which would become surplus in the event separate Metropolitan Planning Committees are established. This is a totally mistaken perception. The Metropolitan Planning Committee is expected to be a high level, democratically set up body, which will bring a constitutional mandate to the whole exercise of metropolitan development planning. The development authorities could serve these Metropolitan Planning Committees as their technical secretariat.

3.24 Another misconception is about the possible conflict of jurisdiction between MPCs and DPCs. Since metropolitan areas are predominantly urban, the rural or the Panchayat component in the MPCs would be rather small. Where the urban areas are co-terminus with revenue districts, such as Bangalore, Chennai or the Calcutta urban district, the problem does not arise at all. In such cases a DPC is not necessary. Where a part of a revenue district is included in a metropolitan area, State Governments can suitably redefine the boundaries for the purpose of DPC and MPC work. Alternatively, a functional delineation is also possible. The Tamil Nadu Government attempted to do this by providing that the MPC for the Chennai metropolitan area will be deemed to be a DPC for those portions of the revenue districts which are included in the metropolitan area. Under the Constitution it is up to the State Governments to determine the jurisdiction of the D PC and the MPC to avoid conflicts, if any.

3.25 In the composition for MPC it is envisaged that one-third of its members are to be elected by and from amongst the elected representatives of urban and rural local bodies in the metropolitan areas. The others are to be nominated, representing Central Government agencies and various State Government agencies, other organizations and institutions responsible for various services in the metropolitan areas. More importantly, the nomination also enables representatives of the private sector and community at large to be mobilised. The manner of choosing the Chairperson of the MPC, and the planning and coordination functions to be entrusted to it,is left to the State Legislature. In preparing the draft development plan the MPC should have due regard to the plan prepared by the Municipalities and the Panchayat, matters of common interest to them, objectives and priorities of the Government of India and the State Government, available financial and other resources for integrated development of infrastructure, environmental conservation, etc. The MPC is expected to hold wider consultations with different institutions and organisations. The Metropolitan Planning Committee is envisaged as an Inter-governmental. Inter-organizational forum for providing a vision, a strategy and a metropolitan wide development plan.

The Maharashtra Act

3.26 Though several States have passed enabling laws to set up an MPC, none has been constituted so far. Recently the Maharashtra Government passed a similar enabling law, responding to a P.I.L. challenging the Government's failure to set up an MPC. Earlier the Government promulgated an Ordinance in June, 1999 to enable the creation of a 45-member Metropolitan Planning Committee in Mumbai, Pune and Nagpur metropolitan areas. Thirty of the members are to be elected from among the elected members of the municipalities and panchayats in the area in proportion to their population. The other fifteen including the chairperson, representatives of trade, industry and other walks of public life are to be nominated by the State Government. One very useful feature of the law is that the Mumbai Metropolitan Region Development Authority is to assist the MPC and in effect function as its technical arm. This is in keeping with the approach recommended by the Central Government and expert bodies so that technical resources of the development authorities can be utilized in a more effective and accountable manner by a politically representative body like the MPC. The MPC itself has not been set up so far.

Political Fears

3.27 Though the rationale for setting up the MPC is clear one other reason for the reluctance of the State Governments in setting them up appears to be that such an MPC may acquire a political identity of its own and may become a counter point to the State government itself. This is a totally mistaken perception. The Constitution itself clearly recognises the role of the Government of India and the Government of the State in metropolitan planning and that is why clause (c) of article 243ZE provides for representation of Government of India and State Government agencies. Clause (3) also requires that while preparing the plan the MPC should have regard to the overall objectives and priorities set by the Government of India and the Government of the State, the nature and extent of investments likely to be made by their agencies and the involvement of other institutions and organisations. The MPC should, therefore, be regarded as a politically representative platform in which the Central and the State Governments will have the clear opportunity of translating their overall objectives and priorities through a metropolitan development plan.

3.28 As far the political aspect, it must be understood that the different municipalities and the panchayats in a metropolitan area need not always have the same political complexion. In fact they will be held by different parties. This is already the case in Calcutta, Hyderabad, Mumbai or Bangalore. Experience also shows that the Chief Ministers of all the States where these multi municipal metropolitan areas are located are in fact taking an active interest in metropolitan development. The examples of the Chief Ministers of Karnataka and Andhra Pradesh and their interest in the development and futures of Bangalore and Hyderabad confirms this. The MPC offers good platform for the Chief Minister of the State to articulate his vision for the metropolitan area and guide its policies and strategies. It is, therefore, appropriate that instead of leaving all items of composition of the MPC open, the Chief Minister of the State is designated as the Chairman of the Committee. The Mayor of the main city can be the Vice-Chairman. The State laws should also specify the agency which will be the technical secretariat of the MPC which will function under its control.

3.29 Another item of importance is the representation of the Members of Parliament and MLAs in the MPC. Here again the rationale for their participation is more than in individual municipalities or Panchayats. Under article 243ZE two-hirds of the members of the MPC are to be elected by and from amongst the elected members of the Municipalities and Chairpersons of the Panchayats in the metropolitan area in proportion to the population ratio. Since the MPC itself is conceived as an inter-sectoral and an inter-governmental platform bringing together the concerns and interests of local, State and Central Governments within a metropolitan perspective, it stands to reason that provisions should be made to secure the participation of MPs and MLAs. This can be done by determining the composition of the MPC in the Constitution itself. As suggested in the case of the DPC earlier, three-fifths of the total number of members can be elected by and from amongst the elected members of the Municipalities and Panchayats. The remaining two-fifths should be representatives of organisations and institutions, as the State Governments may consider necessary for carrying out the functions of the MPC. As in the case of DPC, MPs can be invitees.

3.30 Given the fact that MPCs have not been set up so far, it may also be considered whether they should be limited to metropolitan areas with a population of 20 lakhs and more, rather than 10 lakhs as at present. This will limit the number of such areas to 9 as per 1991 census and possibly 15 as per the likely population of 2001. Apart from population this will also limit the MPC exercise to those situations where the policies, priorities, investments and involvement of both the Central and the State Governments are a significant phenomenon.

Suggested legal changes

3.31 The suggested legal changes are:

(a) Metropolitan Planning Committees should be limited to metropolitan areas with 20 lakh population or more. Clause (c) in article 243P may be amended accordingly.

(b) The composition of the MPC should be as suggested in para 3.29 of the Paper. Article 243ZE should be amended accordingly.

(c) State laws should specify the organisation which will function as the technical and administrative secretariat of the MPC under its control.

(d) Where MPCs exist, their functional and territorial jurisdiction should be distinct and separate from the DPC.

C. Organic Links between Municipalities and Panchayats

3.32 The 73rd and the 74th Constitution Amendments do not address the issue of organic links adequately so far as the Panchayats are concerned. Sub-clause (a) of clause (3) of article 243C enables State laws to provide for representation of Chairpersons of Village Panchayats in the Panchayats at the intermediate level and the Chairpersons of the intermediate level panchayats in the panchayat at the district level. This way some links can be provided between the Village, Taluk and District Panchayats. However, all the States have not made the necessary provisions. Because the Panchayat at the three levels do share commonality of interest. It may, therefore, be considered whether the provisions in this regard should be mandatory.

3.33 However, between the Panchayats and Municipalities there is no link at all. This is partly due to the historical approach of the administration in the pre-independence days when supervision and control over municipalities was exercised by the District Collector and the Municipalities were expected to report to him. The District Planning Committee under article 243 ZD is the only platform where some of the elected representatives of municipalities and those of the district panchayats can come together. This, however, is a tenuous, discontinuous and limited arrangement. It is important that the rural-urban character of any district is reflected in the district level panchayat itself. It can be argued that since the district level panchayat is to be composed principally of representatives elected from territorial constituencies this can be taken care of. However, the Division of district territorial constituencies for the District Panchayat may or may not follow the jurisdictional boundaries of a panchayat or a municipality. It may therefore, be considered whether representation should be provided for Presidents of the Nagar Panchayats, Municipalities and Mayors of the Corporations situated in a district. This will be in addition to the members serving in the District Planning Committee.

3.34 The organic links should not stop at the district level and should be carried forward. A major outcome of the 73rd and the 74th Constitution Amendments is the enormous increase in the number of elected representatives from the rural and urban local bodies as a distinct level of representative bodies. Their needs and views should be adequately reflected in the policies and programmes of the State itself. In the States of Bihar, MP, Maharashtra, Karnataka and UP which have bicameral Legislature a fair number of seats are filled by persons elected by the local authorities constituencies. Sub-clause (a) of clause (3) of article 171 of the Constitution specifically provides that one third of the members of the Legislative Council of a State should be elected by an electorate consisting of members of Municipalities, District Boards and such other local authorities in the State. In the context of the 73rd and the 74th Amendments it is appropriate that panchayats and municipalities are specified as local authorities. In the States where bicameral legislatures exist a channel for representation is available. For instance, the number of such representatives in the Bihar Legislative Council is 34. In MP it is 31, Maharashtra 22, Karnataka 26, and UP (including Uttaranchal) 39.

Representative democracy and multi-level governance as envisaged in the 73rd and 74th Amendments requires that organic links are provided between the different elected bodies. Bicameral Legislatures in the States appear to be a good mechanism for doing this.

The matter merits public debate and consultation.

D. Representation and rights of MPs and MLAs in Municipalities

3.35 In multi level governance as envisaged by the 73rd and 74th Amendments, organic links between the different levels have both structural and political implications. Representation of the MPs and MLAs in Panchayats and Municipalities has been a controversial issue since the beginning of the exercise of constitutional amendments. In the 64th and the 65th Amendment Bills considered in 1989 the agreed position was that the MPs and MLAs should stay out of Village Panchayats. It was left to the States to provide for their representation in Panchayats at the Intermediate level and the District Panchayats. The 64th Amendment Bill also allowed the States to provide for this representation in such manner and subject to such conditions as the State Legislature may decide. This provision would have permitted State laws to determine the number and manner of representing MPs and MLAs as also their voting rights, if any.

3.36 In regard to Municipalities, the 1989 draft Bills contained no provision at all for representation of MPs and MLAs. When a similar exercise was initiated by the V.P. Singh Government, the entire composition of both panchayats and municipalities was left to the States and there was no specific reference to MPs or MLAs. In the Bill introduced in 1991 by the Narasimha Rao Government the provisions of the 64th and the 65th Amendment Bills were repeated. However, the Joint Parliamentary Committee dealing with the Panchayat Bill was of the view that representation of MPs and MLAs should have voting rights. Eventually it was recommended that voting right would be allowed except in the election of the chairperson of the panchayat. Clause 5(b) of article 243C accordingly stipulates that the chairperson of a panchayat at the intermediate level or district level shall be elected "by and from amongst the elected members thereof". The participation of MPs and MLAs in such elections was thus precluded.

3.37 In the case of the 74th Amendment, the concerned Joint Parliamentary Committee added a provision to article 243 R for representation of MPs, MLAs and MLCs. However, unlike the Panchayat Bill, the JPC did not stipulate any restriction on the voting powers relating to the election of the Chairperson or any other matter. This patent anomaly has led to some controversies and court cases as well.

3.38 In 1995, in the case of a few Municipalities in Rajasthan, including Alwar the Chairpersons were removed by votes of no confidence. These Chairpersons moved the Rajasthan High Court for redressal on the ground that MPs and MLAs had not participated in the motion. A single Judge of the Rajasthan High Court held that since MPs and MLAs were not 'elected members' of the Municipalities, their non-participation did not vitiate the motion of no confidence. The Petitioners went in appeal. A Division Bench of the Rajasthan High Court later held that though MPs and MLAs were not 'elected members' of the municipalities, Votes of confidence would have to be carried by a two-third majority of the 'whole house'. The MPs and MLAs should be taken as part of the 'whole house' for the purpose. Since they did not participate, the Division Bench held that the motions of confidence in the instant cases would fail. It was ordered accordingly that the Petitioners should be reinStated as Chairpersons. (Yogesh Saini and others Vs State of Rajasthan and others. D.B. Civil Special Appeal (Writ) Numbers 794, 799, 800 and 801 of 1998: Judgement dated July 15, 1999).

3.39 In another case from Haryana, a decision of the Punjab and Haryana High Court went even further. The Haryana Municipal Act while providing for representation of MPs and MLAs specifically States that they shall neither have the right to contest nor the right to vote in the election or removal of Presidents or Vice Presidents of Municipal Committees or Municipal Councils as the case may be. The Punjab and Haryana High Court has held that article 243R

gives only limited delegation to the State Governments i.e., either to provide for representation of MPs and MLAs or not and does not give the State any right to restrict the voting powers of the MPs and MLAs so represented. The High Court has also held that since MPs and MLAs who are nominated to municipal bodies "being elected members from a much larger constituency, of which the Municipality itself forms a part, would have the right to vote while considering a no confidence motion in the Municipal Committee". This decision almost confers an inalienable right on MPs to vote in any Panchayat or Nagarpalika even though they are not elected members of these bodies. (Rajpal Chabra Vs State of Haryana and others: Civil Writ petition 1016 of 1995). It is also pertinent to mention that the 64th Amendment Bill of 1989 as well as the 72nd Amendment Bill of 1991 allowed the States to stipulate the manner of representation "subject to such conditions as may be specified". Presumably this would have enabled restriction on voting rights but the words have been omitted in the 73rd and the 74th Amendments.

3.40 The patent contradiction between articles 243C in the 73rd Amendment and 243R in the 74th Amendment cannot continue. The situation is further compounded by the lack of uniformity in the provisions made by the different State Governments in regard to the representation of MPs and MLAs in municipalities. In Madhya Pradesh, Haryana and Tamil Nadu, MPs and MLAs are represented in municipalities but have either no voting rights or restricted voting rights. In Andhra Pradesh, Assam, Karnataka, Rajasthan and Uttar Pradesh, representation with voting rights has been provided. Gujarat, Kerala, Maharashtra, Orissa and West Bengal have not provided for such representation at all. In the case of Punjab, representation with voting rights is limited only to MLAs. Table 10 below provides an overview of the position. It is also interesting to recall that in the case of Tamil Nadu the initial amendment of the Municipalities Act carried out in 1994, provided for membership of the MPs and MLAs with voting powers. Subsequently, a second amendment was brought out in 1996 which limited the membership of MPs and MLAs only to corporations, Municipalities and district-level Panchayats but without the power to vote. The conformity laws thus indicate the continued ambivalence and confusion in the thinking of different States as reflected in the Table below:

Table 10

MPs/MLAs in Municipalities

State	MP	MLA
Andhra Pradesh	Yes(NV)	Yes(NV)
Assam	Yes(V)	Yes(V)
Bihar	Yes(V)	Yes(V)
Haryana	Yes(V)	Yes(V)
Himachal Pradesh	No	Yes(V)*
Kerala	No	No
Karnataka	Yes(V)	Yes(V)
Madhya Pradesh	Yes(NV)	Yes(NV)
Rajasthan	Yes(V)	Yes(V)
TamilNadu	Yes(NV)	Yes(NV)
Uttar Pradesh	Yes(V)	Yes(V)
Gujarat	No	No
Maharashtra	No	No
Orissa	No	No
Tripura	No	No
Punjab	No	Yes(V)
West Bengal	No	No

NV: Non -Voting Member/// V: Voting Member///*In Municipal Corporation only

3.41 The provision for the representation of MPs and MLAs in Panchayats and Municipalities appear to go against the spirit of the Constitution and its overall scheme of elected bodies at

different levels. Clause (1) of article 101 of the Constitution specifically States that no person shall be a member of both of Parliament and Clause (2) States that no person shall be a member of both of Parliament and of a House of the Legislature of a State. Similarly, article 190 of the Constitution States that no person shall be a member of both Houses of a State Legislature. In pursuance of articles 101 and 190, the Prohibition of Simultaneous Membership Rules, 1950 has also been issued as Rules by the President. The Houses of Parliament and the Houses of State Legislatures are all constitutionally recognised bodies and dual membership in any two of them was clearly frowned upon by the founding fathers of the Constitution and thus specifically prohibited.

3.42 The Panchayats and Municipalities by virtue of the 73rd and 74th Amendments are also elected bodies recognised by the Constitution. However, clause (3) of article 243C empowers the Legislature of a State to provide for the representation of MPs and MLAs and MLCs in panchayats at the intermediate and district levels. Similarly, clause (2) of article 243R enables the Legislature of a State to make laws to provide for MPs, MLAs and MLCs to be represented in the municipalities. *Prima facie*, these provisions under articles 243C and 243R are against the grain and spirit of articles 101 and 190. It is a moot point whether the prohibition of dual membership in Legislatures is a Basic Feature of the Constitution and if so the membership of MPs, MLAs and MLCs in Panchayats and Municipalities goes against this Basic Feature. It may also be argued that if Panchayats and Municipalities had been given a constitutional status when it was first enacted in 1949, provisions would have been made similar to articles 101 and 190 prohibiting such membership. It is well known that Members of Parliament and Members of State Legislatures zealously guard their respective domain and do not tolerate transgression. It is, therefore, inexplicable as to why both would seek to enter the domain of panchayats and municipalities which are also constituted by representatives elected by the people. It therefore, merits consideration and debate as to whether members of Parliament and State Legislatures should be represented at all in panchayats and municipalities.

3.43 All the States have not provided for such representation. In MP, Haryana and Tamil Nadu MPs and MLAs are represented in municipalities but have either no voting rights or restricted voting rights. In Andhra Pradesh, Assam, Karnataka, Rajasthan and UP representation with voting rights has been provided. Gujarat, Kerala, Maharashtra, Orissa and West Bengal have not provided for such representation at all. There needs to be some uniformity if representation is considered necessary and appropriate.

3.44 Even in cases where representation has been provided with voting rights such voting rights should not cover the right to vote in the election or removal of the Chairperson of a panchayat or a municipality. Sub-clause (5)(b) of article 243C stipulates that the Chairperson of a panchayat at the Intermediate or district level shall be elected "by and from amongst the elected members thereof." The participation of MPs and MLAs in such elections is thus precluded. There is no such stipulation in 243R. As already indicated in the notes this had led to controversies and litigations. The preclusion of MPs and MLAs in the election and removal of chairpersons should be made uniform for both panchayats and municipalities.

MP LADS and MLA LADS

3.45 Apart from representation there is another serious matter requiring attention which is the programme of Local Area Development Schemes, introduced in 1993. Under the scheme an amount of Rs. 1 crore, increased later to Rs. 2 crores is allocated to every MP to be spent on so called Local Area Development Schemes of his or her choice and executed through the District Collector. Construction of building for schools, hostels, libraries and educational institution belonging to government or local bodies, construction of tubewells, roads, bridges, drains, public toilets, cremation grounds, etc., are LAD schemes taken up. The allocation total about Rs. 1600/- crores every year. The 1998 Report of the Comptroller and Auditor General of India (C.A.G.) has brought out several irregularities and lapses in the implementation of this scheme. Notwithstanding, the scheme has been picked up by several States which provide similar

allocations to MLAs as well. Delhi allows each of its MLAs to spend Rs.50 lakh on schemes of their discretion. In Tamilnadu it is as high as Rs.70 lakhs per year. Several other States have similar arrangements.

3.46 All these schemes are operated outside the prescribed budgetary processes of voting, financial sanctions and procedures for execution and accounting. Taking the allocations for the MPs and the MLAs together, the amount runs to a few thousand crores every year and are financed out of the public exchequer and diverting funds which would otherwise be available to rural and urban local bodies. Apart from the financial aspects, the LADS violates the Constitution in spirit and substance.

(a) The Constitution has a clear scheme of separation of domain and responsibilities between the Legislature and the Executive. MPs and MLAs receiving government funds, determining so called development schemes of their choice and getting them executed under their aegis is a patent encroachment on the executive domain.

(b) Most of the schemes being funded and executed do not fall within the Union list at all. In fact several of them are part of the 11th and the 12th Schedules to the Constitution which are part of the financial domain of the Panchayats and the Municipalities. In many States they are not within the purview of the State Governments either. MPs and MLAs exercising their personal choice and decision in funding and executing the scheme is an usurpation of the power and responsibilities of the Panchayats and Municipalities.

(c) In many instances the choice of schemes and the amounts expected can significantly alter or distort local priorities as may be desired or decided by the Panchayats and the Municipalities. However, they may be helpless to rectify the situation as their own fund may be very limited in comparison to what an MP or an MLA can bring as largesse.

(d) The provision of public funds to an MP to be spent on his or her choice in their constituency is in fact helping the MP to 'nurse' that constituency and increase his or her own political clout and influence at public expense. In a five year time frame a sitting MP will have had as much as Rs.10 crores for this purpose. It also provides a grossly major advantage to the sitting MP to strengthen his influence in comparison to others by using "money power", arranged in the case in contravention of the spirit and substance of the Constitution. A Public Interest Litigation is already pending before the Supreme Court seeking to declare the MPLADS *ultra vires*.

Suggested Legal Changes

3.47 The suggested legal changes are:

(a) In keeping with the spirit and substance of the 73rd and 74th Amendments envisaging Panchayats and Municipalities as institutions of self-government, the provision for representation of MPs, MLAs and MLCs in articles 243C and 243R should be deleted.

(b) If such representation is considered necessary, it should be without voting rights and as invitees.

(c) Representation, if allowed at all, should be in District Planning and Metropolitan Planning Committees.

(d) Dual membership in a Panchayat or a Municipality on the one hand and a State Legislature or Parliament on the other should be specifically prohibited.

CHAPTER 4

INTEGRATING THE 73RD AND THE 74TH AMENDMENTS

4.1 The 74th Constitutional Amendment commonly known as the Nagarpalika Amendment is an after thought. The circumstances under which the pre-cursors of the 73rd and the 74th Amendments, namely the 64th Constitutional Amendment Bill which was introduced in May, 1989 and the 65th Amendment Bill which was introduced in August, 1989 have been described in detail in the book "Power to the People? The Politics and Progress of Decentralisation". After the defeat of the 64th and the 65th Amendment Bills the successor Government of V.P. Singh introduced a composite Bill for constitutional recognition of Panchayats and municipalities which lapsed after the V.P. Singh Government. The background to the revival of separate amendment initiatives by the Narasimha Rao government, their consideration by two separate Joint Parliamentary Committees and their eventual adoption by the Parliament have also been described in detail and analysed in the afore mentioned book.

4.2 Though the 73rd and the 74th Amendments as they presently stand are considered companion pieces in many respects, they are a duplication. Part IX entitled "Panchayats" and Part IX A entitled "Municipalities" have a total of 16 and 18 articles respectively. Out of these as many as 9 relating to definitions, reservations, duration of the local bodies, disqualifications, State finance commissions, elections, applications to Union territories, continuance of existing laws and bar to jurisdictions of courts are either identical or nearly identical between the two parts. The other provisions are closely similar. Article 243ZD on District Planning Committees is applicable to both Panchayats and municipalities The 11th and the 12th Schedules containing the list of functions for Panchayats and municipalities are again very similar.

4.3 The objectives of both these amendments are decentralisation and empowerment of self governing local bodies. There cannot be and in fact there is no distinction made by the Constitution between rural and urban areas so far as these main objectives are concerned. There cannot be rural empowerment of the people and urban disempowerment nor vice-versa.

4.4 Unfortunately the enactment of constitutional provisions in two parts has created a needless and artificial dichotomy in the minds of many people particularly Departments and Ministries of the State and the Union Government. This itself has been an important reason for the tardy and uneven progress in the implementation of these constitutional provisions. The discussions regarding the setting up of District Planning Committees in this paper is an apt illustration of how the implementation of this very important provision to understand the rural urban continuum and secure the integration of its development has been affected because the responsibilities fall between two stools and are lost.

4.5 While suggestions have been made in this paper for changes in the existing constitutional provisions in Part IX and Part IXA, serious consideration should also be given on whether these two Parts can be integrated by omitting the provisions which are a duplication of each other and rationalising the arrangement of the other provisions.

CHAPTER 5

SUMMARY OF SUGGESTED LEGAL CHANGES

I. Constitution of Municipalities, Elections and State Election Commissions

A. Constitution of Municipalities

(1) Article 243Q provides for a Nagar Panchayat for a transitional area, Municipal Council for a smaller urban area and a Municipal Corporation for a larger urban area. While clause (2) allows the States to take into consideration various other factors, given the very wide variance, it is desirable that a population classification is provided in the Constitution itself. Given the increasing rate of urbanisation, its density and economic factors, a Corporation should have a minimum population of 5 lakhs, a Municipal Council 50,000 and a Nagar Panchayat 20,000. Provision can be made to preserve previously existing municipalities.

(2) The proviso to article 243Q States that a municipality may not be constituted for an Industrial township under certain circumstances. This proviso did not figure in the Constitution Amendment Bill relating to the 73rd Amendment Act introduced in Parliament in July 91 or in the Bill as reported upon by the Joint Committee in July 92. This appears to be an after thought in response to some suggestions from certain quarters. The provision goes against the grain of decentralisation and local self-government. Hence, the proviso may be deleted.

(3) Article 243U (1) contains a proviso that where a municipality is superseded "it shall be given a reasonable opportunity of being heard before its dissolution". There is no corresponding proviso in article 243E relating to Panchayats. The same proviso should be inserted.

(4) Whenever a Panchayat or a Municipality is superseded a report stating the grounds for such dissolution should be placed before the State Legislature. This will be a deterrent to treating supercession casually and resorting to it because of political expediency. This provision is on par with a report being placed before each House of Parliament in the event of a proclamation of President's rule in a State under article 356.

(5) In determining the number of municipal wards and in delineating them, there should be parity in the ratio between a seat and the population and such ratio should be uniform within a State among any category of municipalities such as Corporations, Municipal Councils and Nagar Panchayats:

(6) The term of the Mayors/Chairpersons should be co-terminus with the term of the municipality. Provision for this should be made in the Constitution itself.

(7) The procedure for removal of Mayor/Chairperson through motion of no confidence should be uniform. Here again a provision should be made in the Constitution requiring majority of the House and two-thirds majority of those present and voting.

(8) Municipal Chairpersons and Mayors should be elected only by and from amongst the elected members of the municipality.

B. Qualifications and Disqualifications for Membership in Municipalities

(1) Articles 243T and 243V contain identical provisions so far as disqualifications for membership in a panchayat or a municipality is concerned. The main principle followed is that the grounds of disqualification should be the same as applied for elections to the State Legislatures. State laws may make additional provisions. State laws compile all provisions regarding qualifications and disqualifications for elections in a single law and in the meantime prepare a manual compiling existing provisions for public information.

(2) While SEC should have the authority to prescribe ceiling of expenses and code of conduct and while these may vary depending on the conditions of the different States,

State laws should clearly specify the powers of the SEC to disqualify candidates or set aside elections in the event of violations.

C. Regularity of Elections

Ensuring regular elections

Articles 243E and 243U of the Constitution contain identical provisions. Clause (1) of article 243E states that every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer". Similarly, clause (1) of article 243U states that every municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting. The provisions are clear and unambiguous and hence, there is no scope for any other interpretation. Clause (3) of article 243E and that of 243U further State that elections to constitute a Panchayat and a municipality respectively shall be "completed before the expiry of its duration specified in Clause (1)".

Both articles 243E and 243U in sub-clause (1) contain a provision for dissolution of panchayat or municipality respectively. Here again sub-clause (b) of clause (3) in both the articles stipulate that elections have to be completed "before the expiration of a period of six months from the date of its dissolution."

To reinforce the existing provisions in the Constitution the following additional stipulations may be considered:

(a) It shall be the duty of a State and the Union (in case of panchayats and municipalities located in Union territories) to ensure the completion of elections as stipulated.

(b) It should also be duty of the State Election Commissioner to ensure this and in the event of possible delay make a report to the Governor of the State drawing his attention to the problems and suggesting remedial action to fulfill the requirements of the Commission.

(c) Article 243K(I) and article 243 ZA(I) State that the "superintendence, direction and control of the preparation of electoral roles and the conduct of all elections to the panchayats/municipalities shall be vested in a State Election Commission." This is a composite set of responsibilities. The preparation of electoral roles and the conduct of elections involve several processes and actions which are closely inter-related. The words, "superintendence, direction and control" are comprehensive and unambiguous and do not permit any artificial division. Clause (4) of 243K and Clause (2) of 243 ZA do provide for a State Legislature to make provisions with respect to all matters relating to interaction with these elections. However, this has to be subject to the provisions of the Constitution and can relate only to processes to be followed and guidelines for this purpose so that such processes serve public interest and ensure free and fair elections. They do not permit splitting up of the composite responsibilities as Stated in article 243K and 243ZA. However as experience indicates certain important parts of these responsibilities such as delimitation of territorial constituencies or reservation of seats or rotation of such reservation among constituencies have been assumed by some State Governments. The effect of this has been to enable these State Governments to intervene in the composite and integrated process of conducting elections and thereby hold up the same if they so chose to do. Articles 243K and 243 ZA may, therefore, be suitably amended to specify that the responsibility for the conduct of elections shall include all preparatory steps for the same including the electoral roles, delimitation, reservation, rotation and matters connected therewith and the responsibility for the same shall vest with the State Election Commission.

Electoral Rolls and Delimitation

1.40.2 (a) Under articles 243K and 243ZA, the preparation of electoral rolls is the responsibility of the State Election Commission (SEC). The general practice has been for the SECs to adopt the electoral rolls available for the Assembly and Lok Sabha elections. In some cases however the electoral rolls for the local elections are prepared afresh and the two rolls may differ. The Constitution should specifically stipulate a common electoral roll. The processes for preparing the roll as also its periodical revision should be uniform throughout the country.

(b) The Election Commission has been evolving over a period of time a system whereby each polling station in an Assembly constituency has a unique identity which is linked to the roll of electors using that polling station. It is possible that panchayat and municipal elections may require more polling stations. If so, these additional polling stations should be extensions or sub-units of the main polling station. This will ensure a 'building block' approach for elections in the country whereby the smallest unit will be a polling station or a sub unit theory. A certain number of these will form a 'panchayat ward' or a 'municipal ward' which in turn will be grouped into panchayats and municipalities or Assembly segments and Lok Sabha constituencies. The voter is the same. The relevant R.P. Act and State laws should specify that common polling stations should be used for elections to local bodies, State Legislatures and Parliament.

(c) While delimitation of the constituencies for panchayat and municipal elections should be under the control and direction of the SEC, the Constitution should stipulate that such delimitation should be adjusted after every census and not for every elections. This will be in keeping with articles 82 and 170 of the Constitution requiring readjustment of Assembly and Lok Sabha Constituencies after every Census.

(d) The State laws should provide guidelines for the delimitation work such as parity in the ratio between the population of a territorial constituency and the number of seats within the same class of panchayats or municipalities. The extent of permissible variations should also be mentioned. Parity as a requirement is already stipulated in the proviso to article 243C so far as Panchayats are concerned but is missing in article 243R relating to municipalities.

(e) State laws should specify that changes in the administrative boundaries of districts, sub-divisions, taluks, police stations, etc., should not be made within six months prior to a panchayat or a municipal election.

Reservations

1.40.3 (a) Articles 243D and 243T contain identical provisions so far as reservation of seats in panchayats and municipalities for SC/STs and women are concerned. However there are some ambiguities about the rotation of such reserved seats. The words used in both the articles are "may be allotted by rotation". However in the second proviso under article 243D regarding reservation of the offices of chairpersons the words used are "shall be allotted by rotation". The Constitutional provisions also do not specify the frequency of rotation. Moreover, in clause (4) of article 243T there is no stipulation for rotation. To remove ambiguities, articles 243D and 243T should be suitably amended to provide for rotation and changes only at the time of delimitation and not in between.

(b) State laws should however provide the guidelines for the process of reservation which should ensure transparency and adequate opportunities for eliciting voter response.

(c) Clause (6) of article 243D and clause (6) of article 243T enable a State Legislature to provide for reservation of seats as also offices of chairpersons in panchayats and municipalities in favour of backward class of citizens. Neither of the articles stipulate any ceiling for the total number of reserved seats and reserved offices. Since not less than one-third of total seats has been specified as the minimum for women; the reservation additionally made for backward classes can take a large proportion. To remove ambiguities the overall total of reserved seats and reserved offices should be specified in the Constitution.

D. State Election Commissions

1.50 Some specific provisions should be added to the Constitution as follows:

(a) The State Election Commissioner should be appointed by the Governor on the recommendations of a group comprising the Chief Minister, the Speaker of the State Assembly and the Leader of the Opposition. This would make the selection impartial in the eyes of all concurred.

(b) The State Election Commissioner should have a fixed term of 5 years.

(c) In rank and status the State Election Commissioner should be equal to a Judge of the High Court.

(d) The broad qualifications for position of State Election Commissioner may be specified in the Constitution itself or in the laws of the State. Since the conduct of elections is a major logistical exercise, administrative experience should be stressed.

(e) Notification for all elections to Panchayats and Municipalities should be issued by the SEC.

(f) SEC should be the single and common electoral authority in the State for all local body elections and elections to the State Legislatures. The SEC will also carry out the elections to Parliament under the supervision and control of the Election Commission of India. What is envisaged is a strong link between the State Election Commissions and the Election Commission of India so that the Election Commission of India can reinforce the autonomy of the State Election Commissions, support their functioning with expertise and technical help and enable the whole election machinery of the country to emerge as an integrated system.

E. Wards Committees and Proximity to Citizens

1.62 The suggested legal changes are:

(a) Wards Committees should be mandatory for each of the ward in all Municipal Corporations with a population of three lakhs or more, to comprise of persons chosen by direct election from the territorial area of the Ward. The Chairman of the Committee will be the Councillor elected from the Ward.

(b) The State laws may determine the number of persons to be so elected but there should be parity, within the city in the ratio between that number and population of a ward.

(c) State laws may also enable Wards Committees to co-opt such residents of a ward who are knowledgeable and can assist the work of the Committee.

(d) In all Corporations with a population of six lakhs and more, Zonal Committees at a level between the Wards Committees and the Corporation Council should be formed. State laws may determine the number and area of such Zonal Committees. The Councillors of all the municipal wards represented in that area shall be members. In addition, one other person from each of the Wards Committees elected by and from amongst the elected members of that Committee shall be a member of the Zonal Committee.

1208 LJ&CA/2002—20A

(e) State laws may determine the manner in which elections to the Ward and Zonal Committees are to be held, their functions and responsibilities and the allocation of funds to carry out the same.

(f) Article 243S should be amended suitably to incorporate the proposals made in items (a) to (e) above.

II. Functional and Financial Domain

A. Functional Domain

The suggested legal changes are:

(a) A common Schedule of functions for both rural and urban local bodies is desirable. The existing 11th and the 12th Schedules which have several common items should be integrated.

(b) This integrated Schedule should not be illustrative only, but should be mandatory. It should be on par with the lists in the Seventh Schedule in status and in the exercise of Legislative and Executive powers which should be co-extensive with the subject, listed in the Schedule.

(c) The assignment of functions should be by substantive law rather than by rules and regulations.

(d) The laws should also provide for the transfer to the Municipalities of organisations, funds and staff who were previously responsible for discharging the functions being assigned. The local bodies should have full control over its staff including those transferred to them. Functions, functionaries and funds should go together.

Financial Domain

2.22 The suggested legal changes are:

(a) The concept of a distinct and separate tax domain for municipalities should be recognised. This concept should be reflected in a list of taxes and should form part of the common schedule of functions and responsibilities for local bodies or in the event it is decided to continue with the 11th and 12th Schedules as separate, the tax domain should figure in the relevant schedule. Carving out items from the existing State lists such as item 49 (taxes on land and buildings) and item 52 (taxes on entry of goods into a local area for consumption) should not be difficult.

(b) Similarly, the concept of a divisible pool of taxes which can be shared between the Union, the States and the Municipalities should also be recognised similar to the provisions in articles 268 to 274. There should be categories of taxes and other levies specifying who will collect the same and how it will be distributed between the 3 levels.

(c) In case of taxes and levies, the proceeds of which are to be shared with municipalities, prior consultation will be required before any modification is made in the scope of the tax or its rates.

(d) Article 276 on taxes on professions, trades and employment should be amended as suggested by the 11th Finance Commission. The ceiling should be specified by Parliament from time to time rather than requiring amendments to the Constitution.

(e) State laws should provide for composition of the State Finance Commission and the criteria for its membership similar to the provisions in the case of the Finance Commission set up by the President under article 280.

(f) State laws should provide for the establishment of the SFCs in a periodical manner and determine a time schedule for the same so that the work and output of the SFCs are synchronised suitably with the Central Finance Commission.

(g) Articles 243 I and 243Y should be amended to ensure that the Action Taken Report by the Government is laid before the State Legislature within six months of the submission of the SFC recommendations.

(h) Sub-clauses (bb) and (c) of clause (3) of article 280 should be amended so that the Central Finance Commission while taking into consideration the recommendation of the SFCs, is not circumscribed by the same.

(i) State laws should also provide for establishing and maintaining a financial database as suggested by the 11th Finance Commission.

(j) State laws should specifically empower municipalities to borrow.

(k) State laws should also provide for the preparation and adoption of municipal budgets in a transparent manner in keeping with the public right to information.

III. District Planning Committees, Metropolitan Planning Committees and Organic links between municipalities and Panchayats

A. District Planning Committees

3.17 The suggested legal changes are:

(a) As per the definitions given in article 243, 'district' means a district in a State while 'Panchayat area' means the territorial area of a Panchayat. The Panchayat at the district level should, therefore, be for the district as a whole instead of the rural areas only. The definitions under article 243 should be amended accordingly. Clause (1) of article 243 ZD should be amended to stipulate that the District Planning Committee shall be constituted within the Panchayat at the district level or Zilla Parishad.

(b) Sub-clause (d) of clause (2) of article 243 ZD should be amended to provide for the Chairperson of the Panchayat at the district level to be the Chairperson of the District Planning Committee. The Chairperson of the largest Municipality in the District should be the Vice-chairman.

(c) In clause (1) of 243ZD, the words "consolidate the plans prepared by the Panchayats and Municipalities in the district" should be omitted so that the DPC's main task of preparing a draft development plan for the district is not contingent or dependent on individual plans prepared by the Panchayats and the Municipalities. However Clause (3) of article 243ZD can provide that in preparing the development plan the DPC will have regard to such plans as are prepared by the Panchayats and the Municipalities. Zilla Parishad should help panchayats and municipalities to prepare these plans which will serve as building blocks for preparation of Development Plan for the district.

(d) Article 243ZD should also contain a provision to enable the State laws and State Governments to entrust additional responsibilities as monitoring of development schemes and programmes in the district, co-ordination of their implementation including powers to modify sanctions to ongoing schemes subject to limits.

(e) The Zilla Parishad should be the technical and administrative secretariat for the DPC independent of and distinct from the District Collector or the District Magistrate.

(f) The State laws should provide for association and involvement of government and non-government agencies and professionals in the DPCs. MPs, MLAs and Ministers desiring to participant in the District Planning Committee should be welcome as invitees.

(g) State agencies, district agencies and district administration should assist the DPC with data and technical know-how in preparation of the development plan for the district. State laws should provide for this.

(h) Where Metropolitan Planning Committees (MPCs) are required to be set up, State laws and regulations should determine the functional and territorial jurisdiction of the DPCs as distinct from the MPCs. Where Metropolitan Planning Committees exist for predominantly urban districts, they should be deemed as DPCs, as no separate DPC is necessary.

B. Metropolitan Planning Committees

3.31 The suggested legal changes are:

(a) Metropolitan Planning Committees should be limited to metropolitan areas with 20 lakh population or more. Clause (c) in article 243P may be amended accordingly.

(b) The composition of the MPC should be as suggested in para 3.29 of the Paper. Article 243ZE should be amended accordingly.

(c) State laws should specify the organisation which will function as the technical and administrative secretariat of the MPC under its control.

(d) Where MPCs exist, their functional and territorial jurisdiction should be distinct and separate from the DPC.

C. Organic links between Municipalities and Panchayats

3.47 The suggested legal changes are:

(a) In keeping with the spirit and substance of the 73rd and 74th Amendments envisaging Panchayats and Municipalities as institutions of self-government, the provision for representation of MPs, MLAs and MLCs in articles 243C and 243R should be deleted.

(b) If such representation is considered necessary, it should be without voting rights and as invitees.

(c) Representation, if allowed at all, should be in District Planning and Metropolitan Planning Committees.

(d) Dual membership in a Panchayat or a Municipality on the one hand and a State Legislature or Parliament on the other should be specifically prohibited.

QUESTIONNAIRE
ON
DECENTRALISATION AND MUNICIPALITIES

CONSTITUTION OF MUNICIPALITIES

1. Do you agree to the suggestion that a population classification for a Nagar Panchayat, Municipal Council and a Municipal Corporation is to be provided in the Constitution itself?

   Yes ☐ No ☐

2. The proviso to article 243Q states that a Municipality may not be constituted for an Industrial township. As this is not in tune with decentralisation and local self-government, do you agree to the suggestion that the said proviso should be deleted?

   Yes ☐ No ☐

3. Article 243U (1) contains a proviso that where a Municipality is superseded "it shall be given a reasonable opportunity of being heard before its dissolution". Should a similar proviso be inserted in Article 243E relating to Panchayats?

   Yes ☐ No ☐

4. Do you agree that whenever a Panchayat or a Municipality is superseded a report stating the grounds for such dissolution should be placed before the State Legislature?

   Yes ☐ No ☐

5. Do you agree that in determining the number of municipal wards and in delineating them, there should be parity in the ratio between a seat and the population and such ratio should be uniform within a State among any category of Municipalities?

   Yes ☐ No ☐

6. Should a provision be made in the Constitution stipulating that the terms of office of the Mayor/Chairpersons should be coterminus with the term of the Municipality?

   Yes ☐ No ☐

7. Should the procedure for removal of Mayor/Chairperson through motion of no confidence be uniform?

   Yes ☐ No ☐

8. Should the Municipal Chairpersons and Mayors be elected only by and from amongst the elected members of the Municipality?

   Yes ☐ No ☐

QUALIFICATIONS AND DISQUALIFICATIONS FOR MEMBERSHIP IN MUNICIPALITIES

9. Should the main principle to be followed for disqualifications for membership in a Panchayat or a Municipality be the same as applied for elections to the State Legislatures?

Yes ☐ No ☐

10. (a) Should the State Election Commissions have the authority to orescribe ceiling of expenses and code of conduct?

Yes ☐ No ☐

(b) Do you think that the State laws should clearly specify the powers of the State Election Commissions to disqualify candidates or set aside elections in the event of violations?

Yes ☐ No ☐

REGULARITY OF ELECTIONS

11. Do you subscribe to the view that it shall be the duty of a State and the Union (in case of Panchayats and Municipalities located in Union territories) to ensure the completion of elections as stipulated?

Yes ☐ No ☐

12. Do you subscribe to the view that it should also be the duty of the State Election Commissioner to ensure the above and, in the event of possible delay, make a report to the Governor of the State drawing his attention to the problems and suggesting remedial action to fulfill the requirements of the Commission?

Yes ☐ No ☐

13. Do you agree that Articles 243K and 243 ZA may be suitably amended to specify that the responsibility for the conduct of elections shall include all preparatory steps for the same including the electoral roles, delimitation, reservation, rotation and matters connected therewith and the responsibility for the same shall vest in the State Election Commission?

Yes ☐ No ☐

14. Do you agree that the Constitution should specifically stipulate a common electoral roll and the processes for preparing the roll as also its periodical revision should be uniform throughout the country?

Yes ☐ No ☐

15. Should the Representation of the People Act and State laws should specify that common polling stations be used for local, State and Parliament elections?

Yes ☐ No ☐

16. Do you agree that while delimitation of the constituencies for Panchayat and Municipal elections should be under the control and direction of the State Election Commission, the Constitution should stipulate that such delimitation should be adjusted after every census and not for every elections?

Yes ☐ No ☐

17. (a) Do you agree that the State laws should provide guidelines for the delimitation work such as parity in the ratio between the population of a territorial constituency and the number of seats within the same class of Panchayats or Municipalities and the extent of permissible variations?

Yes ☐ No ☐

(b) Should Article 243R relating to Municipalities should be amended to provide parity as a requirement on the lines already stipulated in the proviso to article 243C relating to Panchayats?

Yes ☐ No ☐

18. Do you agree that State laws should specify that changes in the administrative boundaries of districts, sub-divisions, taluks, police stations etc., should not be made within six months prior to a Panchayat or a municipal election?

Yes ☐ No ☐

19. Articles 243D and 243T contain common provisions so far as reservation of seats in Panchayats and Municipalities for SCs/STs and women are concerned. However, there are some ambiguities about the rotation of such reserved seats. The words used in both the articles are "may be allotted by rotation". However, in the State Election Commissionsond proviso to article 243D regarding reservation of the offices of chairpersons the words used are "shall be allotted by rotation". The Constitutional provisions also do not specify the frequency of rotation. Furthermore, in clause (4) of article 243T there is no stipulation for rotation. To remove ambiguities, it is suggested that articles 243D and 243T should be suitably amended to provide for rotation and changes only at the time of delimitation and not in between? Do you agree with the suggestion?

Yes ☐ No ☐

20. Should the State laws provide the guidelines for the process of reservation for ensuring transparency and adequate opportunities for eliciting voter response?

Yes ☐ No ☐

21. Clause (6) of article 243D and clause (6) of article 243T enable a State legislature to provide for reservation of seats as also offices of Chairpersons in Panchayats and Municipalities in

favour of backward class of citizens. Neither of the articles stipulate any ceiling for the total number of reserved seats and reserved offices. Since one-third has been specified as the minimum for women; the reservation additionally made for backward classes can take a larger proportion. Do you agree that for removal of the ambiguities, the overall total of reserved seats and reserved offices should be specified in the Constitution?

Yes ☐ No ☐

State Election Commissions

22. Do you agree that the State Election Commissioner should be appointed by the Governor on the recommendations of a group comprising the Chief Minister, the Speaker of the State Assembly and the Leader of the Opposition and the Chief Justice of the High Court?

Yes ☐ No ☐

23. Do you agree that the State Election Commissioner should have a fixed term of 5 years?

Yes ☐ No ☐

24. Do you agree that, in rank and status, the State Election Commissioner should be equal to a Judge of the High Court?

Yes ☐ No ☐

25. (a) Whether the broad qualifications for position of State Election Commissioner may be specified in the Constitution itself or in the laws of the State?

Constitution ☐ State Law ☐

(b) Since the conduct of elections is a major logistical exercise, should administrative experience be stressed?

Yes ☐ No ☐

26. Should Notification for all elections to Panchayats and Municipalities be issued by the State Election Commission?

Yes ☐ No ☐

27. (a) Should the State Election Commission be the single and common electoral authority in the State for all local body elections and elections to the Sate Assemblies?

Yes ☐ No ☐

(b) Whether the State Election Commission should also carry out the elections to Parliament under the supervision and control of the Election Commission of India?

Yes ☐ No ☐

WARD COMMITTEES AND PROXIMITY TO CITIZENS

28. (a) Should Wards Committees be mandatory for each of the ward in all Municipal Corporations with a population of 3 lakhs or more, to comprise of persons chosen by direct election from the territorial area of the Ward?

Yes ☐ No ☐

(b) Whether the Chairman of the Committee should be the Councillor elected from the Ward?

Yes ☐ No ☐

29. Do you agree to the suggestion that the State laws may determine the number of persons to be so elected but there should be parity, within the city in the ratio between that number and population of a ward?

Yes ☐ No ☐

30. Whether the State laws may also enable wards committees to co-opt such residents of a ward who are knowledgeable and can assist in the work of the Committee?

Yes ☐ No ☐

31. (a) Whether in all Corporations with a population of 6 lakh and more, Zonal Committees at a level between the Wards Committees and the Corporation Council should be formed?

Yes ☐ No ☐

(b) Whether the State laws may determine the number and area of such Zonal Committees?

Yes ☐ No ☐

(c) Should the Councillors of all the municipal wards represented in that area be members?

Yes ☐ No ☐

(d) Whether, in addition, one other person from each of the Wards Committees elected by and from amongst the elected member of that Committee should be a member of the Zonal Committee?

Yes ☐ No ☐

32. Do you agree that the State laws may determine the manner in which elections to the Ward and Zonal Committees are to be held, their functions and responsibilities and the allocation of funds to carry out the same?

Yes ☐ No ☐

FUNCTIONAL DOMAIN

33. (a) Do you agree that there should be a common schedule of functions for both rural and urban local bodies?

Yes ☐ No ☐

(b) If so, whether the existing the Eleventh and the Twelfth Schedules which have several common items should be integrated?

Yes ☐ No ☐

34. Do you consider that this common schedule should be treated as the Local Bodies List and be incorporated in the Seventh Schedule itself after the Union, State and Concurrent lists?

Yes ☐ No ☐

35. (a) Do you consider as to whether the process of assigning the functions and responsibilities should be made mandatory?

Yes ☐ No ☐

(b) Do you suggest that the State Governments should exercise the above functions and responsibilities on a State wide basis only for any exceptional reasons?

Yes ☐ No ☐

36. Do you consider that the assignment of functions should be by law rather than by rules and regulations?

Yes ☐ No ☐

37. The laws should also provide for the transfer to the Municipalities of organisations, funds and staff who were previously responsible for discharging the functions being assigned. The local bodies should have full control over its staff including those transferred to them. Functions, functionaries and funds should go together. Do you agree to the above suggestions?

Yes ☐ No ☐

FINANCIAL DOMAIN

38. The concept of a distinct and separate tax domain for Municipalities should be recognised. This concept should be reflected in a list of taxes and should form part of the common Schedule of functions and responsibilities for local bodies or in the event it is decided to continue with the Eleventh and the Twelfth Schedules as separate, the tax domain should figure in the relevant Schedule. Do you agree with the above suggestions:-

Yes ☐ No ☐

39. It is suggested that the concept of a divisible pool of taxes which can be shared between the Union, the States and the Municipalities should also be recognised similar to the provisions in Articles 268 to 274. There should be categories of taxes and other levies specifying who will collect the same and how it will be distributed between the 3 levels.? Please give your comments on the above suggestions.

Suggestions

40. Do you agree that in case of taxes and levies the proceeds of which are to be shared with Municipalities, prior consultation will be required before any modification is made in the scope of the tax or its rates?

Yes ☐ No ☐

41. (a) Should Article 276 on taxes on professions, trades and employment be amended as suggested by the 11th Finance Commission?

Yes ☐ No ☐

(b) Should the ceiling be specified by Parliament, by law, from time to time, rather than requiring amendments to the Constitution?

Yes ☐ No ☐

42. Should the State laws provide for composition of the State Finance Commission and the criteria for its membership similar to the provisions in the case of the Finance Commission set up by the President under Article 280?

Yes ☐ No ☐

43. Should State laws provide for the establishment of the State Finance Commissions in a periodical manner and determine a time schedule for the same so that the work and output of the State Finance Commissions are synchronised suitably with the Central Finance Commission?

Yes ☐ No ☐

44. Should Articles 243 I and 243Y be amended to ensure that the Action Taken Report by the Government is laid before the State Legislature within six months of the submission of the State Finance Commission recommendations?

Yes ☐ No ☐

45. Should Article 280 (3) (bb) and (c) be amended so that the Central Finance Commission while taking into consideration the recommendation of the State Finance Commissions, is not circumscribed by the same?

Yes ☐ No ☐

46. Should State laws also provide for establishing and maintaining a financial database as suggested by the 11th Finance Commission.?

Yes ☐ No ☐

47. Should the State laws specifically empower Municipalities to borrow.?

Yes ☐ No ☐

48. Should the State laws also provide for the preparation and adoption of Municipal Budgets in a transparent manner in keeping with the public right to information?

Yes ☐ No ☐

DISTRICT PLANNING COMMITTEES

49. Should Clause (1) of Article 243 ZD be amended to stipulate that the District Planning Committee shall be constituted within the Panchayat at the district level or Zilla Parishad?

Yes ☐ No ☐

50. (a) Should sub-clause (d) of clause (2) of Article 243 ZD be amended to provide for the Chairperson of the Panchayat at the district level to be the Chairperson of the District Planning Committee?

Yes ☐ No ☐

(b) Should the Chairperson of the largest Municipality in the District be the Vice-chairman?

Yes ☐ No ☐

51. (a) Should the words "consolidate the plans prepared by the Panchayats and Municipalities in the district" occurring in clause (1) of 243 ZD be omitted so that the District Planning Committee's main task of preparing a draft development plan for the district is not contingent or dependent on individual plans prepared by the Panchayats and the Municipalities?

Yes ☐ No ☐

(b) Whether Zilla Parishad should help Panchayats and Municipalities to prepare these plans which will serve as building blocks for preparation of Development Plan for the district?

Yes ☐ No ☐

52. Should Article 243 ZD also contain a provision to enable the State laws and State governments to entrust to Zilla Parishad additional responsibilities as monitoring of development schemes and programmes in the district, co-ordination of their implementation including powers to modify sanctions to ongoing schemes subject to limits?

Yes ☐ No ☐

53. Should the Zilla Parishad be the technical and administrative State Election Commissionsretariat for the District Planning Committee independent of and distinct from the District Collector or the District Magistrate?

Yes ☐ No ☐

54. Should the State laws provide for association and involvement of government and non-government agencies and professionals in the District Planning Committees? Should participation of MPs, MLAs and Ministers in the District Planning Committee as invitees is desirable?

Yes ☐ No ☐

55. Whether the Sate law should provide that State agencies, district agencies and district administration assist the District Planning Committee with data and technical know-how in preparation of the development plan for the district?

Yes ☐ No ☐

56. (a) Where Metropolitan Planning Committees are required to be set up, whether the State laws and regulations should determine the functional and territorial jurisdiction of the District Planning Committees as distinct from the Metropolitan Planning Committees.?

Yes ☐ No ☐

(b) Where Metropolitan Planning Committees exist for predominantly urban districts, whether they should be deemed as District Planning Committees, as no separate District Planning Committee is necessary?

Yes ☐ No ☐

METROPOLITAN PLANNING COMMITTEE

57. Whether clause (c) of article 243P of the Constitution be amended so as to provide that the Metropolitan Planning Committees should be limited to metropolitan areas with 20 lakh population or more?

Yes ☐ No ☐

58. (a)Should the Chief Minister of the State be the Chairman of the Metropolitan Planning Committee?

Yes ☐ No ☐

(b) Should the Mayor of the main city be a Vice Chairman?

Yes ☐ No ☐

59. Should Article 243ZE be amended so as to specify the composition of the Metropolitan Planning Committee as suggested in para 3.27 of the Paper?

Yes ☐ No ☐

60. Should the State laws specify the organisation which will function as the technical and administrative State Election Commissionsretariat of the Metropolitan Planning Committee under its control?

Yes ☐ No ☐

61. Should the functional and territorial jurisdiction of Metropolitan Planning Committees be distinct and separate from the District Planning Committee?

Yes ☐ No ☐

ORGANIC LINK BETWEEN MUNICIPALITIES AND PANCHAYATS

62. Should the provision for representation of MPs, MLAs and MLCs in Articles 243(C) and 243R be deleted?

Yes ☐ No ☐

63. If such representation is considered necessary, should it be without voting rights and as invitees?

Yes ☐ No ☐

64. If representation is allowed, should it be in District Planning and Metropolitan Planning Committees only?

Yes ☐ No ☐

65. Should dual membership in a Panchayat or a Municipality on the one hand and a State Legislature or Parliament on the other hand be specifically prohibited?

Yes ☐ No ☐

66. Should MPs and MLAs be debarred from performing executive functions such as the financing or implementation of schemes which are within the functional domain of Panchayats or Municipalities?

Yes ☐ No ☐

67. Please give details of any other suggestions/comments which you would like to make on Decentralisation and municipalities (in not more than 300 words).

Pointwise suggestions/comments

Annexure 1.1
(See Para 1.19)

Qualifications for members of Municipalities

Name of the Act	Disqualifications
UP Municipalities Act, 1957	a) Has been convicted and sentenced to imprisonment for not less than two years (unless five years has relapsed since his release). b) Undischarged insolvent c) Holds any office of profit d) Is in the services of State, Central or Local government e) Any share or interest in a contract for supply of goods in services undertaken by the municipality f) In arrears in excess of one years demand of any tax payable to the municipality g) Within six years of dismissal for corruption or disloyalty to the State h) Is debarred from practicing as a legal practitioner
Andhra Pradesh Municipalities Act,	a) A person having more than two children. b) A person holding an office of profit under a municipality, the Central Government and State government c) To imprisonment for an offence under the Untouchability d) For offence other than an offence of political character e) Or any offence not involving moral delinquency f) Of unsound mind and stands so declared by a competent court, a deaf-mute or suffering from leprosy g) An applicant to be adjudicated an insolvent or undischarged insolvent h) Interested in subsisting lease or contract entered into with or any work being done for, the council except as a shareholder, other than a director in a company.
Madhya Pradesh Municipal Corporation Act	a) Has been convicted of any offence unless a period of six years has elapsed b) Has been convicted by a court in India c) Sentenced to imprisonment for a period of not less than two years d) Undischarged insolvent e) Is of unsound mind f) Is in the service of the government of any local authority g) Has directly or indirectly share or interest in any work done by the municipality h) Has not paid taxes or charges due to a municipality
Kerala Municipalities Act	a) Officer and employees of Government, local authorities, etc. b) Person convicted for certain offences including corrupt practices c) Adjudged to be of unsound mind d) Voluntarily acquired the citizenship of foreign State e) Sentenced by a criminal court. f) Adjudged as insolvent or is an undischarged insolvent g) Is interested in a subsisting contract made with, or any work being done for the government or the Municipality concerned
Himachal Pradesh Municipal Corporation Act, 1994	a) If he is of unsound mind c) Undischarged insolvent d) Acquired a foreign citizenship e) Found guilty of any corrupt practice f) Sentenced or convicted by any criminal court g) Holds office of profit under the municipality h) Licensed Architect, Draftsmen, Engineer, Plumber, Surveyor or Town Planner i) Holds any office of profit under government or Municipal Corporation j) Interested in any subsisting contract with a work being done for the Corporation k) If registered as a habitual offender l) If he is under employment under any Panchayat or the local authority or cooperative society or State and Central Government including PSUs

Rajasthan Municipalities Act	a) sentenced by criminal court to imprisonment exceeding six months b) has been dismissed from the service of the Central or State government or any local authority for misconduct c) having been a legal practitioner and debarred from practicing d) holds any place of profit in the municipality e) holds a salaried or part time appointment under the central / State or a local authority f) undischarged insolvent g) suffering from leprosy h) adjudged by competent court to be of unsound mind i) one who has more than two children j) share or interest in any work done by the board
Kamataka Municipal Corporation Act	a) Imprisonment for a term exceeding six months b) Convicted under Untouchability offence Act and prevention of food alteration act c) Holds office of profit under the govt. d) Dismissed from service under local authority or govt e) Legal practitioner dismissed from practice f) Deaf-mute g) Unsound mind h) Undischarged insolvent i) Not citizen of India j) Disqualified for standing to election of State Legislature k) Directly or indirectly share or interest in any contract or employment with municipality l) employed as legal practitioner on behalf or against municipality m) licensed surveyor or plumber or water supply contractor of the Corporation or partner of such a firm n) fails to pay all arrears to municipality
Tamil Nadu Urban Local Bodies Act	a) officer or employee of central/State/local authority b) no share or interest in any contract or employment with municipality c) Paid all arrears to municipality. d) sentenced for life or imprisonment for more than six months e) convicted under protection of civil rights Act 1955 f) unsound mind g) undischarged insolvent h) employed as legal practitioner on behalf of or against municipality i) Representative of any association or union representing any municipal establishment j) Already a Councillor whose term of office will not expire before fresh elections k) Dismissed for corruption or disloyalty to State
Haryana Municipalities Act, 1973	a) Disqualified under any law for the time being b) If he is of unsound mind c) Undischarged insolvent d) Acquired a foreign citizenship e) Found guilty of any corrupt practice f) Sentenced or convicted by the criminal court g) Holds office of profit under the Corporation h) Licensed Architect, Draftsmen, Engineer, Plumber, Surveyor ot Town Planner i) Holds any office of profit under government or municipal Corporation j) Interested in any subsisting contract with a work being done for the Corporation k) Fails to pay any arrears of any kind due to him l) He has more than two living children

Annexure 1.2
(See Para 1.21)

Maximum Election Expenditure Norms

ANDHRA PRADESH

Post	Maximum Election Expenditure Prescribed earlier during ordinary Elections 1995	Maximum Election Expenditure Prescribed for Ordinary Elections, 2000
Mayor, Municipal Corporation of Hyderabad	2,50,000	10,00,000
Ward Member, Municipal Corporation of Hyderabad	8,000	20,000
Mayor, Municipal Corporations Vijayawada and Vishakapatnam	2,50,000	5,00,000
Ward Member, Municipal Corporations of Vijayawada and Vishakhapatnam	8,000	15,000
Mayor, Municipal Corporations of Guntur, Kurnool, Warrangal and Rajahmundary	2,50,000	3,00,000
Ward Member, Municipal Corporations of Guntur, Kurnool, Warrangal and Rajahmundary	8,000	15,000
Chairperson, Selection Grade Municipality	50,000	2,50,000
Ward Member, Selection Grade Municipality	8,000	15,000
Chairperson, Special Grade Municipality	50,000	2,00,000
Ward Member, Special Grade Municipality	8,000	15,000
Chairperson, Grade I Municipality	50,000	1,50,000
Ward Member, Grade I Municipality	8,000	15,000
Chairperson, Grade II Municipality	50,000	1,25,000
Ward Member, Grade II Municipality	8,000	12,000
Chairperson, Grade III Municipality	50,000	1,00,000
Ward Member, Grade III Municipality	8,000	12,000
Chairperson, Nagar Panchayat	50,000	75,000
Ward Member, Nagar Panchayat	8,000	10,000
Member, Zilla Parishad	50,000	1,00,000
Member, Zilla Parishad	25,000	50,000
Sarpanch, Non-notified Gram Panchayat	10,000	40,000
Ward Member, Non-notified Gram Panchayat	2,500	5,000
Sarpanch, Non-Notified Gram Panchayat	10,000	20,000
Ward Member, Non-notified Gram Panchayat	2,500	3,000

1208 LJ&CA/2002—21B

ASSAM

Post	Maximum Election Expenses Prescribed
Zilla Parishad Member	40,000
Anchalik (Mandal) Panchayat Member	20,000
President Village Panchayat	20,000
Member Village Panchayat	20,000
Ward Member, Municipal Corporation	10,000
Ward Commissioner, Municipal Ward	5,000
Ward Commissioner, Town Committee	2,000

GUJARAT

Post	Maximum Election Expenses Prescribed
Member, Municipal Corporation	1,25,000
Member, Municipalities	60,000
Member, Nagar Panchayats	25,000
Member, Zilla Panchayats	75,000
Member, Taluka Panchayat	35,000

No Limit has been fixed for Village Panchayat Elections

HARYANA

Post	Maximum Election Expenses Prescribed
Member, Zilla Parishad	75,000
Member, Municipal Corporation	40,000
Member, Municipal Council	30,000
Member, Panchayat Samiti	30,000
Member, Municipal Committee	20,000
Sarpanches	8,000
Panches	3,000

MADHYA PRADESH

Local Body	Population as per 1991 Census	Maximum Limit of Election Expenses
Municipal Corporation	More than 5 Lakh	4,00,000
	Between 3 Lakh and 5 Lakh	3,00,000
	Less than 3 Lakh	2,00,000
Municipal Council	More than 1 Lakh	1,50,000
	Between 50,000 and 1 Lakh	1,00,000
	Upto 50,000	50,000
Nagar Panchayat		25,000

MAHARASHTRA

Post	Maximum Election Expenses Prescribed
Councillor, Municipal Corporation	40,000
Councillor, Municipal Council	30,000
Councillor, Zilla Parishad	30,000
Member, Panchayat Samiti	20,000
Member, Village Panchayat	5,000

RAJASTHAN

Post	Maximum Election Expenses Prescribed
Member, Zilla Parishad	20,000
Member, Panchayati Samiti	10,000
Sarpanch	5,000

GOA

Post	Election Expenses
Member, Village Panchayat	2,500
Member, Taluka Panchayat	10,000
Member, Zilla Panchayat	25,000
Member, Municipal Council	15,000

Annexure 1.3
(See Para 1.24)

Elections in Urban Local Bodies held after 1994

State/UT	Nagar Panchayat	Municipal Council	Municipal Corporation
Andhra Pradesh	1995, 2000	1995,2000	1995,2000
Assam	1997-2000	1996-1997	1995
Delhi	*	#	1997
Goa	*	1995	*
Gujarat	1994-95	1994-95, 2000	1994-95, 2000
Haryana	1994, 2000	1994, 2000	1994, 2000
Himachal Pradesh	1995	1995	1995
Karnataka	1996	1996	1996-97
Kerala	1995, 2000	1995, 2000	1995, 2000
Madhya Predesh	1994, 1999	1994, 1999	1994, 1999
Maharastra	1997-98,	1997-98,	1997-98,
Manipur	1995	1995	*
Orissa	1995, 2000	1995, 2000	1995, 2000
Punjab	1998	1998	1998
Rajasthan	1994-95, 1999	1994-95, 1999	1994-95, 1999
Tamil Nadu	1996	1996	1996
Uttar Pradesh	1995-97, 2000	1995-97, 2000	1995, 2000
West Bengal	1993-94, 1999-2000	1993-94, 1999-2000	1993-94, 1999-2000
A&N Islands	*	1995, 2000	*
Chandigarh	*	*	1996
Daman&Diu	*	1996	*

- Denotes, does not exist

NDMC is not elected

Annexure 1.4
(See Para 1.25)

Number of Urban Local Bodies and elected Representatives

State/U.T	Municipal Corporations	Municipal Councils	Nagar Panchayats	Total
Andhra Pradesh	07(395)	94(2833)	15(314)	116(3542)
Assam	01	25(353)	42(204)	68(557)
Bihar	06	70	93	169
Goa	-	13(155)	-	13(155)
Gujarat	06(468)	86(2745)	60(1260)	152(4473)
Haryana	01	20	32	53(1359)
Himachal Pradesh	01(25)	19(183)	29(221)	49(429)
Karnataka	06(410)	122(3196)	89(1355)	214(4961)
Kerala	05(298)	53(1597)	-	58(1895)
Madhya Pradesh	20(1067)	106(2527)	283(4537)	409(8131)
Mahrashtra	15(1417)	228(4901)	-	243(6318)
Manipur	-	07	20	27
Orissa	02(70)	29(560)	72(1056)	103(1686)
Punjab	03	97	34	134(1699)
Rajasthan	03	11	169	183(4412)
Tamil Nadu	06(480)	102(3494)	611(9794)	719(13768)
Tripura	-	01	12	13
Uttar Pradesh	11(841)	226(5970)	444(5518)	681(12329)
West Bengal	06	112	4	122(2706)
A&N Islands	-	01	-	01
Chandigarh	01	-	-	01
Delhi	01	01	-	02(134)
Pondicherry	-	05	-	05
Daman & Diu	-	02	-	02
TOTAL	101	1430	2009	3540(68554)

Note: figures in brackets indicate number of elected representatives.

Annexure 1.5
(See Para 1.36)

PROCEDURE OF RESERVATION FOLLOWED BY STATE ELECTION COMMISSION OF GUJARAT

Under this subject it is understood that the item relates to Allotment of Reserved Seat

In Gujarat, under the relevant statutes, the State Government has authority to fix the number of seats including reserved seats for SC / ST / SEBC, Woman. After the seats have been quantified, allotment of reserved seats to various Electoral Divisions / Ward having highest percentage of population of SC / ST will be allotted the seat for SC / ST in the event of conflict between SC / ST, it is the SC which will have the precedence.

So far as SEBC is concerned, the Urban Local Self Government Authorities Acts and Gujarat Panchayats Act provide for different criteria. In respect of Municipal Corporations and Municipalities, it has been left to the State Elections Commission to evolve a formula for allotment of seat for Backward Classes. Under Panchayats Act, the seats reserved for Backward Classes are to be allotted, under the Rules to the Electoral Divisions as per the serial number of Electoral Divisions given as per English alphabets.

While the figures of population of SC and ST are available from Census Directorate, the figures of population of SEBC are not available. Commission therefore, initially issued an Order allotting seat as per the serial number of the Ward of a Municipal Corporation / Municipality. In course of consultation with the political parties, this issue was posed and the views of the political parties were solicited. On the basis of the views expressed in the meeting with the political parties, Commission could concretise a formula for allotment of seats for Backward Classes. The formula is as follows:-

a) Apriori to allot seat to Wards from where in the past elections, even in the absence of statutory reservations, the persons belonging to Backward Class were elected.

b) If on the basis of the past election result, the number of seats to be allotted to SEBC can not be allotted, the information as to population of SEBC be obtained from the Municipal Commissioners and Chief Officers of the Municipalities Commission took a conscious view that Municipal Commissioners and Chief Officers are also responsible Officers and information furnished by them will not be imaginary or distorted. The Wards having highest percentage of population of Backward Class were the wards to which the remaining seats be allotted. The seats are not allotted either by lottery or by any other mode. While in Palchayats, reserved seats are being rotated as per Rules to differed Wards, in Municipalities and Municipal Corporations, the seats will be rotated not every five years but every 10 years. The Rules earlier framed by the State Government envisaged rotation of reserved seats every 5 years.

Annexure 1.6
(See Para 1.36)

PROCEDURE OF RESERVATION FOLLOWED BY STATE ELECTION COMMISSION OF MAHARASHTRA

Articles 243D and 243T of the Constitution provide for reservation of seats for the Scheduled Castes, the Scheduled Tribes and the number of seats so reserved shall bear as nearly as may be, the same proportion to the total number of seats to be filled by direct election in the Panchayat or Municipality area or of the Scheduled Tribes in the Panchayat or Municipal area bears to the total population of that area and such seats may be allotted by rotation to different Constituencies in a Panchayat or a Municipality. These articles also provide that not less than 1/3 (including 1/3 of the total number of seats reserved for women belonging to the Scheduled Castes and Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat or Municipality shall be reserved for such women and such seats may be allotted by rotation to different constituencies in a Panchayat or a Municipality. It is also provided in these articles that it shall be competent for the State Legislature to make provision for reservation of seats in any Panchayat or any Municipality at any level in favour of Backward Class of Citizens. In Maharashtra, the State Legislature has made provision by law to provide for reservation for Backward Class of Citizens at 27% of the total number of seats and 1/3 of seats so reserved shall be reserved for women belonging to the Backward Class of Citizens.

In Maharashtra State, there are three different Acts for Corporations, one for Municipal Councils and Nagar Panchayats, one for Zilla Parishads & Panchayat Samitis and one for Village Panchayats. The names of the Acts and the Local Bodies governed by them are as under:-

S.No.	Name of the Local Body	Name of Act
1.	Brihan Mumbai Municipal Corporation	Mumbai Municipal Corporation Act, 1888
2.	Nagpur Municipal Corporation	The City of Nagpur Corporation Act, 1948
3.	13 Municipal Corporation (except B.M.C. &Nagpur)	Bombay Provincial Municipal Corporation Act, 1949
4.	33 Zilla Parishads & 331 Panchayat Samitis	Maharashtra Zilla Parishads & Panchayat Samitis Act, 1961
5.	27,571 Village Panchayats	Bombay Village Panchayat Act, 1958

The reservation Policy in all the above Acts is uniform and applicable to all Panchayats and Municipalities.

Actual seat fixation for various categories under reservation

The seats for Scheduled Castes shall be calculated by the formula given below:-

$$SC = \frac{\text{Total number of seats} \times \text{SC population}}{\text{Total Population}}$$

Sears for Scheduled Tribes shall be calculated as under:-

$$ST = \frac{\text{Total number of seats} \times \text{ST population}}{\text{Total Population}}$$

Seats for the Backward Class of Citizens shall be calculated as under:-

$$BCC = \frac{\text{Total number of seats} \times 27}{100}$$

Seats for Women to be calculated as under:-

$$\frac{\text{Total number of seats}}{3}$$

The procedure of actually reserving the seats for Scheduled Castes, Scheduled Tribes, backward Class of Citizens and Women

After the number of seats admissible to the categories of Scheduled Castes, Scheduled Tribes, backward Class of Citizens and Women are calculated and the delimitation draft is prepared, the seats are actually reserved in the following manner:-

i) The percentage of population of Scheduled Castes & Scheduled Tribes from newly formed electoral wards is calculated.

ii) Taking into consideration, the number of seats admissible to the Scheduled Castes and Scheduled Tribes, the wards are reserved beginning from the highest percentage of Scheduled Caste in descending manner. The same procedure is adopted for Scheduled Tribes where the ward which has highest percentage of Scheduled Tribe is reserved for Scheduled Tribe and so on, depending on the number of seats admissible for each category.

iii) 27 % of the total number of seats are admissible for Backward Class of Citizens. These wards are reserved by drawing lots. So also 1/3 of total number of seats are reserved for women which are also reserved by drawing lots.

iv) Reservation of wards for Scheduled Caste, Scheduled Tribe & Backward Class of Citizen Women is done in the following manner, in the presence of the residents of that area. Initially, the lots are drawn from amongst the wards which are reserved for Scheduled Caste for reserving seats from Scheduled Caste Women. Then the lots are drawn from amongst the seats reserved for Scheduled Tribes only for reserving seats for Scheduled Tribe Women. Thereafter, from the remaining wards the lots are drawn for Backward Class of Citizen (Women). The seats reserved for Scheduled Caste (Women) + Scheduled Tribe (Women) + Backward Class of Citizen (Women) are subtracted from the total number of seats reserved for Women. So that the remaining number of seats are reserved for general Women category. Hence, the seats for general Women are reserved by drawing lots from amongst the wards which remain after reserving the seats for Scheduled Caste, Scheduled Tribe and Backward Class of Citizens.

This procedure is adopted for actually reserving seats in the elections of Panchayats and Municipalities. After showing reservation of each ward, if any, the draft delimitation order is published for calling suggestions/objections from residents of the area.

The experiences of the State Elections Commission in implementation of Reservation policy

1) The number of members of the Panchayat Samitis, Zilla Parishads, Municipal Councils or Municipal Corporations is determined on the basis of population except in the case of Greater Bombay Municipal Corporation and the City of Nagpur Corporation in respect of which there is a fixed number of seats. Accordingly, the area of a Panchayat or a Municipality is delimited. If at any time, the State Legislature alters the criteria of population of determination of number of members of Councillors, resulting into increase or decrease of such or Councillors, it would naturally alter the boundaries and also the number of wards while delimiting the Panchayat or a Municipal area at the time of next general election. If such a situation arises, then although the Constitution provides for allotment of reserved seats by rotation to different constituencies in Panchayat or Municipality. It would be difficult to bring about such rotation. Hence, it is seen that the rotation cannot be followed when there is fresh delimitation.

2) In case of Village Panchayats, it is found that at the time of Census, people give incorrect information to the census regarding their caste e.g. the people belonging to Koli Community at the time of census say that they belong to Mahadeo Koli Community which falls under the Scheduled Tribe Category. Hence, as per the census figures, the population of Koli Community is shown under the Scheduled Tribe population. On the basis of that population, seats are reserved for Scheduled Tribes. But it is found at the

time of elections that people belonging to Koli Community fail to get the caste certificate of Scheduled Tribe. As a result, the seats reserved for Scheduled Tribes remain vacant. The State Election Commission declares bye-elections from time to time but since no population of Scheduled Tribe exists in the village, the seats remain vacant in such cases, If the vacant seats are more than 50 % then the Village Panchayat is not deemed to be established as per the provisions of Bombay Village Panchayat Act, 1958. To overcome this difficulty, the State Election Commission has proposed an Amendment to the election rules so that if it is found after three consecutive elections that the population of certain caste is not available and no nominations are received for a particular category of reservation then such seats shall be reserved for the remaining categories by drawing of lots. If it is found that no population of any category exists in the village, then such seats shall be treated as unreserved seats.

3. It is sometimes found that women of certain category of reservation do not contest elections and such seats remain vacant. To avoid this contingency, the State Election Commission has proposed an arrangement to the election rules that if seats reserved for certain categories of Women are not filled up then such seats shall be made available to the male persons of that category e.g. if seats reserved for Schedule Castes Women are not filled up, then the seats shall be made available for Scheduled Caste (General) so that a Scheduled Caste male who then will be able to contest the elections.

Annexure 2.1
[See Para 2.10(a)]

LOCAL GOVERNMENT LIST
(Common schedule of functions for Panchayats and Nagar Panchayats)

For some of the following items, the States and the Panchayats/ Nagar Pallikas can have concurrent jurisdiction.

1. Agriculture, including agricultural extension and research.
2. Minor irrigation, water management and watershed development.
3. Animal husbandry, dairying and poultry.
4. Fisheries.
5. Cattle ponds; prevention of cruelty to animals.
6. Social forestry, farm forestry and urban forestry.
7. Minor forest produce.
8. Fuel and fodder.
9. Land improvement, implementation of land reforms, land consolidation and soil conservation.
10. Housing.
11. Small scale industries, including food processing industries.
12. Khadi, village and cottage industries.
13. Regulation of slaughter houses and tanneries.
14. Licensing of dangerous and offensive trade.
15. Planning for economic and social development.
16. Town and country planning.
17. Regulation of land-use and construction of buildings.
18. Water including water supply for domestic, industrial and, commercial purposes.
19. Roads, culverts, bridges, ferries, waterways and other means of communication.
20. Electrification, including distribution of electricity.
21. Setting up micro power projects and distribution
22. Non-conventional energy sources.
23. Public Health and sanitation, conservancy and solid waste management.
24. Hospitals, primary health centres, dispensaries, maternity homes and child welfare centres.
25. Health education programmes and preventive measures including vaccination against epidemic diseases.
26. Education, including primary and secondary schools.
27. Technical training and vocational education.
28. Adult and non-formal education.
29. Fire services.
30. Provision of amenities and facilities such as parks, gardens, playgrounds, street lighting, parking lots, bus stops and public conveniences.
31. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
32. Markets and fairs.
33. Libraries and museums.
34. Cultural activities.

35. Pilgrimages.
36. Family welfare.
37. Women and child development.
38. Social welfare, including welfare of the handicapped and mentally retarded.
39. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.

40. Protection of environment and promotion of ecological aspects, and heritage
41. Slum improvement and upgradation.
42. Poverty alleviation programme.
43. Public distribution system.

44. Maintenance of community assets.

45. Vital statistics including registration of births and deaths.

In addition to the above, the following items from the existing List II (State List) Schedule 7 may be added to the Local Government List with concurrent jurisdiction with the States.

46. Regulation of mines and mineral development.
47. Taxes on agricultural income.
48. Land, i.e. right in or over land, land tenures, collection of rents, and tenures, transfer and alienation of agricultural land.
49. Land revenue, collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.
50. Duties in respect of succession to agricultural land.
51. EState duty in respect of agricultural land.
52. Taxes on lands and buildings.
53. Taxes on mineral rights subject to any limitations imposed by parliament by law relating to mineral development.
54. Taxes on entry of goods into a local area for consumption, use or sale therein.
55. Taxes on advertisement other than advertisements published in the newspapers.
56. Taxes on goods and passengers carries by road or on inland waterways.
57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars.
58. Taxes on animals and boats.
59. Tolls.
60. Taxes on profession, trades, calling and employments.
61. Taxes on luxuries, including taxes on entertainment, amusements, betting and gambling.

Annexure 2.2
[See Para 2.20(e)]

Property Tax to Municipal Revenue

	% of PT in Municipal Revenue		Per Capita Property Tax (Rs)	
	1992/93	1997/98	1992/93	1997/98
Andhra Pradesh	35.27	34.54	86.94	141.79
Assam	20.65	14.72	9.52	11.75
Bihar	28.10	26.11	12.00	29.53
Gujarat	20.21	23.46	77.19	165.97
Haryana	11.72	11.41	44.41	60.60
Karnataka	18.62	15.10	37.17	57.62
Kerala	27.47	22.78	42.41	62.74
Madhya Pradesh	12.69	9.85	22.82	29.64
Maharashtra	8.68	7.65	83.34	146.64
Orissa	1.06	1.10	2.05	2.54
Punjab	7.67	5.14	19.83	25.06
Rajasthan	4.96	6.28	13.58	30.10
Tamil Nadu	39.99	20.84	86.32	88.43
Uttar Pradesh	12.78	12.14	21.65	27.33
West Bengal	33.39	36.30	132.50	206.30
Himachal Pradesh	38.06	15.27	208.89	237.41
Manipur	0.35	2.08	0.22	2.23
Meghalaya	16.85	19.00	37.41	51.09
Tripura	42.54	27.31	16.57	27.69
*	14.74	12.87	65.79	105.68

* The Government of Punjab has recently abolished the levy of taxes on domestic properties. In Imphal (Manipur), property taxes are levied in only two wards of the city.





NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

EMPOWERING AND STRENGTHENING LOCAL SELF-GOVERNMENT IN CANTONMENTS

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating a public debate and eliciting public response.

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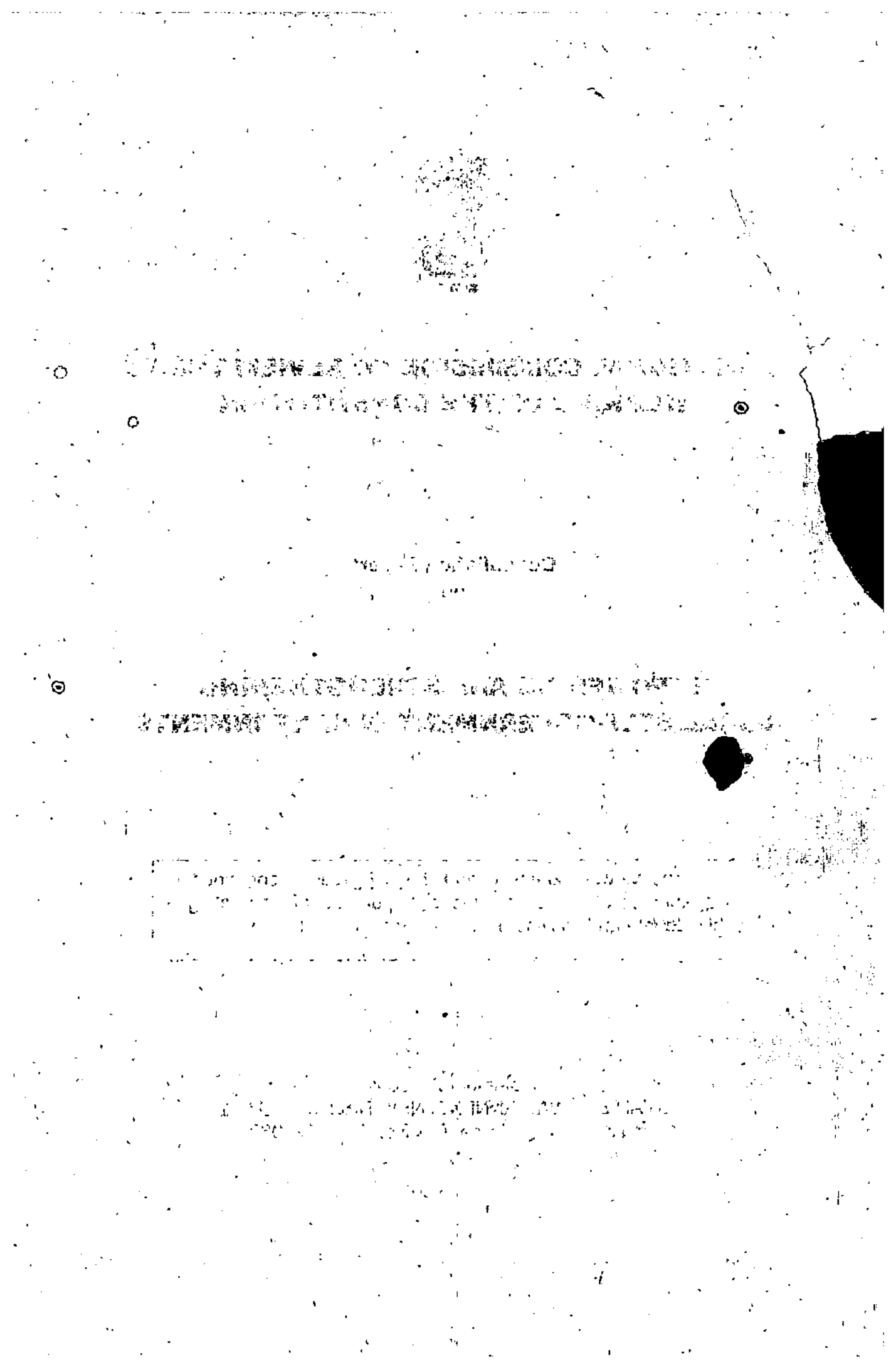

Advisory Panel

on

Decentralisation and Devolution; Empowerment and Strengthening of Panchayati Raj Institutions

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CONTENTS

		Pages
1.	Introduction	1101
2.	Cantonments during British period	1102
3.	Definitions of Cantonment	1102
4.	Historical perspective	1102
5.	Evolution of local self-government in Cantonments	1103
6.	Post-war scenario	1103
7.	Civilian unrest and the passing of the Cantonments Act	1103
8.	Attempts at democratization	1104
9.	Land tenures in Cantonments	1104
10.	Post-independence development	1104
11.	Balwant Rai Mehta Committee recommendations	1105
12.	Cantonments – certain facts	1105
13.	Attempts at Democratisation	1107
14.	The role of GOC-in-C, the Command	1107
15.	Taxation and revenue	1108
16.	Article 285 of the Constitution and service chares in lieu of tax	1109
17.	Administration of cantonments	1109
18.	Current scenario and status of purely military stations	1109
19.	The other view	1110
20.	Certain basic issues	1111
21.	Existing anomalies	1112
22.	Centralization and control	1113
23.	Finance and development – structural constraints	1114
24.	Reforms needed for decentralization, etc.	1115
25.	Suggestions	1117
26.	Questionnaire	1118
	Annexures	1126

1. Introduction

1.1 The Cantonments as local self-government organizations have always remained a puzzle. The army needs it but at the same time would like to be rid of it but for the interest in the land resources. The civilian population wants to be in it but is uncertain about their status and their future. The Cantonments Act, 1924 is a model municipal Act but in its implementation, decentralization and democratic norms are largely compromised because of the status of the citizen, who occupies the property only as a licensee of the Government. Land administration and municipal administration overlap and lose their identities as such.

1.2 The history of Cantonments started with land administration for quartering the troops. Housing was the core objective. In due passage of time housing itself attracted the civil population to reside in the Cantonments and the economic spin-offs attracted other activities. The bazaar area was recognized and the anatomy of the Cantonment got clearly defined with military, the bungalow and civil areas clearly defined.

1.3 The peaceful co-existence of an alien army and a ruled civil population brought in hesitatingly local self-government concepts and practices into Cantonment administration. The military's presence being the hallmark brought this under the jurisdiction of the Union even though initially the administration was part of the army headquarters under the QMGs branch.

1.4 With the dawn of independence, aspirations for further democratization and decentralization were aired but the insistence of civil population to live in a Cantonment and yet have the benefits of total local self-government resulted in half-hearted attempts and cosmetic changes. The administration remained bureaucratic and over centralized with a severe hangover of the army's superiority of the British days.

1.5 The changed scenario brought out by the 73rd and 74th amendments of the Constitution has necessitated a *de-novo* look into the colonial Jurassic park for reforms and updating to satisfy the aspirations of the people which are brought out of necessity before various judicial fora as they could not get their redressals from an over centralized Ministry and the command headquarters who hold the discretion on vital matters on self-government and seldom exercise it in favour of the citizen. The residents of the Cantonments cannot access development funds because the Ministry of Defence and the army are in the non-plan sector. The State Governments do not share their resources even though it is allocated on a population basis.

1.6 A new dimension to the problem is the number of Cantonment stations that have come up whose status is yet undefined. As local self-government is the prerogative of the State Governments and the Constitutional amendments making no exceptions in their favour they have to be delimited under the municipalities or have to choose the Cantonment option. Remaining insulated from the people and local self-government is not advisable in the modern days of human rights, low intensive warfare within our boundaries, cross border terrorism and militancy in which the efficiency and the morale of the army itself depends on the empathy, mutual understanding and respect of the people of India. The rational option seems to be to adopt the Cantonment model.

1.7 The paper attempts to prescribe the outlines of a model after tracing a history of the developments of the Cantonments, the legal lacunae, the necessity for reforms in the constitutional context and prescribe a local self-government model in the plan sector where fund flow may not be restricted, with an administrative structure which will give full scope for decentralization, devolution and development with optimal and adequate safeguards for the health, welfare and discipline of the army. As Peter Drucker said "Governments never abandon but seldom innovate". The attempt here is to innovate without abandoning.

2. Cantonments during British period

2.1 Local self-government in Cantonments is the culmination of the democratic aspirations inherent in the organic growth of any institution in a functional society. But the evolutionary process was fitful shifting and vaporous. Historically, the Cantonments were places where the army of a colonial government had to be exclusively quartered in an effort to keep the armed forces totally insulated from the ruled. The civilian element was totally absent because of the colonial necessity. Cantonment meant quarter assigned for lodging troops, a permanent military station created by the British Government in India for the location of military formation away from the civilian towns insulated from the Indian Nationalist influences.

3. Definitions of Cantonment

3.1 The Commander-in-Chief's general order, dated 31-7-1856 States that no persons except military officers, soldiers and their followers belonging to a force at a station can, of right, occupy houses in a Cantonment but every desire is to be shown to accommodate officers in public service whose duty requires them to live in or near a Cantonment and other persons of irreproachable character and conduct.

3.2 The regulations and orders for the army of the Madras Presidency, 1876 echoes the same in stating "a military Cantonment is as its definition implies a locality set apart primarily for military and medical officers, Chaplains, soldiers, European and East Indian subordinates and their families for whom houses situated are by priority of right available. This, however, is not to interfere with gentlemen of the covenanted civil service as regards houses usually occupied by them in military Cantonments". In 1880, civil and political officers and PWD and RAILWAY officers were permitted to reside in Cantonments as a matter of 'indulgence' in public interest subject of course to the priority rights of the army.

3.3 In such a situation, occupation and administration of land was of primary importance and rules and regulations were made in the context of allotment and occupation of land, transfer, grant, etc. within the military population located therein.

4. Historical Perspective

4.1 The first three Cantonments were constituted in the 17th century - Barrackpore in Bengal and Danapore in Bihar in 1765 and St. Thomas Mount in Madras in 1774. The other Cantonments came into being in the 19th century when army of the East India Company and later British India troops acquired vast tracts of land by conquest or exchange.

4.2 As housing was the main concern and land was no constraint, but finance was, the lands were allotted on grants freely transferable from one military officer to another for construction of houses. The grants were in today's jurisprudence licences with an interest [in land]. The grants were subject to two essential conditions viz. the land is the property of the Government and they are resumable for military purposes, as and when required. The applications were processed in the QMG's branch and the grant was given by the Government of India.

4.3 Initially, the ownership and thereafter transfers were confined strictly to Army personnel and their camp followers. In course of time, Indian natives were allowed to acquire the grants.

4.4 When the Cantonment code (rule) was enacted, the leases granted thereunder were also on resumable tenures though other salient features of a modern lease also found a place. As the total land in Cantonments is owned by the Government on these resumable tenures with the military having a say on their user, the Cantonment civilians remained first and foremost a licensee and then only civilians.

This situation continues so even on date. This status of the Cantonment civilians has far reaching effects on issues of local self-government, especially decentralization and devolution in Cantonments.

5. Evolution of Local Self-Government in Cantonments

5.1 From the early formation, the civic and municipal administration of these Cantonments was kept the close preserve of imperialist administration. Although in the first half of the 19th century, some sort of local government in towns was developed as a measure of decentralization in Cantonment towns which had a big population, the civilians were continued to be treated as army followers and were ruled and administered by military authorities. During the later half of the century, the Municipal Acts were enacted in the Presidencies and Provinces of the then India. Three Cantonments Acts, being Bengal Act XII, 1864, Madras Act I of 1866 and Bombay Act II of 1867, were also enacted vesting the police administration of the Cantonment under the control of the Officer Commanding the Station. The post of the Cantonment Magistrate independent of the District Magistrate and directly under the control of the Officer Commanding the station was the essential feature. He was also the judge of the small causes court and deputy registrar. The Cantonment administration was virtually a total unit of government under the Army.

5.2 With Ribbon Reforms on local self-government, a consolidated Cantonment Act XXX of 1889 was passed for the whole of India which recognized for the first time the necessity of maintaining special laws to replace the military administration. This Act was repealed by the Cantonment Act XV of 1910 which contained only 32 sections. The only municipal subjects it touched were the taxation and Cantonment fund. All other matters were left to be regulated by the rules known as Cantonment Code, 1912. The Cantonment Committees constituted thereunder were dominated by military nominees but for the first time Indian civilian nominated members were brought into being. This Act and the Code were in force when the First World War ended by the Treaty of Versailles.

6. Post War Scenario

6.1 After the war was over, the pressure of the growing national forces resulted in the passing of the Government of India Act, 1919. On the lines of Montague-Chelmsford Reforms Scheme, local self-government in provinces were passed into the hands of elected ministers. But local self-government in Cantonment areas, the Constitution and power within Cantonment authorities, the regulation of housing accommodation and the delimitation of such areas as Cantonments remained a Central subject. But in the Central Government, the Cantonment administration continued to form part of the Army department and not under the Government as such.

7. Civilian unrest and the passing of the Cantonments Act

7.1 In January 1919, a conference of civilian residents of Cantonments met at Ambala under the chairmanship of one late Diwan Lakshmi Narain of Kamptee which gave birth to the All India Cantonment Association. This new association submitted a memorandum of reforms to the Government of India and the Command-in-Chief. As a result of the popular demand by the representatives of the Cantonment population, a departmental committee was appointed in October, 1920 which submitted its report in December, 1920. On their recommendation, a regular Cantonment reforms committee was constituted in January, 1921 with 4 official and 4 non-official nominees from the association. This committee submitted its report in October, 1921. On the basis of the recommendation, the Cantonment House Accommodation Act dealing with the subject of accommodation of military officers was first enacted as Act IV of 1923. This more or less codified and thereby repeated those portions of GGOS dealing with the preemptive right of the Army to take over private houses by right for accommodating their officers but provided for a more humane approach in depriving private citizens of their houses and procedure for determining the rentals.

7.2 The second and most important Bill, namely, the Cantonment Bill, to introduce local self-government in the Cantonments which contained substantial civil population, was placed before the legislature and the Cantonment Act, 1924 (2 of 1924) was enacted. The Bill at the time of introduction faced with serious objections that it was introducing local self-government only in name but concentrated the powers with the army. The administrative and executive mechanism was fashioned in such a manner to keep the army superiority in Cantonment administration. The objections could not be pressed to realize a full-fledged local self-government structure for Cantonments because of the threat of the withdrawal of the Bill as a whole. Therefore, with certain minor modifications, the Bill was passed.

8. Attempts at Democratisation

8.1 An attempt was made in 1935-36 in the Central Assembly by the Congress Party to bring municipal administration of Cantonments on fully democratic basis but the private amending Bill failed. But, it did achieve some measure of success in removing certain obnoxious features as drafted by the Government and enabled the creation of Cantonment Boards even in smaller Cantonments. Since 1935, no change worth mentioning was made in the Cantonments Act, 1924 except for certain minor concessions towards democratization by bringing a parity in membership between the nominated members and the elected members and giving a certain amount of delegation to the civil area committees. But these concessions were given as policy directions.

9. Land Tenures in Cantonments

9.1 Here, we have to pause and take stock of land tenures in the Cantonment because of their impact on the municipal administration in Cantonments. The Cantonment Magistrates who had lost the position and power by these reforms were absorbed as Military Estates Officers and Inspecting Officers (later on Deputy Directors) in the administrative hierarchy and enacted the land administration rules in such a manner that municipal administration in Cantonments was made secondary and subservient to land administration. The Cantonments, barring a few in the Southern region, are occupied territories and lands were and still remain the property of the government. Most of them are held on old grants or other resumable tenures. Very few leases have been granted under the Cantonment Land Administration Rules with secured tenures. Majority of the population continue to be just licensees. Local self-government was thus rendered administratively nugatory, as unencumbered residence and owning property in a locale are essential indicators of local self-government in municipal organizations. Earlier even voting rights in municipal areas were linked to ownership of property.

10. Post Independence development

10.1 After the dawn of the Independence, no attempt was made to bring the Cantonments in tune with the spirit of the times or the principles of the local self-government. As per entry 3 of the Seventh Schedule to the Constitution of India, Parliament is the competent legislature to make laws for delimitation of Cantonment areas, local self-government in such areas, the constitution and powers in such areas of Cantonment authorities and the regulation of house accommodation including the control of rents in such areas. Thus Cantonments continue to be a Union List subject.

10.2 As a follow up of the resolution of Conference of local self-government Ministers held in August, 1948, Government constituted the Central Committee on Cantonments to examine fresh delimitation of the Cantonment areas and the desirability of amending the Cantonments Act, 1924. This Committee was headed by Shri S.K. Patil as Chairman and was packed with official members. The purpose was mainly to make recommendations for excision of civil areas in Cantonments. As a result of the aforesaid Government decision and the Committee's report, civil areas in six Cantonments namely, Agra, Ahmednagar, Allahabad, Varanasi, Delhi and Jhansi were to be partly cut out. But as popular

sentiments were against the excision in respect of Ambala, Kirkee and Pune, the proposal was dropped. There was no delimitation thereafter except for parts of Ambala and Khasyol Cantonments in 1977 and 1986.

11. Balwant Rai Mehta Committee recommendations

11.1 The Estimates Committee of Parliament (1956-57) under Balwant Rai Mehta made radical recommendations that the local self-government should be strictly under the State Administration as the subject mainly falls under List II of the Seventh Schedule to the Constitution and the army should be given representation or right to have a say on any decision of the local authority which goes against the health, welfare, discipline and security of the troops. The civic amenities for the troops within the military area can continue to be with the defence authorities and the Cantonments will regain its original connotation of a place where the troops are quartered. The Committee recommended abolition of Cantonments as commonly understood at present and practical steps should be taken in consultation with the State Governments so as to reach it in the minimum possible time. The recommendations were in favour of reverting to purely military stations.

11.2 The Government examined the aforesaid recommendation and reported to Parliament that whatever the antecedents may be, the **Cantonments are serving a useful purpose now.** The general views of the population in Cantonments was also in favour of continuance of Cantonment administration and popular sentiment had to be respected. The State Governments are not in a position to assume the responsibility of local self-governments in Cantonment areas, and the predominance of the interest of the troops - the health, welfare and discipline calls for the supervisory role of the Station Commandant. The Cantonment Boards, the Government felt, were local bodies in every sense of the term though they enjoy limited powers. The local governments i.e., GOC-in-C under the Cantonments Act, 1924 directly comes under the control of Government of India and thereby the accountability to the Parliament is ensured. So, the Government decided against the recommendations of the Estimates Committee. This government's above Stated position was noted by the Estimates Committee of 1960-61. No major amendments in Cantonments Act, 1924 were made. Even in the year 1983, when the first attempt was made to overhaul the Act, it ended in making mere cosmetic changes only. The Cantonments Act, 1924, therefore, as on date remains substantially as it was in the year 1924.

12. Cantonments – certain facts

12.1 On date, there are 62 Cantonments in the country distributed among 5 Army Commands as under:-

Central Command	29
Southern Command	15
Western Command	09
Northern Command	05
Eastern Command	04

12.2 Section 13 of the Cantonments Act, 1924 deals with Constitution of Cantonment Boards. The Cantonments are categorized as Class I, Class II and Class III, on the basis of the civil population as per the latest Census. Class II Cantonments are, for administrative purposes, sub-classified as A, B and C. the general classification is given below:-

Class	Civil Population
Class I	Above 10,000.
Class II	(A) Above 7500 but not exceeding 10,000. (B) Above 5000 but not exceeding 7500. (C) Above 2500 but not exceeding 5000.
Class III	2500 and below.

12.3 Cantonment Boards have been constituted in respect of every Cantonment under the Cantonments Act, 1924. The Boards are statutory bodies – a body corporate having perpetual succession and a common seal with power to acquire and hold property. Their main functions are, more or less, the same as those of municipal bodies. The Station Commander is the Ex-officio President of Cantonment Board. The legislated composition in respect of the Cantonment Boards is as under:

Category of Member	Classification of Cantonment and Number of Members				
	I	II(A)	II(B)	II(C)	III
Ex-Officio	3	3	3	3	1
Nominated	5	4	3	2	1
Elected	7	6	5	4	1
Total	**15**	**13**	**11**	**9**	**3**

12.4 The Officer Commanding the Station, the Senior Executive Medical Officer (Officer Commanding the Military Hospital) and the Garrison Engineer are the ex-officio Members of the Board. The nominated Members consist of Service Officers and a Magistrate of First Class nominated by the District Magistrate. The elected Members elect one amongst them as the Vice-President of the Board.

12.5 Elections to the Cantonment Board are held on expiry of term of the elected members every five years. In exercise of the powers conferred by Section 31 of the Cantonments Act, 1924, Central Government has framed certain rules called the Cantonment Electoral Rules, 1945 for the purpose. Cantonment area is divided into wards and the boundaries are notified by the Central Government under the Ward Rules for each Cantonment separately. Each year, the Cantonment Boards prepare the Electoral rolls as prescribed under the Cantonment Electoral Rules, 1945. On or before the expiry of the term of elected members of a Cantonment, the Central Government notifies the date for holding elections in each Cantonment. Thereafter, the procedure laid down under the Cantonment Electoral Rules, 1945 is followed. The President of the Cantonment Board appoints the Returning officer and polling is held in such wards where there are more than one candidate contesting. Reservation for the Scheduled Castes and the Scheduled Tribes is done based on the population of SC/ST in the Cantonment and which is notified in the Ward Rules of the particular Cantonment. The results of the elections are notified by the Central Government in the Official Gazette.

12.6 The term of office of an elected member of a Cantonment Board is five years.

12.7 Certain basic data regarding Cantonments in India are placed as Annexure-I and Annexure-II to this paper.

13. Attempts at Democratisation

13.1 In deference to the demand for more democratization of the administration of the Cantonment Boards, parity was introduced, in 1954, between the total number of official and elected Members, by keeping the seat of one nominated Member vacant in Class I and Class II Cantonments. In Class I and Class II Cantonments, the area populated mainly by the civilian population is notified as the Civil Area. Many aspects of the administration of such areas are delegated to the Civil Area Committee of the Board by the Cantonment Board which consists of all the elected Members with the Vice-President as the Chairman of the Committee and the Health Officer and the Executive Engineers as the other two members. Despite its nomenclature, it is a sub-committee of the Cantonment Board. When the Act was amended in 1983, certain powers of the Board were delegated to the Civil Area Committee.

13.2 The Cantonments Act, 1924, lays down the duties and discretionary functions of the Board and the manner in which these are to be performed. But the duties can be performed only subject to the availability of funds at its disposal (section 116 of the Act). The Boards are also empowered to frame regulations relating to the administration of the Boards and bye-laws, controlling various spheres of activities such as erection/re-erection of buildings, sanitation, hygiene, etc., with the prior approval of the Central Government.

14. The role of GOC-in-C, the Command

14.1 The constitutional responsibility of ensuring that the Cantonment Boards carry out their functions in accordance with the law vests in the Government of India. It is the duty of the Government of India to ensure not only delimitation but also the functioning of local self-government in such areas. This constitutional responsibility is discharged through the Officers of the Indian Defence Estate Service (and its predecessor services), the Cantonment Officer at the Board level and the Director (Defence Estates) at the command level and the Ministry of Defence at the Government level.

14.2 But by a historical accident as formations and stations were for military purposes brought under the geographical jurisdiction of the GOC-in-C command, the Cantonments were also grouped under commands for no valid rational reason. The Cantonments are not formations of the army but are local self-government institutions under the accountability of the Government of India. This historical accident has resulted in certain avoidable anomalies like GOC-in-C command functioning as a second government and some times parallel to Government of India which is against the spirit of the Constitution. It also had rendered the Cantonment administration being confused with an army administration and not a local self-government administration.

14.3 The GOC-in-C of the Command continues to be in enigma in the administrative set up of Cantonment Administration. He exercises certain powers of control under the provisions of the Cantonments Act, 1924, the Cantonment Account Code, 1924, the Cantonment Land Administration Rules, 1937, the Cantonment Fund Servants Rules, 1937, etc. The Act does not define him while it has defined the area commander who has no role to play under the Cantonments Act but he has been given sweeping powers not relating to health, welfare and discipline of the army to override the decisions of the Board without any guidelines under Section 52 of the Act.

14.4 As per the provisions contained in section 274 read with Schedule V of the Act, the Officer Commanding-in-Chief, the command or other authority authorized by the Central Government shall be the Appellate Authority in respect of appeals against order under sections 126, 134, 138, 140, 142, 176, 181, 185, 187, 188, 206. All these sections have nothing to do with health, welfare and discipline

of the troops but purely with local self-government decisions of the Board. Similarly, under Section 181A, he can sanction the general scheme to restrict building activity for prevention of overcrowding. Again, under Section 185(2), he has power to stop erection or re-erection or to demolish a building on land not under the management of the Board. Also, the Board cannot compound any building offence not violating a bye-law without the prior approval of the office of the GOC-in-C. Section 192 (I) gives him powers to close and open streets in the Cantonment.

14.5 Under the Cantonment Account Code, he controls the budget, expenses, losses, reappropriation, revision of establishment, etc. Similarly, under Cantonment Fund Servants Rules, he has the appellate and original powers.

14.6 All these powers have no relevance to the interest of the army stationed in the Cantonment. This historical accident had far-reaching effects against the democratization, decentralization and devolution under the Cantonments Act. Because of this historical accident, the Government's administrative machinery, the Director of Defence Estates at the command level had been made accountable to the GOC-in-C and not to the Government of India which is against the constitutional intention or design.

14.7 The role of the GOC-in-C needs a *de-novo* look as much of the powers are concentrated in him which can be decentralized and these being the purely local self-government matters, it can be left to the civil administration i.e., the Director (Defence Estates) and through him establish the accountability of the Central Government to the Parliament.

15. Taxation and Revenue

15.1 Cantonment Boards have powers to raise resources through taxation, fees, lease rent in respect of lands under their management and rentals in respect of properties belonging to and vested in the Board. Under Section 60 of the Cantonments Act, 1924, a Cantonment Board is empowered to levy within the Cantonment area, with the prior sanction of the Central Government, any tax **which may be levied by a municipality in the State in which the Cantonment is situated.** The main sources of income of a Cantonment Board are local taxes such as house tax (property tax), conservancy tax, water tax, lighting tax, trade and profession tax. Expenditure is mostly on establishment and contingencies connected with rendering civic services including maintenance of hospitals and schools.

15.2 The resources of the Cantonment Boards are limited as the bulk of the property in the Cantonment is government-owned on which no tax can be levied. The nature of the Cantonments is such that there is only limited trade and business activity and practically no industry. Thus, the Cantonment Boards are devoid of the resources which are normally available to any municipality of comparable size. Because of the restrictive nature of the land policy regarding the redevelopment of the old properties there has been very little building activity in the Cantonments. This has, further, reduced the possible income from property taxes, which, normally, constitutes the major source of income for local bodies. Cantonments are spread over large areas and the cost of providing civic amenities is, therefore, significantly more than in the municipal areas.

15.3 The Central Government provides financial assistance to Cantonment Boards in the shape of ordinary Grants-in-Aid to balance their budgets. Besides, since certain Cantonment Boards do not have adequate resources to improve the civic amenities, subject to the availability of funds in the Defence budget, limited Special Grants-in-Aid are made available to them for meeting the capital expenditure on this account.

15.4 Because of the financial constraints Government has not been able to provide adequate grants to the Cantonment Boards to improve their civic facilities to the desirable levels.

15.5 The annual consolidated accounts for the year 1998-99 showing the actual expenditure and income are placed as Annexure-III and Annexure-IV to this paper.

16. Article 285 of the Constitution and Service Charges in lieu of Tax

16.1 Under article 285 of the Constitution, properties of the Union are exempt from the State taxes. The Government of India had, however, agreed in 1954, to pay "service charges" to the local bodies in respect of Central Government properties falling within municipal limits, at rates ranging from 33-1/3% to 75% of the property tax payable to compensate the loss of normal income of local bodies due to the Constitutional ban on the State Government taxing Central Government properties. Though such payments were being made to municipalities, the Cantonment Boards were not being so paid. In 1982, the Ministry of Defence agreed to pay service charges to the Cantonment Boards. The rate of payment, however, was kept at the lowest slab of 33-1/3% of the property tax leviable. Thus, from 1983-84, Cantonment Boards have also been paid service charges. However, due to financial constraints only a part of the amount due to be paid to the Cantonment Boards by way of service charges could be released.

17. Administration of Cantonments

17.1 It will be seen from the above that in the administration of Cantonments there are four major constituents viz., the Government of India, the GOC-In-C the Command, the local military authorities in the Cantonment Board and the elected representatives of the residents. As the ultimate accountability to the Parliament at the apex level and to the people of the Cantonment at the cutting edge is that of the Government of India, the executive mechanism and the management information and control channel have by perforce to be a civil service under the Government of India. Therefore, the executive authority at the Cantonment level is an officer from the civil services under the control of the Ministry of Defence independent of the Army. He is the executive officer of the Cantonment Board ensuring the visible presence of the Government of India at the cutting edge and acts as the much needed balancing factor between the interests of the people and the army quartered therein. He is the secretary and advisor to the Board and the civil executive interface of the civil population. He reports to the Government of India through his channel i.e., the Director, Defence Estates at the command level and the Director General at Government of India level.

17.2 The public resentment that the Cantonment magistrates have *en bloc* became military estates officers and thereby control the Cantonment administration on behalf of the army also abated when these functions were assigned to the defence estates service [and its predecessor civil services] reassuring the citizen that he, like his peers elsewhere, is under the civil administration and not under the Army.

18. Current scenario and status of purely military stations

18.1 While major changes have taken place on the basic concept and methodology of warfare, and the role of the army in a developing society, the need for exposing the Army to local self-government philosophy and principles becomes all the more relevant. Even though the Cantonments were a historical necessity in the colonial context where the armed forces had to be insulated from the civil population, in the current day context there is a need for Cantonments for the very opposite reason not to insulate them from the civil population. In a national scenario where militancy, insurgency, low intensive conflicts bordering on war fought within the national frontiers and cross border terrorism, the army cannot operate in a sterile atmosphere without the support and empathy of the civil population. Evidence on record shows that during the turmoil in Punjab, the Cantonments were comparatively peaceful. In the Badamibagh Cantonment, the military areas were not attacked till they were walled off

insulating them from the Cantonment population and the Cantonment Board's Constitution was varied dispensing with elected representatives.

18.2 The number of Cantonments has remained static at 62. But the growth of military stations has become prolific spread over the length and breadth of India. Barring a few areas which need high security, the other military stations remain the same as the military areas within the Cantonments i.e., an area where military were quartered on training while not on operation duties. Another feature that has to be taken into consideration is that the majority of military stations are family stations where the army persons are allowed to keep their family with them. This calls for a structured local self-government environment and ambience to enable the family to have normal social intercourse with society and have the facilities of education, health, recreations and other amenities as are available to the civilian counterparts elsewhere. The civil military osmosis which is natural in the Cantonment stations in view of the close but controlled coexistence of civil and military population in a delimitated area where the health, welfare and discipline of the military personnel are the prime concern of the local self-government institutions may not be available in other local self-government areas like municipalities and Panchayat. Again, a military station creates scope for any number of economic activities or opportunities by way of providing trade, services, entertainment and other necessities of social and economic life. The peripheral growth around the military station by way of encroachments and uncontrolled settlements cannot be wished away. Also, the need for insulating the Indian Army from Indian citizen is not desirable either in peacetime or in period of internal militancy or even war. The empathy of the citizen is a great source of strength and morale for the troops and their families. The question of social and other costs – is an important factor to be taken into consideration in any decision to keep the army and the families insulated in a military station. The expenditure on providing facilities like education, medicare, shopping facilities, entertainment, transportation and other service facilities will have to be met from the Defence expenditure in an insulated military station whereas in Cantonments where civil population coexist with the military, these facilities are provided for by the civil population thereby reducing the overall costs on the Defence expenditure. The children and family of the soldier are not forced to live in an artificial, unnatural habitat.

18.3 Another issue that may crop up is that even though the Constitution has envisaged the union of States with a strong central pull, in reality we have come to recognize a federal polity with a centrifugal State pull. The Defence forces will however continue to be a Union subject under central control. In this evolutionary context, the need for Cantonments as a local self-government institution has to be anxiously examined.

18.4 Another important aspect is the necessity for the defence services to understand and respect Human Rights as their very roll exposes them to suspicion in any human right violation. Constant interaction with the civil population in a controlled environment of a Cantonment enable them to understand and get sensitized to respect human rights.

19. The other view

19.1 The contrary view is that it is not advisable to expose the army to civil population and allow them to mingle freely with them. Also, if the Cantonments should have a civil component, purely military stations cannot be covered under the Cantonments Act. Thirdly, from the security point, it is advisable to stick to military stations. It is also felt by some that there will be better control, uniform homogenous management of a purely military station strictly under army control. The army officers also do not want to get involved in the politics of the local self-government without proper background and adequate training. Therefore, they feel that the civil area should be excised and the Cantonments should either be purely military stations or with minimum civil population.

19.2 In 1980, the Committee under the then Financial Advisor, Nakra went into the issue of future of purely military stations. He advised that the military stations should have three components, the purely

military area, a buffer zone for purely commercial and service activity and civil area. This will introduce economies in scale and cost reduction in running military stations where much of the non-military expenditure can be absorbed by the civil component. In a sense, Nakra was for a forerunner of disinvestment in the Cantonment sector.

19.3 Cantonments, by customary definition, are places where the troops are quartered. If this is so, purely military stations are also, by definition, Cantonments. The Cantonment Act has accepted this definition. Section 13 (1) (iii) dealing with the constitution of Cantonments states that the Cantonments will be divided into the 3 classes. In Class III Cantonments, civil population does not exceed 2500. So, the military stations by popular definition as well as for the purpose of the Cantonments Act have to be grouped under Class III Cantonments as they any case contain certain civilian component. But, Section 3 dealing with definition of Cantonments requires the Central Government to declare it as such for the purposes of this Act.

19.4 Therefore, under the existing legislative framework, the purely military stations do constitute Cantonments but the Central Government has to make a declaration so that the Cantonments Act becomes operative in such stations.

20. Certain basic issues

20.1 The first question that needs to be addressed is (i) whether the Cantonments should be continued as a local self-government institution, and whether it should be restricted to 62 Cantonments as on date or whether it should be extended to cover all the military stations which are family stations and are non-operational.

20.2 The Cantonment Board itself has two components as local self-government institution. One part consists of ex-officio and nominated members including the State Government nominees. The other part consists of purely elected representatives from the various wards of the Cantonment including the military area. The elected component is supposed to be the voice of the people in the local self-government institution. The nominated members are supposed to look after the army interest. The law and order component and the interest of the State Government in this area are looked after by the District Magistrate representative. The mechanism has been so delicately fashioned that a fair and perfect equilibrium between the army, the State Government and the people are maintained. The Defence Ministry has no nominee in the deliberative body even though they are the propriety owners of total land in the Cantonment. However, Ministry of Defence is represented by the executive officer who is an officer of the Ministry of Defence, from the civil services recruited through the Union Public Service Commission, trained for the special job of the local self-government in an environment where the equilibrium between the civil population, State Government and the army people has to be constantly maintained.

20.3 The second question that arises is should there be a change in the existing structure and administrative set up and if so, in which areas the structure should change for improvement in the concept of local self-government as such. In this context, the definition of "local authority" under clause (31) of section 3 of the General Clauses Act, 1897 and the decision of the Supreme Court in the Municipal Corporation of Delhi Vs. Birla Cotton Spinning and Weaving Mills, Delhi and another (AIR 1968 SC 1232 at p.1254), are relevant. The General Clauses Act defines a local authority as one which is legally entitled to or entrusted by the Government with the control or management of municipal or local fund. The fund becomes an important condition. But the Supreme Court has in the far reaching judgement quoted above has encapsuled the essence of local self-government and states "local bodies are subordinate branches of governmental activity. They are democratic institutions managed by the representatives of the people. They function for public purposes and take away a part of the government affairs in local areas. They are political sub-divisions and agencies which exercise a part of

State functions. As they are intended to carry on local self-government, the power of taxation is a necessary adjunct to their other powers. They function under the supervision of the Government".

20.4 The Cantonments are like Union territories, a political sub-division and agency of the Central Government and exercise the state function. But, the fact that most of the Cantonments are situated in the territorial jurisdiction of respective State Governments cannot also be overlooked. The aspiration of the people of the Cantonments will be on par with the aspirations of the people of the State in which the Cantonments are situated. Hence, there should be harmony in the laws that are applicable to the people of the Cantonment and the laws that are applicable to the people of the State, of course, without jeopardizing the interests of the army quartered therein. Therefore, the administration of the Cantonment should be further democratized and decentralization becomes a core issue.

20.5 The Supreme Court in Union of India and others Vs. R.C. Jain and Others (AIR 1981 S.C. 951) has identified the important ingredients of local self-government: (i) It cannot be merely a governmental agency but must be legally independent agency, (ii) The representatives must be elected by the inhabitants of the area, (iii) It must enjoy a certain degree of autonomy, the freedom to decide for itself, questions of policy affecting the areas administered by it, the autonomy may not be complete and the degree of dependency may vary considerably but the appreciable measure of autonomy there must be, (iv) It must be entrusted by the statute the governmental functions and the duties as are usually entrusted to municipal bodies and (v) It must have the power to raise the funds for the furtherance of their activities and the fulfillment of the projects by levying taxes, rates, charges and fees.

21. Existing anomalies

21.1 The general view that the Cantonments are local self-government only in form and not in fact arise from the following:-

(i) that the Cantonments even by constitution under Section 13(3) of the Cantonments Act, 1924 tilts more towards bureaucratic character with military dominance. The Cantonment Boards cannot exercise complete autonomy as the elected members can be easily voted out with the casting vote lying with the President. It is also pointed out that the ex-officio President cannot be removed or suspended like elected Vice-President because there is no provision for his removal or suspension and his accountability is not spelt out.

(ii) Section 51 of the Act gives drastic over riding powers to the President of the Board to suspend any resolution, refer the matter to the GOC-in-C;

(iii) The role of the GOC-in-C is irrelevant in the context of the local self-government. Its continuation as a functionary does not serve any military purpose but forms the basis of the criticism that the Cantonments are not administered by the civil Government but by the military.

(iv) So, while the Cantonments are *de jure* autonomous local self-governments *de facto* the autonomy and therefore local self-government itself is illusory. In view of the structure as well as the powers that makes them more bureaucratic institution without any accountability. It is also contented that these statutory provisions suffer from "excessive delegation" for want of guidelines.

(v) Similarly, in case of certain appeals from the executive orders, section 274 read with Schedule V of the Act vests the powers with the Officer Commanding-in-Chief, the commander or the other authority authorized in that behalf by the Central Government. It is pointed out that when the Act is read as a whole, the Cantonment Boards are neither local self-governments in a strict sense of the term nor are they democratic. The questions of decentralization and devolution can come only after this basic intrinsic anomalies are resolved and necessary autonomy and democratic decentralization is provided for under the Act. The repeated demands of the elected representatives emanate from these restrictive clauses.

(vi) The Cantonments Act like any other municipal Act has provisions conferring powers of taxation, control powers in the interest of public safety, provisions relating to sanitation, prevention of disease, building activities, markets, licensing, etc. It has positive roles to play in running hospitals and dispensaries and institutions providing water supply, drainage and lighting, etc.

22. Centralization and control

22.1 One of the control areas which has impact on the citizen is the control of building activity. These activities are regulated by the local bodies under their bye-laws, rules and regulations. In view of the fact that most of the lands historically belong to army, and were given on grants or leases to civil population, the restrictive covenants especially in the so called old grants have rendered the Cantonment Boards role in building sanctions totally nugatory. While the Board has got the powers to approve the building plans according to building bye-laws, the GOC-in-C has been given powers to put embargo to prevent construction. The old grants because of the shifting policy of the GOI disable any citizen from carrying on building activities even according to the bye-laws. With the result, the authorized building activities are very limited and the bungalow areas in the Cantonment have become ghost towns.

22.2 For e.g., the GOC-in-C command, Pune has enforced an Floor Stage Index of one and point five in the civil area and bungalow area respectively of all the Cantonments in the Command without any assessment of the density, zonal plans, the available FSI in the neighbouring municipalities and the metropolitans. This embargo has stopped nearly all growth in many Cantonments where the private lands could not be developed. The complete absence of building activity in most of the Cantonments is one of the reasons for comparative low population growth in the Cantonment. Similarly, the shifting policies on the administration of old grants has resulted in the displacing persons by unplanned resumptions vast acres of lands which were not put to any military use. In the pre-independence era, military lands were managed under the Cantonment Land Administration Rules provided for leasing out lands for various tenures depending upon the surplus and availability of land. In the post-independence era, no lease has been sanctioned and the lands that have been resumed in 1970s, have only proliferated litigation and waste of land resumed which could have been gone for a more planned building activity even for military benefit through private capital.

22.3 The citizens main grouse against Cantonments mainly center around his inability to carry on normal building activity despite the availability of land vis-à-vis his counterpart in the municipalities.

22.4 The anatomy of Cantonment has three clear-cut areas, (i) the civil or bazaar area where residential, business and other service activities take place. (ii) bungalow area which is purely residential area where both army officers and the civilian gentry reside. This area contains maximum vacant land with maximum restrictions on building activity. (iii) the purely military area, the operational and soldiers' lines, residence, etc. The bungalow area can be utilized only for residential purposes. It contains mostly of old grants and other resumable tenures.

22.5 The British never envisaged total ban on constructions at any stage. They were interested in encouraging construction as additional house-stock will be available for the use of the army. Instruction of the army department dated 30th April, 1930 clearly States that in cases where the holder wishes to construct additional building on old grants sites or a shop or an outline part of the site by which the purpose of the grant is substantially altered there is no injustice or hardship involved by demanding a corresponding alteration of the conditions of the grants. In 1944, by another instruction, it was stated that no construction should be objected to just because they did not serve the military interest and the refusal shall be based on the positive injury to the military interest. But the post-independent scenario shows the total inability of the government to grasp the need for better land management and utilization of Cantonment lands. Initially, in 1968, it was decided to resume all sites and in the civil area if they

are not converted to leases to resume the same. This being directly in violation of the grant condition of military necessity as a precondition for resumption was abandoned in favour of the resumption on the basis of actual military requirement and the manner in which buildings will be resumed without restricting the occupants. In 1976, it was decided to permit conversion of old grants to freehold in the civil area. With a result, the bungalow area which has maximum area with minimum density started developing the symptoms of urban decay. You will find dilapidated building with minimum amenities dotting the whole of bungalow area where civilians reside. The bungalows resumed were also not put to use as the army did not actually need them.

22.6 The solution may be to divide the Cantonments scientifically as military areas and residential areas and allow modification and amendments of land tenures or more liberal permission to erect and re-erect buildings. This will also help to carry on zonalisation plans for development activities. The existing division of the Cantonments and restrictions imposed on construction will continue as one of the sources of discontent among the Cantonment population.

23. Finances and development – structural constraints

23.1 Once the building activity function is removed from the local self-government functions, what remains is the taxation and development activities. Property tax being the primary tax of local bodies has failed as income source even where normal building activity takes place. In Cantonments with negative growth, the triennial assessment does not show much of a potential for income growth. The Cantonments, therefore, depend mainly on central grants or service charges in lieu of Central Government properties. Because of the increase in the building activity in the military and the government area, the service taxes as a proportion of the total taxes is high. But as the service charges is not tax but bounty. The Boards could not depend on this as a regular source of income. For more than a decade, the developmental activity compare to the neighbouring municipality were at a low ebb. There is no scope for getting any money or grants from State Governments even in certain common tax like entertainment tax, octroi, entry tax, etc.

23.2 To redeem the situation, the government relaxed land policy to permit resumable sites to be converted into freeholds so as to trigger building activity in the civil area under the bye-laws without any restrictions and also to mobilize additional income by way of tax and other economic spin offs. But the permission to convert resumable sites to freeholds has to be given by the Government of India in the Ministry of Defence. Also, a No Objection Certificate has to be taken from the military even though in the civil area for the conversion. The over centralization and unnecessary condition for No objection from the military in the civil area has made the policy not take off. This has again resulted in unnecessary litigation.

23.3 The Ministry of Defence is not entitled to development funds in any financial distribution. Till 1996, Cantonments were under the budget of QMG. The effect was that the Cantonments therefore were effective denied access to various development funds earmarked for specific local self-government areas by the GOI and other world organizations like UNICEF, UNDP, etc. even for schemes like water supply, housing, drainage and other amenities. Therefore all planning for economic and social development, urban forestry, protection of the environment and promotion of ecological aspects, safeguarding the interest of weaker sections, slum improvement and upgradation, urban poverty alleviation, etc. could not be undertaken in the Cantonment areas.

23.4 Despite the constitutional provision for the devolution of funds, which are largely population based, from the Centre and the States, the Cantonment Boards were not included in the ultimate distribution vis-à-vis other local self-government organizations of the State Government. This created the avoidable disparities between the Cantonment and the Municipalities especially near the metropolitan towns. The Cantonments being under the Ministry of Defence suffered in the process in the field of revenue assignment. Unlike the municipalities, they do not have access to non-agricultural

assessment tax, entertainment tax, surcharge and stamp duties, surcharge and sales tax, duty on transfer of properties which are shared municipal taxes in India. The Cantonments depend only on their own municipal taxes. They are not entitled to many of the grants given by the State Government which are available to the municipalities for development purposes. The MOD do not have any provision for development oriented revenue distribution from their budget to Cantonment Boards. They have to depend mainly on the service charges that too at a lower rate compared to the State Government instrumentalities.

23.5 With the result, an analysis of the structure of municipal finance – mix of taxes, user charges and fee, transfers and loan - there is a large vertical imbalance due to inadequate own resources and horizontal imbalance within the State because of uneven access to resources, lack of high yielding and buoyant sources of revenue which seldom assigned to local government. The Cantonments above all suffer from systemic inefficiency because of centralized control over powers on land management which has resulted evenly in under-exploitation of own resources against high cost.

24. Reforms need for decentralization, etc.

24.1 The core problem of the Cantonments as local self-government is too much of bureaucratic and military interference even in areas which do not affect health, welfare and discipline of the troops. The military administration believes in Command and control which is anti-thesis of decentralization and devolution. At the Board level, it is the President Cantonment board, the military officer who has got supervisory control over the executive functions. In the deliberative area, the board is loaded with overwhelmingly nominated voice. The GOC-in-C command has assumed the powers of the Government creating thereby a diarchy. In all land matters, the military and the GOI have concentrated the powers in their hands. So, the problem is over centralization at two levels. One, the GOC-in-C and the other, the GOI. Both power centers are not easily accessible to citizens by the inherent features of army and Defence predominate. The only interface is the elected members at the board level and the Defence Estate Service at the administrative level. These interfaces are poor substitutes for decentralization. At best they may make the convey belt move upwards. The solutions perhaps lies in demilitarizing the Cantonment administration at all levels to an extent without disturbing the balance, or affecting the health, welfare and discipline of the troops. And, at the same time, delegation and devolution of powers at the administrative level to the Director (Defence Estates) at the appellate level and the Cantonment boards at the Cantonment level. The local government should be positioned not in the GOC-in-C command but either Ministry of Defence or one of the instrumentalities in the Department, preferably the Principal Director of the Command and all municipal functions should be the responsibility of the Board and Principal director of the Command and the functionaries with accountability to the Ministry of Defence and Parliament.

24.2 While there is a felt necessity for preserving Cantonment in the Indian context, radical reforms are called for if they have to survive as vibrant local self-government instrumentalities. Cantonments have come to stay as historical necessity. It has a positive factor in the military environment in a democratic set up, if purely military stations have to be brought under the Cantonment Act; then there is a need for declaring certain civil areas as part of the Cantonments. This will enable the much needed civil military interaction and inter-se confidence and relevance. The new military stations have their advantage in that the civil areas which will be included in the Cantonment has the advantage of not being shackled by out dated land tenures which will enable the local self-government to take roots faster and in the real sense of the term. As military interests are paramount in the Cantonment environment, the Station Commander and the nominated representative on the Board has to retain the role and position. This by itself will not weaken the democratic functioning of local self-government as the nominated members shall be participating as equals with the elected. This diarchy has to continue in a democratically defined zone. But the nominated members shall not be given over riding powers where it does not concern the military interests. The Nakra plan has to be studied in all seriousness as it has local economic spin offs and overall cost effective management of the military stations.

24.3 The role of the GOC-in-C in the scheme of the Cantonments Act can be dispensed with because the analysis of the various provisions of the Acts and Rules show that he is another focus of centralization in areas of local self-government which do not warrant a military authority of such stature to be bogged with routine problems that concern municipal administration. His role should be defined for effectively ensuring the interests of the military stationed in the Cantonment and he should be relieved of this additional burden of financial controller of Cantonments, control of the municipal staff and unnecessary appellate functioning. Again, it is retrograde step to continue two levels of government in the single organizational structure. The Central Government should continue to be the Government and the executive and administrative service under it for Cantonment administration shall be given the additional duties and responsibilities of the GOC-in-C command.

24.4 The land tenures obtaining in the Cantonment stations need drastic overhauling. Military purpose and public purpose shall advise the deprivation of property but this should be ensured by effective guidelines and in an institutionalized objective manner. The aim should be to see that the citizen does not suffer by arbitrary deprivation of his right to belly. The old grant conditions which are being interpreted to suit each situation needs to be examined and the regulations which are being more or less repealed by the Cantonment House Accommodation Act should be expressly repealed and a new Act placed for governing grant conditions to permit normal building activity under the Municipal laws, and the ceiling laws without let or hindrance. Surplus land should be taken over and given out on lease so that citizens are encouraged to settle in Cantonments in a planned manner facilitating creation of house stock which can be made available to the armed forces as and when required by strengthening the Cantonment House Accommodation Act.

24.5 The distinction between bungalow and civil area should cease for local self-government purposes and should be replaced by modern town planning strategies like zoning under a master plan, strict adherence to norms of construction of each zone, having the military needs present and future in view. Sufficient vacant land should be allowed inside Cantonment in a planned fashion for enlargement of military area as per laid down scales.

24.6 The Cantonment should be included in the developmental schemes, plans and programmes of the State Governments. The distribution of the funds between the States and Union of all funds that devolve ultimately to local self-government organizations shall devolve on the Cantonments as well.

24.7 The grouping of Cantonments are at present command based. The grouping should be either State based or zone based depending upon the geographical situation of the Cantonments. The Defence Estate Service should be restructured so that the delegation of powers of the Central Government in the interest of better local self-government could be made at different levels with necessary control mechanism. For e.g., the conversion of old grants into free holds could have been managed more effectively if the powers have been delegated with suitable guidelines at the Cantonment level or at the Director's level. Concentrating in the MOD has only defeated very objective of the policy.

24.8 One of the constraints facing the Cantonment was lack of access to plan finance as Ministry of Defence as a whole comes under the non-plan area. The first goal of any revenue reform is to ensure adequacy and growth of revenues, the finances, the basic civic needs of tax payers over a period of time. The Cantonments can source many of the projects from plan finance if they could access them for specific projects. But they are being treated as part of Ministry of Defence and have to face adverse discrimination vis-à-vis the other municipalities and other metropolitans who can negotiate with Asian Bank and World Bank seeking loans for water supply, sewage and other projects which provide the basic municipal necessities to which a citizen is entitled to.

25. Suggestions

25.1 As Cantonments come with the legislative competence of the GOI under Article 246 read with entry 3 of List I of the Seventh Schedule, the solution appears to be to bring the Cantonments under the administrative control of the Ministry which has something to do with the local self-government and can access plan finance and developmental grants and loans. It may be worth while considering that the Ministry of Urban Development and Poverty Alleviation as the most suitable Ministry for Cantonments. The Cantonments could be brought under the Ministry of Urban Development and Poverty Alleviation for planning and budget purposes and the mechanism should be worked out as in the case of Boarder roads and coastal guards which are not under the administrative control of Ministry of Defence but still function in the interest of Defence forces with the Ministry of Defence and army having their say.

25.2 The Cantonments should also be brought under the Part IX-A of the Constitution so that they can take the advantage of the benefits of district planning, metropolitan planning, the finance commission, assignment of taxes, duties, tolls and grants and aids from the State Government, prepare plans for economic development and social justice, etc.

25.3 To sum up, the need for Cantonments in the current scenario cannot be overemphasized. But, urgent reforms are overdue to ensure that the Cantonments are allowed to function as local self-governments *de jure* and *de facto*. The Constitution of the Cantonments should continue with the Station Commander as the ex-officio President and the Vice-President elected from the elective component of the Board. Total democracy with a civilian as a President will not be in the interest of administration which has the objective of protecting the welfare, discipline and health of the troops and related military interest. The demand for democratization is actually the demand for decentralization and powers to decide the development activities of the Cantonments as a whole without let or hindrance. Structural constraints prevent the Cantonment Boards to access plan finance and development funds available for municipal necessities merely because the Cantonments come under the Ministry of Defence, a non-plan area. As any increase in the Defence budget is viewed with suspicion internationally, it may be advisable to work out a mechanism by which the fund flow is not restricted but at the same time the military interests are also protected. Again, local self-government being the last priority of the Ministry of Defence and the armed forces, in situations of budgetary constraints the occum's razor falls on the Cantonments. Because of the external pressures, the Municipalities get larger share of service charges in military stations within their delimitation. If fund flow is assured, the Cantonments can be run as model local self-government organizations because of the expertise available in all areas - be it engineering, public health, education or other municipal functions. The Government of India's accountability is ensured by the presence of Civil Service executive at the cutting edge. What is needed is an enlightened approach to land tenures in the Cantonments which should have a developmental orientation.

25.4 The alternate scenario envisaged by Balwant Rai Mehta Committee will remove the say of the army in the civic matters of the locale in which they are quartered. But, the outgoes of the Defence budget for services provided will not be proportionally reduced. The costs would be higher, services may not be satisfactory. Again, in the context of growing militancy, acts of terrorism and other such conflicts within the borders and deployment of the army becoming a day-to-day necessity, insulating the army from the civil population totally will not be in their interest or in the interest of security of India in as much as the empathy of the civil population is a necessary morale booster and at the same time provides a balanced backdrop for easy and efficient intelligence flow.

25.5 In view of the above circumstances, the balance of convenience appears to lie in mending the institution of Cantonments than ending it.

QUESTIONNAIRE
ON
EMPOWERING AND STRENGTHENING LOCAL SELF-GOVERNMENT IN CANTONMENTS

[Note: Please attach additional sheets, if necessary]

1. There are 62 Cantonments, which are administered by Ministry of Defence under the Cantonments Act, 1924. There are more than 400 military Cantonments, which neither come under the Cantonments nor under municipalities. With the insertion of Part IX-A by Constitution *vide* the Constitution (73rd Amendment) Act, 1992, these military stations have to come under the delimitation of the municipalities. Should these military stations be delimited as Cantonments? Or should they be brought under the municipalities?

   As Cantonments ☐ As municipalities ☐

2. (a) The Cantonments are mixed townships for civil and military habitation. Should the army be completely isolated from civil population?

   Yes ☐ No ☐

   Should the army be allowed interaction with civil population in a controlled surrounding of the Cantonment in the overall national interest?

   Yes ☐ No ☐

3. What are the advantages and disadvantages that will accrue to armed force if they are kept insulated from the civil population in the present day context?

   (Not more than 200 words)

Views:

4. If purely military Cantonments should continue, then is there a necessity for continuance of 62 Cantonments under the control of the Central Government?

   Yes ☐ No ☐

5. If the Cantonments have proved to be a necessary instrumentality of the Central Government in a federal polity, then should it continue in the present form or need any changes?

   Present form ☐ Need a change ☐

6. (a) Should local self-government functions of Cantonment areas be handed over to the concerned State Government?

Yes ☐ No ☐

(b) If so, what should be the interface between the concerned state government and the central government for protecting the military interest?

(Not more than 200 words)

Views:

7. (a) Do you suggest purely elected bodies for administration of local self-government functions in Cantonments?

Yes ☐ No ☐

(b) Do you suggest continuation of the existing composition of Cantonment Boards as it is or any modifications in the existing set up?

Yes ☐ No ☐ Modifications ☐

8. What steps are essential to ensure the protection of military interest especially health, welfare and discipline of the troops stationed in the Cantonment if the Board consists of only elected representatives?

(Not more than 200 words)

Suggested steps:

9. Should the composition and functioning of the Cantonments be further democratized and MPs and MLAs representing the Cantonment constituency be given some say in the functioning of the Cantonment Board?

Yes ☐ No ☐

10. (a) One of the objections to the Cantonments Act, 1924 is that it is overtly democratic while covertly bureaucratic. Do you agree with this?

Yes ☐ No ☐

(b) If so, what corrective measures would you suggest to make the Cantonment boards truly local self-government organizations?

(Not more than 200 words)

Suggested measures:

11. The Cantonments come under the executive authority of the Government of India and legislative authority of Parliament. But the powers of the local government are centered in the GOC-in-C command giving the impression that Cantonments are not administered by the civil government but by the army. Do you think that the executive power of the GOC-in-C should be dispensed with in the scheme of affairs?

Yes ☐ No ☐

12. (a) If the GOC-in-C is dispensed with, to whom should the existing powers be transferred, the GOI or the Director General (Defence Estates) or any other functionaries of the Defence Estates Department

(Not more than 200 words)

Suggestions:

(b) Will this ensure better delegation and consequent de centralization?

Yes ☐ No ☐

13. On date, the Cantonments are geographically situated within the respective States but organizationally agglomerated under the command structure of the army.

(a) Is this a rational division?

Yes ☐ No ☐

(b) What are the problems that may arise by this structuring?

(Not more than 200 words)

Problems:

(c) What alternate regrouping can be suggested?

(Not more than 200 words)

Suggestions:

14. The station commander's role is very necessary in the Cantonment organization. He represents the military interests as the military head of the station. He has got supervisory authority over the executive. Should the executive officer of the Cantonment board be drawn from the state services or should he be from a civil service under the GOI?

(Not more than 200 words)

Suggestions:

15. There is a feeling that the executive should be under the control of the army and the executive officer of the Cantonment board shall be drawn from the E-in-Cs branch in the army headquarters with the station commander having supervisory control is this proposal relevant. Secondly, constitutionally can the executive authority of the President of India be represented by a functionary in the armed forces in a local self-government organization in the light of the Supreme Courts observations that local bodies are civil governments and form part of the state and are political entities?

(Not more than 200 words)

Suggestions:

16. (a) Should the Cantonment administration be so fashioned that the development and municipal rights of citizen should be on par with the citizens of the State?

Yes ☐ No ☐

(b) What measures are required for this?

(Not more than 200 words)

Suggestions:

17. (a) Will this enable Cantonment Boards to access resources available to state government for municipal purposes?

Yes ☐ No ☐

(b) Can Cantonment boards be brought within the dispensation of State Finance Commission?

Yes ☐ No ☐

18. Land tenures in the Cantonments are restrictive and have reduced the rights of the citizen to that of a licensee. Do you agree with this perception?

Yes ☐ No ☐

19. One of the main grievances in the Cantonments is that despite rational building bye-laws, the land tenures prevent the citizen from making constructions according to the bye-laws. Also, this has resulted in the lop-sided development in that the bungalow area cannot have any constructions despite low density and the civil areas get over crowded despite high density. What remedial measures are necessary to correct the situation?

(Not more than 200 words)

Suggestions:

20. Is there a scope for introducing new laws to substitute the old grants to make better use of land and effective land management?

Yes ☐ No ☐

21. The restrictive land tenures and over military intervention in building constructions has resulted in encroachments, growth of slums and unauthorized use of buildings for educational and other social purposes without adequate planning to fulfill the needs of the society? Will permitting constructions under building by-laws and permitting change in the grant conditions on application should solve the problem?

Yes ☐ No ☐

22. Should the distinction between bungalow and civil area be abolished as both are residential areas and for effective local self-government in Cantonments?

Yes ☐ No ☐

23. The development of Cantonments is tardy due to lack of local resources and incapacity to attract plan finance and development grants. What, in your view, are the reasons for the same?

(Not more than 200 words)

Views:

24. The Ministry of Defence by itself is a negative structural factor for attracting plan finance and development funds for the Cantonments Do you think that the Cantonments should be brought under Ministries like Urban Development and Poverty Alleviation instead of Ministry of Defence to strengthen the local self-government and ensure effective devolution of funds and expertise in the Cantonment development?

Yes ☐ No ☐

25. If the Cantonments should be brought under the control of a Ministry other than the Ministry of Defence, what mechanism should be devised to protect the military interests especially health, welfare & discipline of the troops?

(Not more than 200 words)

Views:

26. (a) The classifications of the Cantonments on date are three depending upon the population of the Cantonment and the constitution of the Cantonment Boards is also dependent on the classification. Would you suggest a change in the classification for effective representation of the population after the recent census?

Yes ☐ No ☐

(b) If yes, give detailed suggestions:-

(Not more than 200 words)

Suggestions:

27. (a) The development of future Cantonment to include the civilian population and commonly shared commercial zone will be in the interest of the armed forces quartered in the Cantonment. Do you agree with the view?

Yes ☐ No ☐

(b) Give reasons for your views.

(Not more than 200 words)

Reasons:

28. The Cantonments because of the size and the population are neither represented in the legislative assemblies nor in the Parliament? Do you think that the accountability of the Central Government to Parliament will be effectively enforced if Cantonments form a constituency by themselves as a whole for election of members to the Rajya Sabha?

Yes ☐ No ☐

29. The need for a trained local self-government civil service for effective administration of the Cantonments keeping the balance of interest of the army as well as civil population in the Cantonment cannot be over emphasized. What steps would you recommend to make the civil service independent of the local pressures and forces and accountable to the people and the Parliament?

(Not more than 200 words)

Suggestions:

30. What are the additional sources of income that can be locally raised by the local self-government organization like Cantonments?

(Not more than 200 words)

Suggestions:

31. An analysis of the financial statements of the Cantonment Boards reveal that nearly 35 Cantonments are deficit, and about 10 Cantonments have surfeit funds due to accumulation of service charges for which there is no matching developmental projects available on date. Under the present statutory dispensation, there is no scope for cross-funding. Would you suggest the constitution of a development authority through which the surplus funds can be canalized to the deficit Cantonments for development expenditure?

Yes ☐ No ☐

32. (a) Do you think there is a need for establishing a Cantonment development authority in whom all the lands should be vested and the constructions and developments and management of lands including the constructions (non-operational) for the army in a Cantonment should be established?

Yes ☐ No ☐

(b) Will such a development authority with necessary powers, expertise and directly answerable to the MOD be more cost-effective and ensure uniform development of Cantonments in a planned manner?

Yes ☐ No ☐

33. Will the Cantonment development authority enable to dispense with departmental engineering services for capital works and a more rational downsizing of MOD will be possible if only maintenance role is vested in the department?

Yes ☐ No ☐

34. Do you think that the Cantonment development authority be in a position to raise financial resources from the market on the guarantee of the vast land resources vested in it for construction purposes in the Cantonment for the army and other institutional needs of the Cantonment and thereby reduce considerably the expenditure on such construction from the Defence Budget?

Yes ☐ No ☐

35. Do you agree that the Constitution of Cantonment development authority will ensure optimal use of land, minimize land wastage and convert land into a factor of production than a dead asset as on date?

Yes ☐ No ☐

36. At present the function of the Cantonment Boards are divided into obligatory and discretionary. Should this not be municipal (basic) and developmental and the basic functions should not be made subject to availability of funds?

(Not more than 200 words)

Suggestions:

37. Please give details of any other suggestions/comments which you would like to make on Empowering and Strengthening local self-government in Cantonments.

(Not more than 200 words)

Suggestions:

ANNEXURE I
[See Para 12.7]

ANNUAL CONSOLIDATED ACCOUNTS FOR THE YEAR 1998-99
INCOME IN Rs. (Actual)

Sl. No.	Name of the Cantonment	Year of Estt. of Cantonment	Total area (In Acres)	Extent of Civil Area/ Private Land (In Acres)	Total Population as per 1991 Census	Class	Grant-in-aid given during 1998-99	
							Ordinary Rs.	Special Rs.
38	KHASYOL	1942	1535	–	9310	IIA	65,00,000	
39	KIRKEE	1817	3000	122	78323	I		
40	LANDOUR	1872	694	16	2907	IIC	35,00,000	
41	LANSDOWNE	1887	1414	26	7106	IIC	70,00,000	
42	LEBONG	1882	174	4	--	III	25,00,000	
43	LUCKNOW	1862	6807	72	50089	I		
44	MATHURA	1833	2676	12	9231	IIB		
45	MEERUT	1803	8299	346	96021	I		
46	MHOW	1818	4190	241	74987	I	40,00,000	
47	MORAR	1956	2746	276	27015	I		
48	NAINITAL	1878	588	5	1114	III	15,00,000	
49	NASIRABAD	1818	5665	226	42208	I		
50	PACHMARHI	1872	2475	68	10083	II	40,00,000	
51	PUNE	1817	2739	244	82139	I		
52	RAMGARH	1941	9305	7773	56264	I	70,00,000	
53	RANIKHET	1869	4176	167	16874	I	115,00,000	
54	ROORKEE	1853	1176	7	10877	IIB		
55	SAUGOR	1835	4049	135	37135	I	55,00,000	65,52,000
56	SECUNDERABAD	1806	10121	3000 (Pvt.) 236 (Civil Area)	171148	I		
57	SHAHJAHANPUR	1835	2379	10	19010	I		
58	SHILLONG	1885	491	43	11076	IIB	40,00,000	
59	ST.THOMAS MOUNT	1774	3192	190	39744	I		
60	SUBATHU	1875	586	27	3700	IIC	50,00,000	
61	VARANASI	1811	1168	35	15082	I		
62	WELLINGTON	1853	1648	107	19764	I	115,00,000	
					Total Grant-in-aid:		21,04,48,000	95,52,000

Class of Cantonment	No. of Members	Total No. of Boards
I	14	36
IIA	12	6
IIB	10	4
IIC	8	6
III	3	10
		62

ANNUAL CONSOLIDATED ACCOUNTS FOR THE YEAR 1998-99
INCOME IN Rs. (Actual)

ANNEXURE I
[See Para 12.7]

Sl. No.	Name of the Cantonment	Year of Estt. of Cantonment	Total area (in Acres)	Extent of Civil Area/ Private Land (in Acres)	Total Population as per 1991 Census	Class	Grant-in-aid given during 1998-99	
							Ordinary Rs.	Special Rs.
38	KHASYOL	1942	1535	--	9310	IIA	65,00,000	
39	KIRKEE	1817	3000	122	78323	I		
40	LANDOUR	1872	694	16	2907	IIC	35,00,000	
41	LANSDOWNE	1887	1414	26	7106	IIC	70,00,000	
42	LEBONG	1882	174	4	--	III	25,00,000	
43	LUCKNOW	1862	6807	72	50089	I		
44	MATHURA	1833	2676	12	9231	IIB		
45	MEERUT	1803	8299	346	96021	I		
46	MHOW	1818	4190	241	74987	I	40,00,000	
47	MORAR	1956	2746	276	27015	I		
48	NAINITAL	1878	588	5	1114	III	15,00,000	
49	NASIRABAD	1818	5665	226	42208	I		
50	PACHMARHI	1872	2475	68	10083	II	40,00,000	
51	PUNE	1817	2739	244	82139	I		
52	RAMGARH	1941	9305	7773	56264	I	70,00,000	
53	RANIKHET	1869	4176	167	16874	I	115,00,000	
54	ROORKEE	1853	1176	7	10877	IIB		
55	SAUGOR	1835	4049	135	37135	I	55,00,000	65,52,000
56	SECUNDERABAD	1806	10121	3000 (Pvt.) 236 (Civil Area)	171148	I		
57	SHAHJAHANPUR	1835	2379	10	19010	I		
58	SHILLONG	1885	491	43	11076	IIB	40,00,000	
59	ST.THOMAS MOUNT	1774	3192	190	39744	I		
60	SUBATHU	1875	586	27	3700	IIC	50,00,000	
61	VARANASI	1811	1168	35	15082	I		
62	WELLINGTON	1853	1648	107	19764	I	115,00,000	
					Total Grant-in-aid:		21,04,48,000	95,52,000

Class of Cantonment	No. of Members	Total No. of Boards
I	14	36
IIA	12	6
IIB	10	4
IIC	8	6
III	3	10
		62

CANTONMENT BOARD MEETINGS HELD DURING 1998-99

ANNEXURE II
[See Para 12.7]

Sl.No.	Name of the Cantonment	Ordinary	Special
1	AGRA	8	3
2	AHMEDABAD	6	-
3	AHMEDNAGAR	9	-
4	AJMER	1	-
5	ALLAHABAD	8	1
6	ALMORA	8	-
7	AMBALA	5	10
8	AMRITSAR	7	-
9	AURANGABAD	6	7
10	BABINA	5	5
11	BADAMIBAGH	-	-
12	BAKLOH	2	-
13	BAREILLY	3	2
14	BARRACKPORE	5	5
15	BELGAUM	11	3
16	CANNANORE	11	1
17	CHAKRATA	4	-
18	CLEMENT TOWN	3	3
19	DAGSHAI	6	-
20	DALHOUSIE	3	-
21	DANAPUR	5	1
22	DEHRADUN	9	-
23	DEHU ROAD	6	1
24	DELHI	13	2
25	DEOLALI	9	8
26	FAIZABAD	2	-
27	FATEHGARH	4	7
28	FEROZEPUR	2	2
29	JABALPUR	4	1
30	JALANDHAR	7	4
31	JALAPAHAR	7	-
32	JAMMU	4	1
33	JHANSI	7	-
34	JUTOGH	4	-
35	KAMPTEE	7	8
36	KANPUR	10	2
37	KASAULI	4	2

CANTONMENT BOARD MEETINGS HELD DURING 1998-99

ANNEXURE II
[See Para 12.7]

Sl.No.	Name of the Cantonment	Ordinary	Special
38	KHASYOL	2	1
39	KIRKEE	6	1
40	LANDOUR	2	-
41	LANSDOWNE	8	1
42	LEBONG	2	3
43	LUCKNOW	8	7
44	MATHURA	1	9
45	MEERUT	8	5
46	MHOW	5	7
47	MORAR	4	2
48	NAINITAL	7	-
49	NASIRABAD	4	-
50	PACHMARHI	3	1
51	PUNE	11	11
52	RAMGARH	9	2
53	RANIKHET	4	2
54	ROORKEE	9	-
55	SAUGOR	8	5
56	SECUNDERABAD	6	2
57	SHAHJAHANPUR	5	2
58	SHILLONG	11	6
59	ST.THOMAS MOUNT	8	8
60	SUBATHU	6	-
61	VARANASI	8	-
62	WELLINGTON	9	1

ANNUAL CONSOLIDATED ACCOUNTS FOR THE YEAR 1998-99
INCOME IN Rs. (Actual)

ANNEXURE III
[See Para 15.5]

Sl. No.	Name of the Cantonment	Rates & Taxes	Service Charges	Pounds & Hackney	Revenue derived from property	Military Conservancy	Misc.	Grant & Contribution	Extraordinary & Debts	Total	Opening Balance	Grand total
1	AGRA	4165079	30874036	161570	2644788	7774650	636910		1796983	48054016	14417032	62471048
2	AHMEDABAD	805231	18696084	--	8793682	757093	104794	1375000	446188	30980072	3670467	34650539
3	AHMEDNAGAR	7324493	5043161	89922	3948149	2492747	566107	11020000	1242720	31727299	18452422	50179721
4	AJMER	89782	4633924		33129	258824	709375	5666019	56407	11447460	432643	11880103
5	ALLAHABAD	623684	34828742	125885	9983457	6284215	231753	4909	13455086	65537711	4636243	70173954
6	ALMORA	48826	254631	4818	197148	1256658	19337	1400000	113361	3294779	1168601	4463380
7	AMBALA	1618315	18998072	50645	5430428	13773398	191568	23440826	78272	63581524	47881967	111463491
8	AMRITSAR	211172	7468681	5280	229341	8391342	60673		680035	17026524	3320748	20347272
9	AURANGABAD	4120981	62053	680	390927	440026	123998	8000000	1268165	17925177	13186311	31111488
10	BABINA	2152973	6932218	15325	2814525	8422951	169210		584209	21091411	15617173	36708584
11	BADAMIBAGH	905940	10779376	15896	1317476	20699849	17409850	3500000	6750	54635137	9723596	64358733
12	BAKLOH	76061	478364	3110	456030	1532552	51491	6000000	180641	8778249	2491849	11270098
13	BAREILLY	1228805	19476522	50090	8520082	5415307	306192	860547	34077863	69935408	4765493	74700901
14	BARRACKPORE	2088380	6093715	15463	1464322	4301737	137575	7000000	500070	21601262	13207571	34808833
15	BELGAUM	7980346	21413059	125398	13565273	2311198	1327832		101950433	148673539	83660963	232334502
16	CANNANORE	1025228		5703	728920	1081159	133695	2078622	1936411	6989738	972488	7962226
17	CHAKRATA	685282	198524	558	302449	2503630	36058	6000000	15230	9741731	1015980	10757711
18	CLEMENT TOWN	204978	726946	5950	441224	6090458	101021	5500000	396005	13466582	870801	14339383
19	DAGSHAI	113012	573471	-	303954	251486	269841	4500000	5200	6016964	4924086	10941050
20	DALHOUSIE	1071017	671712	948	480269	1847448	146958	5000000	980897	10201249	3335116	13536365
21	DANAPUR	469812	1569791	1484	3079832	1778436	464580	7500000	865010	15728945	1863036	17591981
22	DEHRADUN	5280827	21889699	98703	836196	3668780	231862	13145877	28848600	74000544	441245	74441789
23	DEHU ROAD	19253414	9064739		5129476	2902456	881810	2900000	19431640	59563535	11874662	71438197
24	DELHI	24363774	177314690	325127	43005532	2062248	571308	9390000	32178207	289210886	10653388	299864274
25	DEOLALI	11785067	6217615	165128	5830636	6219951	258400	13683263	3329050	47489110	2078348	49567458
26	FAIZABAD	105922	3990713	11467	285545	2349746	47862	6000000	11325	12802580	2993358	15795938
27	FATEHGARH	58905	12187960	11115	771767	2569089			9106187	24705023	2427149	27132172
28	FEROZEPUR	18640855	6590279	12121	1054298	18047674	342436	11520000	162308	56369971	14318210	70688181
29	JABALPUR	12583374	19421936	67026	5898074	11111141	701974	900972	1699525	52384022	44759425	97143447
30	JALANDHAR	36178025	19423900	110290	2439244	12910203	1786221	14028500	495531	87371914	9942231	97314145
31	JALAPAHAR	51204	554561		50512	1036673	46369	4500000	2142166	8381485	2723900	11105385
32	JAMMU	99335	3116064	3459	2029683	8151721	6100	3500000	230997	17137359	14051371	31188730
33	JHANSI	2714296	20557373	2729	16814945	6600777	592356		1698036	48980512	2818248	51798760
34	JUTOGH	69937	344128	420	179410	1209924	1964	4500000	14294	6320077	3866558	10186635
35	KAMPTEE	6212540	7369492	60277	446976	361909	320147	4553245	1204600	20529186	13984861	34514047

ANNUAL CONSOLIDATED ACCOUNTS FOR THE YEAR 1998-99
INCOME IN Rs. (Actual)

ANNEXURE III
[See Para 15.5]

Sl. No.	Name of the Cantonment	Rates & Taxes	Service Charges	Pounds & Hackney	Revenue derived from property	Military Conservancy	Misc.	Grant & Contribution	Extraordinary & Debts	Total	Opening Balance	Grand total
36	KANPUR	8211805	59676935	27638	2761418	3702241	1863702	-	63501244	139744983	8728077	148473060
37	KASAULI	973895	1278273	75	2340230	978712	264212	7500000	267149	13602546	4569246	18171792
38	KHASYOL	387804	1024333	1826	126446	4302500	59635	6500000	224904	12627450	885194	13512644
39	KIRKEE	70508416	90253265	5561	24920940	9526311	1782148	7865904	40932191	245794736	10481701	256276437
40	LANDOUR	284743	134620		247963	93296		3500000	836920	5097542	1393786	6491328
41	LANSDOWNE	733127	1446216	600	587657	1784869	317010	7985023	138673	12993175	5316473	18309648
42	LEBONG	12155	307067		36635	1036519	45550	2500000	3699034	7636960	1590983	9227943
43	LUCKNOW	1997988	53525031	218068	1482107	13075471	391736		59367649	140058030	11559008	151617038
44	MATHURA	93317	8566920	38406	1539023	6782922	38157		9089900	26148645	1137600	27286245
45	MEERUT	4820082	29662990	11535	32738072	8244912	337287	2634160	73413353	151862411	19319133	171181544
46	MHOW	17171429	35324563	298853	2156347	7000000	1485050	4690000	347642	68473884	7858709	76332593
47	MORAR	108816	4397078	4941	717506	677676	121805		232730	6260552	9910272	16170824
48	NAINITAL	175789	1590680	700	250395	1043719	871	1500000	35631	4597785	2730354	7327869
49	NASIRABAD	33286773		3494	2800642		177663	357000	27129991	63755563	1029770	64785333
50	PACHMARHI	2193035	2471104	17934	1192194	792875	51381	4064981	2540629	13324333	616973	13941306
51	PUNE	92227563	45392863	5800	28589092		4489401	723071	85127221	263062656	13803024	276865680
52	RAMGARH	2777005		9135	2929209	3771863	1770823	7000000	357424	18615459	2892476	21507935
53	RANIKHET	3618692	1614932	5210	1139969	2665432	306060	12578767	13783036	35712118	1277198	36989316
54	ROORKEE	109694	22941704	20948	1210911	7915632	35090		8836412	41070391	1825357	42895748
55	SAUGOR	8826585	8399360	29573	1205593	5659532	204751	13440302	3061017	40826713	2531236	43357949
56	SECUNDERABAD	73216949	74410113		28858524		4548407		116529504	297565497	21783731	319349228
57	SHAHJAHANPUR	91458	4326546	3487	831812	3249691	34256		1465306	10002556	2550519	12553075
58	SHILLONG	555815	1056930		2302666	3191960	224383	4546419	1388969	13267142	2960063	16227205
59	ST.THOMAS MOUNT	14972415	33895950	29	5765558	3000000	3484350	8229764	32636119	101984185	5712296	107696481
60	SUBATHU	197950			802913	599178	158499	5000000	64892	6823432	2760044	9607476
61	VARANASI	1300047	5885563	14960	668020	1784372	777191	165059	661553	11256765	2143846	13400611
62	WELLINGTON	913671	2548796	700	677802	3491032	704379	11500000	5421024	25257404	222264	25479668
	TOTAL	514175870	987952063	2266040	312295692	271238171	52663424	306255915	812258719	3259105994	534160873	3793266767

ANNUAL CONSOLIDATED ACCOUNTS FOR THE YEAR 1998-99
EXPENDITURE IN Rs. (ACTUAL)

ANNEXURE IV
[See Para 15.5]

Sl. No.	Name of the Cantonment	General Collection of Revenue & Funds	Original	Maintenance	Public safety	Medical Service/ Sanitation & Military Conservancy	Public Instruction	Contribution for general purpose, Pension & Gratuities	Water supply under agreement	Misc.	Extraordinary & Debts	Total	Closing Balance	Grand total
1	AGRA	2895250	168345	7593459	3594977	26061967	2678073	6900000	4969622	456197	223124	55541014	6930034	62471048
2	AHMEDABAD	1125498		4116796	1249214	4332825	2846095	685005	136538	1505419	13471526	29468916	5181623	34650539
3	AHMEDNAGAR	1304324	103008	3460220	1287615	10166959	3790148	2888741	1744204	395330	3919245	29059794	21119927	50179721
4	AJMER	478610	1212000	1768022	259084	2349391	3594	249008		202170	5099607	11621486	258617	11880103
5	ALLAHABAD	1688830	789240	4140074	2231912	14858854	2972978	3719072		265740	35220940	65887650	4286304	70173954
6	ALMORA	528046		101897	318905	2193929	3981	129354	12188	65482	101021	3454803	1008577	4463380
7	AMBALA	2484969	2749038	5598257	4642221	17045172	2998145	7247424		1122069	61116257	105003552	6459939	111463491
8	AMRITSAR	985268		205932	641560	12911719	964797	388312		90472	626231	16814291	3532981	20347272
9	AURANGABAD	1255152	9614167	1428102	725708	5181046		1408712	6143	152299	1165899	20937228	10174260	31111488
10	BABINA	2606385	2310344	5866740	858962	18161292	957401	704917	732812	146209	527998	32873060	3835524	36708584
11	BADAMIBAGH	1783643	4579621	3216315	2537861	15588770	82198	1341343		67650	6456657	45654058	18704675	64358733
12	BAKLOH	643498	1347000	948079	271961	3854962	1499205	1002898	27587	78751	175715	9849656	1420442	11270098
13	BAREILLY	1798179	2120075	10631014	5146802	17076915	4033818	3699551		160407	20506385	65373146	9327755	74700901
14	BARRACKPORE	1404757	2070978	2197815	1011814	10829534	1479138	1864185		507710	10385571	31751502	3057331	34808833
15	BELGAUM	1391528	8227081	3076846	1529865	6710376	1986064	2892055	7752214	327435	98594037	132487501	99847001	232334502
16	CANNANORE	671052	1027416	441075	197503	1834693	12899	183840		101771	2703365	7173614	788612	7962226
17	CHAKRATA	1473665		1181575	666356	3318235	1547846	1045791	5800	52857	9960	9302085	1455626	10757711
18	CLEMENT TOWN	470527	507503	1315709	796029	8511527	827089	750945		118536	405610	13703475	635908	14339383
19	DAGSHAI	649034		549498	890760	3065871	5095	666571		91100	47475	5965404	4975646	10941050
20	DALHOUSIE	1135525	1654489	1221568	1020939	4934877	776799	370714		105862	925995	12146758	1389607	13536365
21	DANAPUR	1473435	595723	650303	1034921	8273213		1360000	85282	89162	115760	13677799	3914182	17591881
22	DEHRADUN	5347605	2573198	5903093	2690344	20822085	4376144	3350973	221288	185633	28067881	73558444	883345	74441789
23	DEHU ROAD	6339129	5444704	2624262	1493342	14600498	8813648	3292398	4927707	415373	15987588	63938649	7499548	71438197
24	DELHI	4432234	8993456	13968235	12702238	42875004	15685032	6767156	166527	403657	173551633	279545172	20319102	299864274
25	DEOLALI	3267899	1206024	6598243	2854496	19379442	7659027	4708375	8878	203932	1548737	47435053	2132405	49567458
26	FAIZABAD	862035	859222	964457	954704	8400620	941470	853360		183312	24787	14043967	1751971	15795938
27	FATEHGARH	1275534	51189	1978828	808764	7296903	1456997	546758		462321	10775072	24352364	2779808	27132172
28	FEROZEPUR	7375692	6995265	9292394	4487832	28421451	2328555	5188535		618421	333153	65041298	5646883	70688181
29	JABALPUR	3534570	337041	26197970	2768265	21444302	3810112	4817640	914430	312791	31481663	95818784	1524663	97143447
30	JALANDHAR	10038740	1332765	4435959	3655088	34588320	10922945	7740315		675881	2372608	75962619	21351526	97314145
31	JALAPAHAR	259707	1620254	591693	615589	1875313	302637	863879		49685	3056295	9235052	1870333	11105385

ANNUAL CONSOLIDATED ACCOUNTS FOR THE YEAR 1998-99
EXPENDITURE IN Rs. (ACTUAL)

ANNEXURE IV
[See Para 15.5]

32	JAMMU	1199912	1216144	1461789	697169	11377522		810384		123943	198147	17085010	14103720	31188730
33	JHANSI	3998909	4542908	7480028	1311733	19959568	1927048	4967278	384338	513757	858934	45944501	5854259	51798760
34	JUTOGH	775362	981306	119267	194277	2057613	1476349	751502	60151	36850	10000	6462677	3723958	10186635
35	KAMPTEE	1155986	1228596	2338347	392652	5446089	1086608	224096	1456093	137427	2571583	16037487	18476560	34514047
36	KANPUR	3483674	577768	28280512	5448670	28649408	3647873	8041748		538196	812993	79480842	68992218	148473060
37	KASAULI	1716028		1118096	896628	5716060	836139	946030		108089	490823	11827893	6343899	18171792
38	KHASYOL	1154434	90885	186299	279927	4990107	3810800	1615163	31971	35272	293916	12488774	1023870	13512644
39	KIRKEE	15731085	4978091	14469600	10581633	36521268	13729069	4613590	2654562	1154720	142867042	247300660	8975777	256276437
40	LANDOUR	589989	266100	2424018	173797	1711948	492	209898	276591	101673	19950	5774456	716872	6491328
41	LANSDOWNE	1402611	1026709	1144444	590209	5431367	1846794	1807390	532938	150658	279873	14212993	4096855	18309648
42	LEBONG	282219	315000	139807	135895	1777124	281547	949568		20455	4578516	8480121	747822	9227943
43	LUCKNOW	2146140	5730547	23920929	5944931	37375973	3595135	5446269	552164	592147	46156490	140460725	11156313	151617038
44	MATHURA	804972		1780079	1178702	10699477	935766	2975248		92128	7726320	26192692	1093553	27286245
45	MEERUT	5069245	4069570	41940549	10120707	43291531	7518651	14563135		541958	24244338	151359684	19821860	171181544
46	MHOW	3998625	841742	9970509	2811149	20971374	6975734	9441016	3508109	456107	161374	59135739	17196854	76332593
47	MORAR	696499	573398	3770182	557069	3664498		1938727		55354	382559	11638286	4532538	16170824
48	NAINITAL	688408	595490	238951	335507	2319708	179954	714216		71136	30989	5174359	2153780	7328139
49	NASIRABAD	5488903		5009629	985955	10379945	10000	5045000	2130458	241156	34067457	63358503	1426830	64785333
50	PACHMARHI	1027091	798429	927340	285124	4645578	1034366	1297670		71094	721691	10808383	3132923	13941306
51	PUNE	5497242	4418503	38375464	9965762	39857294	18251596	10202594		3395293	95631355	225595103	51270577	276865680
52	RAMGARH	1363649	374088	739644	366004	11482922	2441008	2515397		213500	485677	19981889	1526046	21507935
53	RANIKHET	3990703	1674770	1013740	2043347	11325804	2625260	2898899	1224865	186816	10007017	36989221	95	36989316
54	ROORKEE	973847	2067862	2200842	1291262	9269825	4461388			131866	18010000	38406892	4488856	42895748
55	SAUGOR	4316941	1510946	1697677	1119411	10459966	4336979	2418949	966726	342390	1585338	28755323	1462626	30217949
56	SECUNDERABAD	4355550	595070	49858226	7429544	45887788	3300	8466568	43099841	671037	150926040	311292964	8056264	319349228
57	SHAHJAHANPUR	885571		1422053	610394	4702104	499337	890640		104159	1701098	10815356	1737719	12553075
58	SHILLONG	1326681		995277	547278	5289047	889661	308830	57947	184300	5040121	14639142	1588063	16227205
59	ST.THOMAS MOUNT	2562236	1514088	13289383	1967154	15143024	11197870	5158028	2392976	254772	50698861	104178392	3518089	107696481
60	SUBATHU	833534	125000	730806	405267	3218448	5000	847429	39957	73681	94644	6373766	3233710	9607476
61	VARANASI	680675	437009	1325061	672509	5778725	1131165	1092428		184657	550845	11853075	1547536	13400611
62	WELLINGTON	1373811	492892	4487864	734143	11552002	1731934	1523288	27920	424586	2997941	25346381	1133287	26479668
	TOTAL	150551052	109532057	404120840	134219450	827919182	182228753	180506796	81108827	20522801	1133219725	3233929483	559337284	3793266767



NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

EMPOWERING AND STRENGTHENING OF PANCHAYATI RAJ INSTITUTIONS/AUTONOMOUS DISTRICT COUNCILS/TRADITIONAL TRIBAL GOVERNING INSTITUTIONS IN NORTH EAST INDIA

* The views expressed and the suggestions contained in this paper are intended for the sole purpose of generating a public debate and eliciting public response.

December 21, 2001
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Advisory Panel

on

Decentralisation and Devolution;
Empowerment and strengthening of
Panchayati Raj Institutions

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Chairperson

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Members

- Dr. Abid Hussain
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Dr. Raghbir Singh

FOREWORD AND ACKNOWLEDGEMENTS

This Consultation Paper on 'Empowering and Strengthening of Panchayati Raj Institutions/Autonomous District Councils/Traditional Tribal Governing Institutions in North East India' is partly based on two papers, namely the paper prepared by Dr. Bhupen Sarmah of the Omeo Kumar Das and the other paper prepared by the Institute of Social Change and Development and Prof. Apurba Baruah of the North East India Social Science Congress (NEISSC) (see at Annexures I and II respectively), for the Commission. The Paper was also developed out of the various memoranda received by the Advisory Panel from organizations, State Governments, traditional institutions, communities and individuals as well as interviews and fieldwork conducted by Shri Sanjoy Hazarika, member of the Advisory Panel.

The Advisory Panel discussed and modified the Consultation Paper written and edited by Shri Hazarika. The conclusions and suggestions have grown out of collaborations with the Omeo Kumar Das Institute, NEISSC and Shri P.A. Sangma, Member-in-charge.

The Papers prepared by the Omeo Kumar Das Institute and NEISSC are attached as Annexures I and II respectively to this Consultation Paper.

Special help and responses in this study were received from the State Governments of Mizoram, Tripura, Meghalaya and Assam but no responses were received from Arunachal Pradesh, Nagaland and Manipur. The Commission also wishes to acknowledge the contributions made by traditional governing systems of the Khasi Hills of Meghalaya, the office of the Durbar Hima Mylliem, Shillong, and the Council of Nokmas, Tura; the Khasi, Jaintia and Garo Autonomous District Councils; Lai, Mara and Chakma District Councils in Mizoram; Tripura Tribal Autonomous Area District Council; Sixth Schedule Demand Committee (Manipur); the Mara Democratic Front; Mara Students' Organisation; Mara Thyutilia Py; Hmar Peoples Convention; Hmas Students Association; Young Mizo Association; various village council heads and members; vice-chairman, High Powered Committee; various District administrators and police officials in the North East; Khasi Students' Union and other student unions in the North East.

The Commission places on record its appreciation of and gratitude to Shri Hazarika, Dr. Sarmah and Prof. Baruah for their contribution.

CONTENTS

Chapters		Pages
I.	Historical background	1143
II.	Local self-governing institutions in the North Eastern States	1145
	A Nagaland	1145
	B The Sixth Scheduled States	1147
	C Non-Sixth Schedule States which have called for extension of the Sixth Schedule	1156
	D Non-Sixth Schedule Staes	1156
	E General Suggestions	1158
	F Specific Statewise suggestions for change	1160
	G General Observations	1162
	Questionnaire	1163
	ANNEXURE – I	1165
	ANNEXURE – II	1184
	ANNEXURE - III	1210

CHAPTER I

Historical Background

The North East of India, home to numerous diverse communities and located strategically with borders with Bhutan, Tibet/China, Myanmar and Bangladesh, has seen much violence and bloodshed over the past few decades. These include insurgencies in the States of Nagaland, Mizoram, Manipur, Tripura and Assam and the growth of militant groups in Meghalaya. In addition, there are conflicts and confrontations over land use and control as well as issues of language, identity formation, demographic change and minority-majoritarian relations. Every year, the Brahmaputra and its tributaries flood the Assam and Barak valleys, displacing millions of people and destroying property worth crores of rupees. Yet, these rivers also bring fertility to their banks, a result of fresh silt deposits[1].

1.1 Alienation from the rest of India, misgovernance and corruption as well as underdevelopment are stated as common frustrations in this region which is one of the richest regions in terms of natural resources in India and also one of its most beautiful part. Ironically, the area has also become among the poorest in income levels and the incidence of rural poverty is growing[2].

1.2 To tackle the problems of this unique area and to preserve the democratic traditions and cultural diversity of its people whose ancestors have come from distant South East India, Tibet as well as from other parts of India, the framers of the Constitution conceived of the instrument of tribal self-rule. This stands embodied in the Sixth Schedule to the Constitution of India. The drafting of this Schedule was done by a Sub-Committee on North East Frontier (Assam Tribal and Excluded Areas) of the Constituent Assembly headed by Shri Gopinath Bardoloi, the then Premier of Assam. The effort was to accommodate the collective aspirations of tribal communities within the broader framework of a democratic political system characterized by centralized powers, in a situation characterized by a mix of apprehension, confusion and hope in the days immediately preceding the adoption of the Constitution of India[3].

1.3 The Sixth Schedule operates in parts of Assam, Mizoram and Tripura and throughout the State of Meghalaya. Earlier, Arunachal Pradesh (known earlier as North Eastern Frontier Agency) was also part of the Sixth Schedule and administered by the Governor of Assam as the agent of the President. But currently, Assam (barring the two districts covered by the Sixth Schedule), Arunachal Pradesh, Manipur and Sikkim have passed legislation bringing local bodies under the 73rd and 74th Constitution Amendments (i.e. three-tier Panchayati Raj system and Nagarpalikas).

1.4 This area with its large number of (tribal) communities[4] and emerging educated elites of recent origin has a peculiar political history. Most of these communities have self-governing village councils and are organised as tribal chiefdoms even during the late British period. Nation and State formation was virtually absent and even in the most advanced area of the region, ruled then by the Ahoms, the economy was monetised only by the British[5]. But the effort should be to give all States the opportunities provided by the 73rd and 74th Constitution Amendments. This should be done with respect to their unique traditions and genius, without tampering with their essential rights and giving each State the chance to use its own nomenclature for such systems of governance, which will have local acceptance.

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[1] Flood figures of the Ministry of Finance.
[2] Basic Statistics, 2000, North Eastern Council, Shillong, Meghalaya.
[3] See Hansaria, Sixth Schedule to the Constitution of India.
[4] See K.S. Singh, People of India series, Introductory Vol.
[5] See Alamendu Guha, Planter Raj to Swaraj, Peoples Publishing House, New Delhi.

1208 LJ&CA/2002—25A

1.5 There are a slew of Constitutional clauses and complex laws developed by Parliament which seek to deal with the complexities of the North East. But how effective have these been? What systems and segments of the Constitutional provisions have been effective? Which have not? What are the possibilities of changes or reform in those areas which should be considered to bring self-governance and greater responsibility, both political and social, back to the ground level?

1.6 Our efforts, surely, must be to develop those instruments of political government through the framework of the Constitution which brings self-governance to the region and confront the false hopes and angers generated by forces proposing disintegration. The future of the States of North East India, in political terms, hinges on those seeking and choosing self-governance over those seeking separation.

1.7 Over the past decades, the systems of local-governance promoted under the Sixth Schedule have been seeking to guarantee political dominance for backward groups, better local governance at the community level, better economic development and ethnic security for those who feel threatened by large scale influx of illegal migrants and even settlers from other parts of India.

1.8 There are other regions in India which also have large populations of tribals, outside of the North East. These areas are covered by the Fifth Schedule and are protected by the Central Government in a paternalistic manner. This is totally different to the Sixth Schedule States where the emphasis is self-rule because many of the communities inhabiting these areas had ruled themselves until the British subjugated them in the 19th century.

1.9 Indeed, this has led to strong tribal political formations in the North East and weaker movements in Central and Northern India. Thus, until 2000, only the North East had tribal states which were ruled by tribal elites. Formation of the new States of Chhattisgarh, Jharkhand and Uttaranchal will bring considerable changes to the scenario.

1.10 But the issues of emotional, physical and political distance and alienation still remain. The Constitution is an enabling document which provides a framework for solutions. The latter, in the final analysis, is in the hands of people and the Governments they elect, at the national, state and local levels.

1.11 Constitutions by themselves cannot make for good people. But they can and should provide the framework for good governance and good conduct for governments and societies, in the sense that social and political realities are reflected in the framework of governance. In these times of democratic governance, both here and elsewhere in the Review of the Working of the Constitution, the effort has been to give the greatest degree of individual and community independence in terms of decision-making and implementation. This Paper aims at developing interest, generating information and involvement in such a process of review leading to change. Without such involvement, no proposal, no matter how laudable or important it may be, can work. But these do provide, we believe, a basis for discussion and public debate especially within the North East. We seek their dissemination as widely as possible, through the media and other fora.

1208 LJ&CA/2002—25B

CHAPTER II

Local-Self Governing Institutions in the North-Eastern States

2. Structuring

This Chapter is divided into the following parts:-

A. Nagaland
B. The Sixth Schedule States[6]
   i. Assam
   ii. Meghalaya
   iii. Tripura
   iv. Mizoram
C. Non-Sixth Schedule States which have called for extension of the Sixth Schedule
D. Non-Sixth Schedule States
E. General suggestions
F. Specific State-wise suggestions for change
G. General observations.

2.1 A. NAGALAND

2.1.1 In response to an influential and politically organized popular movement for separation, the State of Nagaland was created in 1963. Despite 38 years of existence, the creation of the State and the manner of its creation continues to divide Naga society with an influential group still opposed to its formation, saying that it is not sufficiently representative of all Nagas[7]. Others have made their peace with the Government of India, accepting the ground reality but taking little responsibility for the functioning of the administration[8]. However, others who are still fighting for a separate Nagalim (Naga homeland) continue to influence the politics not only for the State of Nagaland but the country as a whole. The result is an administration and a society in a state of acute dysfunction, with confrontation, violence, inefficiency and corruption ruling: in short, a complete failure of governance.

2.1.2 Constitutionally, Nagaland is a case apart, even from other North Eastern States with the passage of article 371A of the Constitution [enacted by the Constitution (Thirteenth Amendment Act), 1962] which specifies that no Act of Parliament in respect of (i) religious or social practices of the Nagas, (ii) Naga customary law and procedure, (iii) administration of civil and criminal justice involving decisions according to Naga customary law and (iv) ownership and transfer of land and its resources shall apply to the State unless its Legislative Assembly by a Resolution so decides. This provision gives such powers including the right to deny the Government of India prospecting/mining rights to the Nagaland Government which few other States have in India.

2.1.3 In addition, the Governor of Nagaland has special powers to act with regard to internal disturbances, powers which are virtually unchallengeable. The administration of Tuensang District, in particular, has been singled out for special attention and direct control by the Governor in the Constitution [articles 371A(1)(d) and 371A(2)(a) to (g), both inclusive]. Setting

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[6] The National Commission to Review the Working of the Constitution has gone into the details of the Karbi Anglong/North Cachar Hills Autonomous District Councils as well as the Autonomous District Councils of Meghalaya as the former have maximum powers among the District Councils of the North-Eastern region and the latter have extremely unique problems.

[7] See Asielie Pusa, Politics in Naga Society – the Inter-Tribal relations, Phd. Dissertation, NEHU, 1996.

[8] Various Statements of the Naga militant groups about State Government published from time to time in various newspapers.

up of a Regional Council for Tuensang is provided for [in sub-clause (d) of clause (1) of Art. 371A].

2.1.4 Further, there is the Nagaland Tribe, Area, Range and Village Council Act of 1966 which provides for the creation of such Councils - a tribal council for each tribe, an Area Council for Kohima and Dimapur, a Range Council where there is a recognized range in the Mokukchung and Kohima Districts and Village Councils for one or more villages in Kohima and Mokokchung, wherever they may be deemed necessary by the Deputy Commissioner.

2.1.5 The Nagaland Tribe, Area, Range and Village Council Act is a highly centralised piece of legislation which vests enormous powers in the person of the Deputy Commissioner of the respective districts and gives local bodies little or no effective role in managing their own affairs[9]. Little wonder that neither this nor the Regional Council mentioned previously has played any significant role either in social formation or development[10]. Indeed, few of them have ever been set up in the past nearly 40 years of the existence of the provisions on the statute book.

2.1.6 Because of a complicated political situation, caused by turmoil, a sense of identity as well as violence, there is little sense of ownership of these systems. An exception, to a degree, is the innovative Village Development Board (VDB) scheme which was started in the 1970s. This was set up initially by the State Government to enable village councils to function effectively and autonomously, with some basic funds put at their disposal to use as they felt best. Later, the VDBs began receiving Central funds and currently about 1,000 of them are functional with assets totalling about 20 crore rupees[11]. Yet, this is only a tiny fraction of the funds made available to the State and indicates the attitude in the ruling elite toward self-governance.

2.1.7 In the case of Nagaland, the relevant questions relate to the following [some of the suggestions are valid for the rest of the North East, including Sixth Schedule and non-Sixth Schedule States]:-

(a) Whether parts of article 371A and the 1966 Act should be merged to make them a more effective and useful legislation?

(b) Whether, with the existing ceasefires between the Government of India and the principal militant groups and growing areas of peace in the State of Nagaland since 1997 and the attendant possibilities for greater decentralisation and more devolution of powers, the time has come to review the extraordinary powers of the Governor and reduce those powers; if so, to what extent?

(c) Whether the Regional Council specified in Article 371A (which has never been set up) and the other Councils should be disbanded and their place be taken by a combination of elected representatives of Naga civil society organisations which have greater acceptance among all political and ethnic groups of the Naga people and that elections to such bodies be held every five years and whether the name of such a representative organisation and its local bodies should be decided in consultation with the Naga civil society organizations and the State Legislature?

(d) These autonomous bodies could be Constitutionally protected from interference from the State Government; the State Government may not have direct control over these institutions and provision for Central funding for Plan expenditures should be incorporated.

(e) Funds could be sent to these bodies for Plan expenditure and local development work, on a range of subjects for which the Karbi Anglong Autonomous District Council be taken as a model, and disbursed according to this panel's recommendations.

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[9] See The Nagaland Tribal, Area, Range and Village Councils Act, 1966, section 3(d) empowering the Deputy Commissioner to establish village councils in Kohima and Mokokchung districts only where he deemed it necessary.

[10] Horam M., Naga Polity, BR Publishing Corporation, New Delhi, 1975.

[11] Discussion with A.M. Gokhale, former Chief Secretary, Nagaland, December, 2000.

(f) Whether such local bodies should review the use of State projects and public funds, affecting the development of areas within the local bodies and covering projects in the infrastructure sector such as roads, highways, bridges, drinking water projects, health and education facilities, bringing a greater sense of ownership and responsibility to local communities.

(g) Such bodies be given responsibility to decide, in consultation with but not necessarily with the approval of, local Members of Parliament, State Legislators and the permanent executive (i.e., Block Development Officers, Deputy Commissioners, etc.) for the implementation of article 371A. The greatest degree of internal autonomy is a must for any future political arrangement as far as Nagaland and the Nagas are concerned.

(h) A Constitutional Amendment may be made making it mandatory for such bodies as well as the State Government and the Centre to co-operate in the protection and preservation of the natural resources, habitat and biodiversity of the Naga areas.

(i) Given the worrying demographic transformation in Nagaland where nearly 65 per cent decadal growth rate has been reported for 1991-2001 by the latest census report, a regular exercise should be carried out by the Election Commission of India, the State Election Commissioner and the Chief Electoral Officer involving village bodies and public organisations, to identify genuine voters (both Naga and non-Naga) and illegal settlers and disenfranchise the illegal ones from the voters' lists. Those who have been in the State for over ten years should be asked to come forward and report to the local authorities so that they can be issued temporary work permits without giving settlement, voting or citizenship rights. If such groups and individuals do not voluntarily come forward, then the local police must be given the responsibility of ousting them from the State.

(j) The help of NGOs and student groups as well as lawyers should be taken in identifying such "doubtful" groups; human rights groups cutting across ethnic frontiers should be associated with such a process so that genuine nationals are not harassed.

(k) All Indian nationals resident in the State be issued Identity Cards.

(l) There should be careful consideration of a non-territorial approach to the overall Naga issue, particularly in the light of the tragic incidents in Manipur and opposition in Assam and Arunachal Pradesh to the extension of the ceasefire area between the Government of India and the National Socialist Council of Nagaland (I-M) to parts of the NER, outside of Nagaland. There are suggestions from some quarters[12] that the Sami model of Scandinavia where members of the Sami tribe belonging to different countries be suitably amended to make it useful for the NER. The problem is that such an approach would trigger many demands for similar arrangements in different parts of the country and along its borders, including Myanmar and Bangladesh which would be totally unacceptable, not just to the Government of India but also to many areas of public opinion.

(m) It must be conceded that much of the above and other issues with regard to Nagaland depend on a long-term settlement of the political issues being discussed between the Naga leadership and the Government of India. But the above are pointers to giving as much autonomy to local communities as possible to promote self-governance and a sense of ownership.

B. SIXTH SCHEDULE STATES

Background:

2.2.1 The Sixth Schedule to the Constitution of India contains provisions as to the administration of tribal areas in the State of Assam, Meghala, Tripura and Mizoram. The aim of the Sixth Schedule was to protect hill and other tribal communities from the control and power

[12] Prof. B.K. Roy – Burman's views on this have been published widely.

of the groups of the plains. The process of protection began with the formation of the first District Councils in Assam, as far back as 1951. These District Councils were first set up as the United Mikir and Cachar Hills of Assam, comprising parts of the former districts of the United Khasi and Jaintia Hills as well as parts of the erstwhile Nogaon, Sibsagar and Cachar districts of Assam. Today, the Khasi, Jaintia and Garo Hills comprise Meghalaya State, which was announced in 1970; District Councils were formed in the State in 1972.

2.2.2 The Sixth Schedule provisions are regarded as a mini-Constitution within the main Constitution but the whole Schedule needs a close look to remove flaws, contradictions and shortcomings.

2.2.3 The provisions relating to entrusting subjects to the Councils were without giving them powers to legislate for the same. For decades, confusion continued in various Sixth Schedule areas about village councils or courts as frequent references were made to both in a synonymous manner. Similarly, at one point in Meghalaya, there were three forms of courts functioning - the District Judge and the Deputy Commissioners and the "village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas" with some exceptions.

2.2.4 Such anomalies and contradictions need to be ironed out and some of the suggestions below may help ease the problems.

(i) Assam:

2.2.5 The division of the composite State of Assam led to the drawing of new administrative boundaries. The North Cachar hills sub-division of the United Mikir and Cachar Hills District was upgraded to a district in 1970. The Mikir Hills District section was renamed as Karbi Anglong in 1976. Both districts have Autonomous Councils.

2.2.6 For each autonomous district, the Sixth Schedule provides for a District Council consisting of not more than 30 members for a term of five years. The Governor is empowered to nominate not more than four members to the Council while the others are elected on the basis of adult suffrage. The Chief Executive Member (CEM), the chairman and the deputy chairman of the council (equivalent of speaker and deputy speaker) are elected from the members and the CEM selects the other executive members.

2.2.7 There are different internal rules for different Autonomous District Councils (ADCs). In some councils like Mara in Mizoram, the electorate are eligible adults (i.e. anyone above the age of 18 years); in others such as Karbi Anglong, right of access to traditional lands and length of stay in the region are regarded as "qualifying criteria" for being included in the voters' list for the ADCs.

2.2.8 It is suggested that **the above relevant provision of the Mara ADC of Mizoram should be made applicable to all such councils, with specific provisions to protect the interests of small minorities, such as non-tribals who may not be eligible to vote but who also reside in such traditionally tribal areas.**

2.2.9 The extensive powers of the District Councils are wide-ranging. These include legislative, judicial, executive and financial powers.

2.2.10 **Legislative:** An ADC or DC is authorised to allot the use of land for agriculture, grazing, residential and non-agricultural purposes; the regulation of the practice of jhum or other forms of shifting cultivation; use of water courses/canals for agriculture; the appointment of headmen or chiefs; property inheritance and social customs as well as regulation of money lending.

2.2.11 **Judicial:** Constituting village councils and courts for the trail of suits and cases of ST communities as well as courts of appeal; only the State High Court and the Supreme Court of India have jurisdiction here; the ADCs can modify and make procedures for the village councils/courts.

2.2.12 **Executive:** Establish, construct and manage a range of public projects including primary schools, ferries, fisheries, roads, road transport and waterways in the district.

2.2.13 **Financial:** A district fund to be set up for each autonomous district, levies on land, buildings, professions, vehicles, passengers and goods carried in lorries and the rights to sharing royalty from licenses or leases for the purpose of prospecting for or extraction of minerals granted by the State Government in any area within the jurisdiction of the ADC as mutually agreed upon by the State Government and the district council.

2.2.14 The infirmities in the functions and powers endowed by the Sixth Schedule were apparent after some years of functioning. ADCs, for example, had legislative power over the subjects listed above. But their laws required the Governor's assent[13]. There have been cases of Governors in one particular State withholding assent to laws passed by the ADC for ten years and more. As far back as 1960, an official committee remarked that the councils suffered from a lack of coordination with the State Government, spent money meant for development work on administrative expenses and suffered from an excess of clerical staff[14]. These sound familiar more than 40 years down the line.

2.2.15 In a bid to assuage tribal concerns, the State Government transferred 16 departments to the ADCs in 1970 including agriculture and minor irrigation, fisheries and forests, dairying and milk products, general education and health and family planning. But devolution was ineffective because the State Government retained tight control. Thus, while education was a Council subject, the appointment of teachers was under the State.

2.2.16 The emergence of new social forces accentuated discontent over the state of affairs and led to the movement for an autonomous state within Assam and led to a Memorandum of Understanding between the Autonomous State Demand Committee (ASDC) and the Government of Assam in the presence of the Ministry of Home Affairs[15]. Consequently, the State Government transferred another 14 departments (making a total of 30) including Panchayat and Rural Development including DRDA, handloom and textiles, sports and youth welfare, town and country planning, transport, excise and finance (including sales tax, excise and professional tax). An office order laid down specific guidelines for the administration and transfer of funds within the Council and from the State Government to the ADCs. The budget estimates passed by the council are independently developed and are sent to and cleared by the State Budget. All Centrally sponsored schemes are implemented by the Council.

2.2.17 Because of this MOU, the two Assam Autonomous District Councils are much more powerful than their counterparts/local governing institutions in other parts of the North East, within or outside the ambit of the Sixth Schedule.

2.2.18 One problem is the over-centralisation of power in the ADCs at the hands of the executive committees. All planning and plan implementation are decided at this central level. Hierarchy is frozen, the influence of the bureaucracy is growing and initiatives to decentralise are few.

2.2.19 A major gap is the lack of interaction at the village and field level. There are no elected village councils or regional councils. This is the critical tier of the Panchayati Raj system that needs to be implemented at the village level.

2.2.20 **It should be considered whether the functioning of the ADCs should be amended to make them more accountable through the insertion of a clause that makes mandatory the creation of village councils/bodies with a degree of representation to the traditional institutions of chiefs and goan buras, without giving the latter any primacy.** The

[13] This point was emphasized strongly at a meeting at Shillong with members of the three District Councils of Meghalaya

[14] See B. Lalthakima, Evolution Of The Pawi District Council , M.Phil Dissertation, NEHU 1996.

[15] See Jidung, Phd dissertation on Karbi Anglong District Council, NEHU (P.S. Dutta, Autonomy Movements in Assam).

politicisation of the system in these districts has meant that these institutions are no longer above politics but deeply immersed in it. **The village councils, as in the case of the DCs, should be elected every five years.**

2.2.21 Indeed, the structured manner in which the Karbi Anglong and North Cachar Hills Autonomous District Councils have strengthened their position vis-à-vis the State Government is worth emulating despite questions being raised on their record of internal democracy and transparency.

2.2.22 This Paper suggests that all District Councils, whether described as Autonomous or otherwise and other local governing bodies (PR system as well), may examine the possibility of adopting the thirty subjects controlled by the Karbi Anglong and North Cachar Hills Autonomous District Councils. In addition, they must devolve power to the village level through elections and enabling local communities to take charge of their lives. Both are necessary steps.

2.2.23 Two other proposals also evolved during the preparation of this paper: firstly, defections have led to instability in some of the district councils and hence, it is proposed that the Anti-Defection Law should apply here. In this context it is necessary to keep in mind that in view of the experiences of the implementation of the anti-defection provisions, it may be necessary to review the Act itself and plug the loopholes and remove the possibilities of misuse. Secondly, the accounts and finances of the councils should be regularly audited by the Comptroller and Auditor-General of India instead of the State Auditor-General. The Public Accounts Committee of the State Legislature should also scrutinize their conduct.

2.2.24 The independence of the District Councils from "national" laws and the influence of Parliament is visible in that for all the four States covered by the Sixth Schedule - the hill districts of Assam, Meghalaya, Tripura and three district councils of Mizoram - there are similar clauses (i.e., 12, 12A, 12AA and 12B) which specify that the President may, with respect to any Act of Parliament, order that it will not be applicable to the autonomous district or region of the concerned State. But the control of the State Legislature varies. In Meghalaya, any regulation made by a ADC will have to pass muster in the State Assembly; if it is rejected, the local law fails. In Assam, no law enacted by the State Government with regard to the ADCs will be given effect to unless the ADC so directs.

(ii) Meghalaya

2.2.25 The District Councils in Meghalaya are among the oldest in the country. As noted above, they began at the time of undivided Assam. Essentially built to protect the hill groups from domination by the plains, there is a distinctly anomalous situation in Meghalaya today: the District Councils are dominated by the tribal communities. So is the legislature of the State and political leadership which are controlled by the three major tribes of Meghalaya: Khasi, Jaintia and Garo. So, certain questions arise: whose interests are the Autonomous District Councils protecting? Have they been effective in taking self-governance to the grassroots? If not, where have they fallen short?

2.2.26 It has been observed in Meghalaya, especially in recent years, political instability; floor crossings combined with abrupt changes of leadership have disrupted the functioning of the Councils[16]. In addition, there appears to be a growing public perception that these groups have become a smaller version of the state government without giving a commensurate public benefit and that politicians here appear to be preparing themselves for the next stage - i.e., elections to the state assembly instead of working for their constituents.

2.2.27 Given the small size of the hill states under the Sixth Schedule, a conflict of interest was bound to arise between the legislators to the state assembly and the District Councils. Thus, many local issues such as road repair, water and electricity supply, cutting of forests, disposal of waste, building licenses and fees come up not just before members of District Council but

[16] Newspaper reports of defections and discussions with Council members led us to this conclusion.

are taken up by the public with the local state legislator as well as the Members of Parliament. There is, therefore, an overlap of authority.

Traditional systems in Meghalaya

2.2.28 In addition, there are the traditional ruling systems of Meghalaya viz. the Syiems (rajas) of the Khasis Hills, who signed the Instrument of Accession to India; the Dolois of the Jaintias and the Nokmas of the Garos. Of these three, the Syiems and their "courts" - Durbars [councils which traditionally deliberate on issues of concern, especially taxation, land rights, marriages etc.) with myntris (ministers) and headmen in attendance] function.

2.2.29 The Dolois of the Jaintia Hills and the Nokmas, or traditional headmen of the Garos, are not as influential or well organized as the Syiemships, which still collect tithes, exercise their influence to arbitrate in disputes but have been marginalised in the political process by the State Legislature and the District Councils, especially the latter. It should be pointed out here that the Syiemships are a clan based political system more in the line of a feudal and monarchical political authority than tribal democratic traditions. The limited political participation available to the common tribal under the traditional system need not necessarily fulfil the political aspirations of newly-emerging, forward-looking tribal élites.

2.2.30 It could be cogently argued therefore that in Meghalaya, there are not two but three competing systems of authority - each of which is seeking to "serve" or represent the same constituency. The result has been confusion and confrontation especially at the local level on a number of issues.

2.2.31 There is a long list of provisions for subjects and powers as far as all District Councils in the four States covered by the Sixth Schedule, viz. Articles 244 (2) and 275 (I). This is an extremely comprehensive list which covers subjects such as allotment, occupation or use, or setting apart, of land. Apart from land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes, the list includes the regulation of jhum (shifting cultivation), establishment of village or town committees or councils and their powers as well as administration, town and village police, flood control, trade and commerce.

2.2.32 The rules of town administration under the Sixth Schedule are not necessarily in consonance with those of the 74th Constitution Amendment. Indeed, there are proposals for amendments to the Constitution from the Meghalaya Autonomous District Councils which seek to do away with Municipalities because they are said to be "not popular with the tribals". Apart from Shillong, Jowai has a municipality under a Chief Executive appointed by the Government and the move to abolish the municipality will enable the ADC to re-establish a Town Committee under the Jaintia Hills Autonomous District Village and Town Administration Act of 1974.

2.2.33 There have been differences of opinion on the relevance of even the implementation of the 74th Amendment with regard to Nagar Palikas or Municipalities, applicable in the case of Meghalaya to the city of Shillong. Indeed, the clash between a "Constitutional" exigency and local views was most recently seen when elections could not be held to the Shillong Municipality because of the pressure from some political parties, student organisations and other non-government groups. All this happened despite a Supreme Court ruling ordering the elections. A senior minister in the cabinet told a workshop[17] that local people did not want elections to city administrations and that for small constituencies, they felt that the local state legislator who had been elected from these wards should do the job. Yet, in the case of Shillong, the municipality has a history of decades of functioning with 11 elections.

2.2.34 The District Councils in the Khasis hills have a unique history: although not barred by law, non-tribals have rarely contested and won elections here. There are charges that non-tribals are not encouraged to vote in these elections and that their names are frequently deleted from the rolls. The tribal and non-tribal divide appears more acute here than in other Sixth

[17] Meghalaya Cabinet Minister at a workshop on development in the North East in New Delhi, 2000.

Schedule areas[18]. This is not the case, for example, in the Garo Hills Autonomous District Council where there are non-tribal members.

2.2.35 Ideally, the Government should consider the creation of non-tribal voters' constituencies, to be delimited not in geographical terms but only in the manner of a specific number of seats earmarked for the purpose in a people-proportionate manner. In such a situation, the non-tribals, for example, in the Khasi Hills could vote for a non-tribal candidate in a non-tribal, non-geographical constituency. If, however, for purposes of political exigency, it is not possible to create such constituencies, the Governor should be empowered to nominate a maximum of five and a minimum of three non-tribal members. In such a case, the Government may also consider increasing the strength of the ADC to either 35 or 33, as the case may be. Such a provision might help defuse the problem arising out of the political confrontation between tribals and non-tribals, without jeopardizing the legitimate political aspirations for self-governance of the tribal population.

2.2.36 It may be noted that the powers of the District Councils do not extend to all of the city areas of Shillong. However, opinion is divided on the future of the District Councils: senior officials and politicians in the State Government say that the District Councils have outlived their utility and view them as a drain on scarce public resources and should be dispensed with, especially with the existence of the State Legislature. This is strongly opposed by various sections of society in Meghalaya, not least by the District Council members themselves. Indeed, such a drastic step is unlikely to have extensive support and could instead lead to further alienation of a new segment of society in Meghalaya.

2.2.37 Trends towards militancy in the State can be discouraged through measures leading to self-governance. For this to happen, the traditional systems of governance will have to be included and given specific roles and opportunities, instead of being marginalised as they have been for decades.

2.2.38 It is, therefore, to be considered whether an intermediary tier be placed under the existing Autonomous District Councils (which can be called by another name, if so desired, be divided). This tier could be representative of existing village councils and traditional systems as the First Tier of self-government where such institutions are functional and strong. This may be called the Durbar in the Khasi Hills and by the local nomenclature elsewhere and may comprise elected members of each village from the community/traditional systems. There should not be more than 15 members.

2.2.39 The situation needs to be assessed realistically. Such institutions were extremely influential but can they go back in time and hold those powers of the pre- independence period? This is unlikely. Compromises will have to be struck by all sides with a great deal of flexibility and vision for the sake of the immediate and the future.

2.2.40 It is suggested that provisions for decentralisation in any form should always take into account the need for democratisation and gender justice. In Meghalaya, five members of each of the three Autonomous District Councils should also be elected from the First Tier. This should include the traditional chiefs/rajas (Syiems).

2.2.41 The details of subject and power sharing can be worked out but it would be suffice to suggest here that those facilities/powers which affect village communities - village roads, births and death registry, marriages, property alienation and divisions, power, water, bodies, forests, education, agriculture, preservation of animal stock and cattle pound, etc. (all at the village level) should be in the hands of the village-level system. At the international border, they will be associated with assisting border security agencies and help both in identification and settlements, etc.

[18] there is an organised political opinion of a major section of the non-tribals in Meghalaya, often represented by organisations like Non- Tribal Youth Union (for information on important student and youth organisations and their views, see report of the ICSSR NERC Project on: Youth organisations in North East India, mimeo, NERC, Shillong, Meghalaya, 2000.

2.2.42 Larger issues and subjects can go to the Second Tier - i.e., the amended District Councils. The State Legislature in this case is the Third Tier of governance, an overall supervisory and policy-making body that Constitutionally delegates powers - as in the case of the 73rd Amendment - to local governing bodies but is not associated with the daily running of detailed projects. That may be left to the First and Second Tiers.

2.2.43 The lacunae in the functioning of the District Councils lies in their lack of financial powers and their subsequent dependence on State Governments. This dependence can be reduced with the appointment of a State Finance Commission (although these are now currently appointed in Sixth Schedule States and are required to be set up in those States following the 73rd Amendment; however, this is no reason why such Finance Commissions should not be set up in the Sixth Schedule States, thereby making them beneficiaries of the 73rd Amendment. The life of the State Finance Commission should be renewed at the end of every five-year term) which can authorise the division of the funds necessary for the smooth functioning of the newly-structured Councils. The State Finance Commission, should report directly to the Governor and should make recommendations on the net proceeds of the taxes, duties and tolls and fees leviable by the state; grants-in-aid to the District Councils, etc. from the Consolidated Fund of the State. This is not a new suggestion but needs to be given legal status.

2.2.44 Such a Commission should lay down that the monies should go to the Councils as a matter of course and, as in the case of Karbi Anglong and North Cachar Hills, with detailed plans drawn up by the Councils and the traditional institutions in consultation with the State Government. A group of technical and financial advisors, under the overall supervision of the Executive Council, should help draft these proposals. The budgets can be a part of the annual State budget and should be passed with as little changes as possible.

2.2.45 The role of the Governor needs to be examined, especially as he has powers to hold up legislation passed by the District Councils. It should be made mandatory for the Governor to pass legislation proposed by the Council, if he does not respond within six months. There have been cases in Meghalaya where proposals by a Council have been held up for more than 10 years.

2.2.46 Some District Councils, both in Assam and Meghalaya, have been characterised by political instability caused by defections and efforts to oust the Chief Executive Councillor. The provisions of the anti-Defection Act should be made applicable here and in other States under the Sixth Schedule.

2.2.47 An extremely sensitive issue in Meghalaya is the possibility of a political role for women in the District Councils and traditional institutions. There is considerable opposition to the suggestions of reservations of one-third of all seats for women, as in the panchayats and nagar palikas. The matrilineal system of inheritance and controls on society in Meghalaya has made this a difficult political and social question. But while reservation may not be acceptable, local governing systems should accept the basis of gender representation and if necessary by way of nomination as in other district councils. Thus, the State Governor should be empowered to nominate women to not less than three seats in each District Council. Some traditions are good for all time; but any legislation or tradition which discriminates is undemocratic and unacceptable in today's society. In Meghalaya, public opinion is growing in favour of women's participation in politics and adoption of principles of modern liberal democracy. This progressive trend may be strengthened with Constitutional recognition of the Durbars on the basis of the arguments developed above (also *see* Appendix on Meghalaya).

(iii) Tripura

2.2.48 The Tripura Tribal Areas Autonomous District Council (TTADC) was formed in 1985, a successor to an earlier Council area formed in 1982 under the Fifth Schedule and then transferred to the Sixth Schedule.

2.2.49 Again, this was a paternalistic intervention to meet an ethnic demand for preservation of tribal rights in the face of what has been seen as a majoritarian flow. One must remember that

Tripura was, till after independence, a dominantly tribal state. Migrations and settlements from East Bengal/East Pakistan made it a Bengali Hindu majority area.

2.2.50 The TTAADC has 28 elected members; two are nominated by the Governor on the basis of the Chief Executive Members' recommendation. The nominated members must be tribals.

2.2.51 The population structure of Tripura is two-third non tribal and one-third tribal of the total of 3.1 million (2001 Census, Provisional). Yet, the TTADC comprises two-third of the State's geographical size.

2.2.52 Significantly, the party that came to power in last year's elections was the IPFT (Indigenous Peoples Front of Tripura) which strongly favours tribal rights and control. Apart from other demands, the issue of financial autonomy was a rallying cry of the IPFT which won a comfortable majority of the 28 seats being contested.

2.2.53 It has been noted here and in other States that where the Councils and State Governments are of the same political party, financial relations and political relations are reasonably good, in a smaller replay of the relations between the Centre and the States. Otherwise, there is frequent confrontation and charges and counter-charges of discrimination.

2.2.54 The tribal council members are demanding direct funding of their budgets from the Centre under article 244A of the Constitution.

2.2.55 It is suggested that devolution of powers be effectively carried out in the financial segment through an independent state finance commission, as mentioned earlier in this paper. The monies for the Autonomous Council should come from the recommendations of the State Finance Commission and it should receive grants in aid, etc. from the Consolidated Fund of the State. Without financial devolution, programmes will be non-implementable, and that will lead to growing frustration and alienation.

2.2.56 It should be noted here that throughout the NER that the perception of the Centre (New Delhi) as a controlling, all-powerful, distant authority is now changing. Currently, there is as much resentment directed against the failure of governance at the local level, with criticism growing of state capitals and local ruling elites (also see Annexure II).

(iv) Mizoram

2.2.57 There are three Autonomous District Councils in Mizoram, viz. the Lai Autonomous District Council, the Mara Autonomous District Council and the Chakma Autonomous District Council. These are representative of numerically small populations of which the Lai is the largest with 40,000 persons[19]. The percentage of Scheduled Tribes in each Council area is 98.7 per cent, 97.7 per cent and 100 per cent respectively.

2.2.58 They handle 18 subjects each, similar in listing to those of Meghalaya.

2.2.59 The Chakmas have 13 elected posts and three nominations. The Lai ADC has 23 elected members; there are four nominated members by the Governor. The Mara ADC has 19 elected members and four nominated members.

2.2.60 State Government officials say that article 275 is faulty in relation to the Sixth Schedule: it continues to mention only the tribal areas of Assam, without taking into cognizance the changed political circumstances in the NER. This needs to be amended.

2.2.61 A number of departments have been handed over to local bodies, including school education up to the middle level, land, forests and local revenue. The allotment for the District Council comes from the State budget.

[19] Figures quoted by the Lai Autonomous District Council.

2.2.62 Non-tribals have voting rights but are not known to have contested the elections.

2.2.63 The District Councils here and in other States are ethnic in nature in addition to being subject to political interventions to protect tribal communities, as noted earlier.

2.2.64 Their powers and subjects of jurisdiction are similar to those of the other district councils in the Sixth Schedule. It should be noted here that earlier, Mizoram was a district of undivided Assam and in subsequent incarnations it was governed by a Council with powers not dissimilar, though less elaborate, to those of today.

2.2.65 The overall suggestions and recommendations for other district councils should also apply here so that they are not controlled by the State Government and state-level politicians, who are not closely associated with governance and development among these ethnic groups. For this, the Centre should fund all Plan expenditure of the three District Councils. The basic functions of governance are not possible in a place such as the Chakma Autonomous District Council which has neither proper roads or a sub-treasury, a bank, a post office or a hospital. The Centre must ensure that these basic minimum infrastructure facilities for governance are made available at the earliest.

2.2.66 The size of the ADCs may be increased to 30 with nominated members being limited to four: two may be nominated by the CEM and two by the Governor. Of those nominated, two should be reserved for women.

2.2.67 To make decentralisation and devolution of power meaningful, it is necessary to insert enabling clauses in the rules governing the function of the ADCs to strengthen the position of the Village Councils, so that they become more self-sustaining. Given the small size of villages in the ADCs, it should be considered whether a VC should consist of not less than 100 houses and a population of not less than 1,000 persons, by combining the voting strength of two or three villages. They should be empowered to raise their own resources by way of taxes and reducing their dependence on District Councils. In addition, more local judicial powers may be considered for the VCs as well as an increase in the remuneration of the Village Council members.

2.2.68 As with other States, Mizoram needs to set up a State Finance Commission whose term will be renewed at the end of every five years and which can decide on division of funds to the Autonomous Councils and the State Government from the Consolidated Fund of the State.

2.2.69 The Mizo situation is extremely complex for it brings into sharp focus the difficulties of governance in a region which has multiple micro-minorities and a 'national' minority (i.e., the Mizos) as the State majority! There are demands from groups such as the Paites in western Mizoram, the Hmars (who already have a Hill Development Council) and the Brus (Reangs) for autonomous District Councils. This can be decided only through a process of political consensus but, suffice to say that given the Memorandum of Settlement between the Government of Mizoram and the Hmar Peoples Convention (27 July 1994), the GOM agreed to extend the Sixth Schedule Provisions to the Hmar demand area. It has not been able to do so, despite many requests from the HPC. The cases of Paites and the Bru (Reangs) will also need to be reviewed in the light of this agreement. Otherwise, there is every possibility of radicalisation growing, especially among the youth.

2.2.70 A difficult issue is that of the Bru, many of whom were evicted by a campaign against them. An estimated 40,000 have taken refuge in neighbouring Tripura. The Bru have demanded a separate autonomous council which is opposed by the State Government.

2.2.71 It may be noted here that there is a growing opinion in the non-Sixth Schedule areas of the State which regards the gap between the Village Councils and the State Government/ Legislature as very wide. A spectrum of views indicate considerable support for an intermediary tier of governance. Given the small populations in the districts of the State, it may be appropriate for Mizoram to consider developing an intermediary level of governance at the District Level, called the District Council (specific name of the district to be appended) or any

appropriate Mizo title. The Village Council may be reconstituted with two or more village councils forming one village council.

2.2.72 The State Government seeks to form District Development Boards with the local MLA as the Chairperson of the Board and nominated officials as members. It is unlikely that such a body can lead to decentralisation; it is therefore suggested that the District Council should comprise of elected members, the number of which should depend on the size of the district population. The officials can function as advisors to the District Council and the MLA may be a non-voting member of the same. The local Member of Parliament should also be a non-voting member, in the constituency/district where he/she is a voter.

2.2.73 The State Government should consider reservations for eligible persons from the Sixth Schedule area of the State in government services such as police and civil departments, in proportion to the percentage of population of the scheduled tribes in the State.

C. NON-SIXTH SCHEDULE STATES WHICH HAVE CALLED FOR EXTENSION OF THE SIXTH SCHEDULE

2.2.74 Manipur has been seeking Sixth Schedule status for its hill areas for decades and nothing much has come of it, leading to opinion that the demand was not really serious. The communities in the Hills of Manipur have traditionally comprised of about one-third of the total population of the State.The provisional state total has been placed at 2.3 million, up from 1.8 million in 1991.

2.2.75 The Hills of Manipur are dominated by various Naga Tribes, including the Tangkhuls. There is a separate community, the Kukis, which has been pitted against the Tangkhuls, both politically and in terms of militancy, and which dominates one of the hill districts, i.e., Churachandpur.

2.2.76 The previous State Cabinet has passed a resolution asking the Centre to confer Sixth Schedule status on the hills. Yet, its predecessor government had only last October passed legislation through the state assembly which conferred Autonomous District Council status on the Hill Area of Manipur. This piece of legislation has been opposed by influential groups in the Hills which are demanding extension of the Sixth Schedule.

2.2.77 There is a lack of consensus on this issue and it needs to be thrashed out within a time framework, after detailed discussions with representative groups from both sides.

2.2.78 While the Government of India should seriously consider the request to extend the Sixth Schedule provisions to the Manipur Hill areas, it should also consider invoking and involving the traditional tribal institutions of the various hill tribes as a Tier of the Autonomous District Council. This issue needs to be viewed in the light of the complications arising out of the Naga situation.

D. NON-SIXTH SCHEDULE STATES

2.2.79 The non-Sixth Schedule States in the North East i.e. where the 73rd and 74th Amendments have been implemented are Assam (barring Karbi Anglong Autonomous District Council and the North Cachar Autonomous District Council), Manipur, Tripura (barring the Tripura Tribal Areas Autonomous District Council) and Arunachal Pradesh.

2.2.80 Assam passed the Assam Panchayat Act in 1994, dividing rural governance into gaon, anchalik and zilla parishad enclaves. Yet, the powers passed on to these systems are little more than perfunctory and the last election was held in 1992, when the Congress swept the polls. The term of the panchayats expired in 1997 and despite a number of promises, no fresh elections have been held. New election have been announced for December, 2001. An earlier announcement in October, 2000 was postponed after a legal challenge to the proposal. The

opposition came from those who said that it would not be possible to have panchayat elections in such an area as the Bodoland Autonomous Council.

2.2.81 The Bodoland Autonomous Council (BAC) evolved its own laws and structure as per the 1993 agreement between a group of the Bodo community and the Government of Assam. The Bodos say that elections should be under the system assured by the 1993 accord and not the 73rd Amendment. But this is contradictory to a stipulation in the accord, that panchayat and zilla parishads would have the same meaning as defined in the Assam Panchayat Act. This is no longer acceptable.

2.2.82 The accord was signed in haste without even having the borders of the said Council clearly demarcated. The greater problem is that the area has not been notified as a Scheduled Area, i.e., a place where the laws would be in consonance with systems other than the panchayat form of government. Until this notification takes place, the BAC will continue to be troubled by an identity problem and little development work can be conducted. In its present form, the BAC is toothless and unable to have a say in matters of routine functions--maintenance of roads, veterinary services, buildings and irrigation systems despite these being notified in the Act!

2.2.83 The T.L. Baruah Committee suggested ways of increasing revenue flow into the BAC, taking into account the demographic pattern of the region. New rules need to be written into the BAC that will enable the devolution of funds on a scientific basis. These should include the remoteness of the area, the persistent rural poverty among the Bodos and other plains tribal communities. But most urgent is the election of a General Council, the top decision-making body in the BAC. It should be constitutionally mandatory to have these elections every five years.

2.2.84 Nothing barring a state of emergency (which the State cannot declare but the Centre can), should be allowed to disrupt this procedure. In addition, the delineation of the borders have to be conducted without delay and a time frame developed for this purpose.

2.2.85 There are major hurdles in extending the Sixth Schedule to the BAC. One problem lies in the fact that the demographic profile of the BAC is of a non-Bodo majority, already smarting under what it regards as an unrepresentative ruling group.

2.2.86 Yet, if it is not brought under the Sixth Schedule - the politics of the Bodo area will be characterised by a curious fact: tribals from other parts of eastern India will contest the reserved seats for tribals (Kokrajhar). This has happened in three successive Lok Sabha elections and created much tension and resentment locally.

2.2.87 It is suggested that the Karbi Anglong "package" of policies/laws should also help shape BAC structural functioning.

2.2.88 Indeed this package could be the basic model for Panchayat functioning in Assam and self-governance in the North East.

2.2.89 While the Assam Panchayat Act is little different to similar legislation prevailing in other parts of the country, it could be argued that it could be improved with the inclusion of some of the traditional structures such as the mel, or an assembly of village elders which functioning will be not only to settle disputes but also to take important collective decisions as and when required. Thus, in 1892, the people of Kamrup and Central Assam organised themselves into local mels and decided to oppose increase in land revenue rates notified by the colonial authorities.

2.2.90 It is to be noted that the Panchayat Acts cannot be a blind imitation of other legislation passed by certain States such as Kerala and Karnataka. Those States such as Assam should have a flavour of existing useful institutions, such as the mel, and the naamghar or prayer house. The latter was once set up to proselytize a reformed Vaishavism but became the nerve centre of community activities, ranging from worship to thrashing out problems relating to daily activities.

2.2.91 The Naam ghar and the mel are not strictly speaking institutions of self-government but they are unique and could inject both a sense of realism and of strong values to the Panchayats. It would be useful to bring in mel members into the village councils and encourage their participation.

(v) Manipur

2.2.92 Manipur adopted the Manipur Panchayat Act in 1994 and the most recent elections here took place in January 2001. The State Government has not devolved a number of the subjects to the Panchayats and elected members went on strike, demanding reinstatement of their rights.

2.2.93 The 73rd and 74th Amendments are applicable only to those parts of Manipur which are in the plains and are yet to be fully implemented.

2.2.94 The recommendations and views expressed in the Nagarpalika Network's report to the Commission are in consonance with thinking along on these issues in the North East, not just for Manipur, but for all States listed in this Paper and should be developed appropriately for local conditions, considering the size of rural and urban populations and existing infrastructure.

(vi) Arunachal Pradesh:

2.2.95 The Arunachal Pradesh Panchayati Raj Act was passed in 1994. However, there has not been any election to these bodies because the Assembly rejected a Central Bill which sought to delinate the Scheduled Castes of the State and make provisions for political reservation for them. The State Government said there were no Scheduled Castes in the State. The Government drafted and sent a bill to this effect to the Central Government for obtaining the assent of the President. This should be completed quickly. In Arunachal Pradesh, there is also a traditional gathering of villagers known as the kebang, which meets to sort out problems. In some cases, it may be adultery, in others theft. It is proposed that members of the Kebang be associated with the gaon panchayats and encouraged to contest elections.

(vii) Tripura

2.2.96 The Tripura Panchayats Act was passed in 2001. Tripura's Panchayats cover only one-third of the State. Two-thirds of the area is with the TTAADC (See **Annexure II**).

E. GENERAL SUGGESTIONS

2.2.97 The choices before the North East are not easy: between local self-governance and self-determination, between survival and devastation, between accountability, transparency and responsibility on the one side and corruption, continuing poverty and conflict on the other. The Commission feels that the following steps will help strengthen the former.

2.2.98 While the suggestions for each State are set out clearly at the end of each section, the following points need to be re-emphasised:

(i) Careful steps should be taken to devolve political powers through the intermediate and local-level traditional political organisations, provided their traditional practices carried out in a modern world do not deny legitimate democratic rights to/of any section in their contemporary society. The details of state-wise steps to devolve such powers will have to be carefully considered in a proper representative meeting of traditional leaders of each community, opinion builders of the respective communities and leaders of state and national stature from these very groups. The Karbi Anglong Autonomous

District Council may serve as a possible model and help all groups to arrive at an acceptable position as far as powers and functions are concerned (A List of subjects is given in **Annexure III**). A hasty decision could have serious repercussions, unforeseen and unfortunate, which could further complicate and worsen the situation. The system of in-built safeguards, such as the Sixth Schedule, should be maintained and strengthened for the minority and micro-minority groups while empowering them with greater responsibilities and opportunities, for example, through the process of Central funding for Plan expenditure instead of routing all funds through the State Governments. The North Eastern Council can play a central role here by developing a process of public education on the proposed changes, which would assure communities about protection of their traditions and also bring in gender representation and give voice to other ethnic groups.

(ii) That traditional forms of governance must be associated with self-governance because of the political failure of local elites. However, positive democratic elements like gender justice and adult franchise should be built into these institutions to make them broader based and capable of dealing with a changing world where globalisation is critical, at both the national and international levels.

(iii) That the State Election Commissions (SECs) function independently of State Governments, with their own funds, staff and activities on the lines of the Central Election Commission, with a corpus from either the State Consolidated Fund or the Consolidated Fund of India. SEC should decide, independent of the State Government, on elections to local bodies and ensure that the five-year term and deadline for elections is adhered to.

(iv) A State Finance Commission be appointed in each state; including Sixth Schedule States; areas under the Sixth Schedule but located in states which are not otherwise under this Schedule would also benefit from the existing State Finance Commission.

(v) Funds to self-governing institutions be issued with as little interference as possible from State Governments and this be mandated under the respective Finance Commissions of the States; Central funding (for all Plan Expenditure) may be routed through the Planning Commission and the North Eastern Council and (earmarked specifically to the Autonomous District Councils; the implementation of centrally funded projects from various departments of the Union Government should be entrusted to the ADCs and to revived village councils with strict monitoring by the Comptroller and Auditor-General of India.

(vi) Penal provisions, such as loss of Central funding to state projects, should be instituted if State Governments fail to hold local body elections regularly and on time; funds should be given directly through the structure proposed by the SFC to the local bodies.

(vii) That the Government may consider invoking the 74th Amendment with regard to civic bodies, with appropriate changes for the NER, to cities and towns in the region. Given the small populations of the area, it is suggested that Municipal Corporations, comprising elected members, should be created in those towns and cities having a population of not less than two lakhs. Those with a population of 50,000 to less than two lakhs should have their own elected Town Councils. Each Corporation/Town Council should have elections on the basic of adult franchise. However, given the peculiar situation of the North East and concerns about ethnic identity , the majority of seats in the Sixth Schedule and tribal areas may be reserved for the ST nominees. A fixed quota, not to exceed one-tenth of the size of the whole Corporation/Council, should be kept for non-tribals. The size of the Councils should not be less than 30 for urban areas with populations of over one lakh and not more than 20 for those under one lakh. The number of non-tribal nominees would thus be not less than three in the first category and not more than two in the second category of urban areas. Given the current political situation, the sensitive issue of reservation of seats for women may, for the time being, be made through nominations by the Governor as outlined earlier and not as in article 243T.

1208 LJ&CA/2002—26A

(viii) Since there are no metropolitan areas in the NER and only small and middle-size urban areas, it may not be necessary to have ward committees in those areas with populations of less than one lakh. Such ward committees may be set up in towns with populations of above one lakh. In Aizawl, Mizoram, for example, the State Government is considering setting up a nominated body such as a City Development Council. The city has no building by-laws; like many other towns in the NER, unrestrained construction sprawls haphazardly along the edges of roads, on hilltops and down steep slopes, presenting a maze of concrete structures and leading to traffic, communication and other infrastructure problems. It has been suggested that the body should be an elected one and could be drawn from the 15 village councils which currently exist in Aizawl and which could, in turn, be converted into city wards; two members of the Council could be elected from each of these sections. All the members would vote to elect a Chairperson. In addition, the three non-tribal nominees and three women nominees would give the house a total strength of 36. To help the smooth functioning of such a system and overcome the relative inexperience of new members in the management urban affairs, the Corporation, in consultation with the State Government, may appoint a group of technical experts to help develop systems and processes for specific departments such as sanitation and water supply, electricity and power distribution, building by-laws and other infrastructure. In addition, there should be a clause enabling the Governor of the State to nominate not less than three women to the Corporation/Council in addition to any women who may be elected directly to the Corporation/ Council. The Panchayats, Village and District Councils/Autonomous District Councils/Municipal Corporations/Town Councils should prepare a joint District Development Report for the whole district as in article 243ZD. Other clauses of Part IXA: "The Municipalities" of the Constitution, i.e., article 243P through till the last article (article 243ZG) should be made applicable throughout the North East, with special protection for Sixth Schedule and tribal areas by deleting the words Nagar Panchayats/ Municipalities and substituting them with the words "Town Council" or "Municipal Corporation", wherever applicable.

(ix) The process of protection of identity and the process of development and change are extremely sensitive. These twin processes need to be understood in the framework of a changing world and the role of all communities, small and large, in that world. Therefore, the North Eastern Council should be mandated to conduct an intensive programme of public awareness, sensitization and education through non-government organizations, State Governments, and its own structure to help bring about such an understanding of the proposals given below in the next years.

(x) That the provisions of the Anti-Defection Law be made applicable to all Sixth Schedule areas. That the Governor of a State where ADCs are functional cannot delay the passage of proposed legislation for more than six months; currently, these can be held up for years.

(xi) All changes as proposed in the Advisory Panel's recommendations relating to the Constitution 73rd and 74th Amendments for the rest of the country shall also to apply to the North East, as relevant. In addition, the following changes are suggested for the different States in the North East Region.

F. SPECIFIC STATE-WISE SUGGESTIONS FOR CHANGE

(I) ASSAM

1. The Sixth Schedule should to be extended to the Bodoland Autonomous Council with protection for non-tribal, non-Bodo groups. Other Autonomous Councils to be upgraded to Autonomous Development Councils with more Central funds for infrastructure development; to remain within the purview of the 73rd Amendment but also use traditional governing systems at the village level.

1208 LJ&CA/2002—26B

(ii) MANIPUR

2. Provisions of the Sixth Schedule may be extended to hill districts of the State; also, implement 73rd Amendment vigorously in the areas of the plains where, despite elections, the system is virtually non-existent.

(iii) ARUNACHAL PRADESH

3. Integrate traditional governing systems such as the Kebang in the local governing systems; members of the Kebang may be elected to the Gram, Anchal and Zilla Parishad through quotas which will give them a maximum of five seats.

4. Not less than four women may be nominated to each unit of each tier (by the Panchayat chairperson) and the size of the Panchayat be increased accordingly.

(iv) TRIPURA

5. Implementation of the changes as proposed by Advisory Panel for other States with Panchayati Raj [See this Commission's Consultation Paper on 'Review of the Working of the Constitutional Provisions for Decentralization (Panchayats)'].

(v) ARTICLE 371A: NAGALAND

6. Naga Councils to be replaced by elected representatives of various Naga society groups with an intermediary tier at the district level.

7. The Karbi Anglong model could be followed at this level.

8. Village Development Boards to be less dependent on State and receive more Centrally-sponsored funds.

9. The Government should conduct a study to consider proposals and a possible framework for the Naga situation.

NON-SCHEDULED/SIXTH SCHEDULE STATES:

(vi) MEGHALAYA

10. A tier of village governance to be created for a village or a group of villages in the Autonomous District Councils, comprising of elected persons from the traditional systems plus from existing village councils with not more than 15 persons at each village unit.

11. A total of 40 seats in each Autonomous District Councils up to 10 seats from the existing 30 (currently one non-tribal is nominated by the Governor) with the following break-up:

- Five seats to be reserved for Syiems and Myntris, Dolois and Nokmas in the Khasi Autonomous District Council, the Jaintia Autonomous District Council and the Garo Autonomous District Council respectively.
- Women and non-tribal representatives to be nominated to a total of not more than five seats in all.

(vii) MIZORAM

12. An intermediary elected 30-member tier, to be developed at the district level in areas not covered by the Sixth Schedule, i.e., excluding the Chakma, Lai and Mara District Autonomous Councils. There would thus be two tiers below the State Legislature: the District and the Village.

13. Village Councils in non-Scheduled areas to be given more administrative and judicial powers; two or more villages to be combined to form one village council, given the small population in the State.

14. Consideration to be given to groups seeking Sixth Schedule status, depending on viability of the demand, including size of population, territorial and ethnic contiguity.

15. Central funding as outlined in general suggestions to the ADCs.

16. Nominated seats for women, non-tribals and Sixth Schedule tribes in non-scheduled area (not to exceed six over and above the size of the Councils, making a total of 36 members); current size of ADCs to be increased to 30 with a similar provision for women and non-scheduled tribes.

(viii) TRIPURA

17. The size of the Council should be increased from 28 to 32.

18. The number of nominated members be increased to six from the current level of two. It is suggested that the existing non-tribal seats (currently, they have three elected seats) be converted to tribal seats. These non-tribals may be nominated by the Governor and three tribal women may be nominated by the Chief Executive Member.

G. GENERAL OBSERVATIONS

The following general observations arise from the study though beyond its scope:-

(a) That Identity Cards be made mandatory for all Indians resident in the North East, to begin with, and that the national Citizenship law be reviewed to plug loopholes which enable illegal settlers to become "virtual" citizens in a short space of time, using a network of touts, politicians and officials.

(b) That local communities be involved in the monitoring of our borders, in association with the local police and Border Security Force.

(c) That, given the demographic imbalance which is taking place in the North East as a result of migration from Bangladesh, Nepal and also of settlers from other parts of India and to disable such groups from entering electoral lists and the citizenship rolls of this country, that reservations for the local communities and minorities from other parts of the country be made in the State Legislature.

(d) That a National Immigration Commission be set up under law to examine a range of issues including Work Permits for legal migrants, Identity Cards for all residents, a National Migration Law, a National Refugee Law, to review the Citizenship Act, the Illegal Migrants Determination by Tribunal Act and the Foreigners Act.

(e) The Central Government should consider authorizing a further study to evolve proposals and framework for the Naga situation, one of the most challenging tasks before the Constitution, Government and civil society. This could serve as a platform for discussion and political change in the region.

QUESTIONNAIRE
ON
EMPOWERING AND STRENGTHENING PANCHAYATI RAJ INSTITUTIONS /AUTONOMOUS DISTRICT COUNCILS/TRADITIONAL TRIBAL GOVERNING INSTITUTIONS IN THE NORTH EAST INDIA

1. What, according to you, are the working problems faced by the institutions set up under the Sixth Schedule to the Constitution of India to bring greater self-governance (i.e. District Councils).

Working problems:

(Not more than 200 words)

2. (a) What is the relationship of the State Government with the District Councils/institutions set up under the Sixth Schedule?

(Not more than 200 words)

(b) Are these local self-governing bodies seen as a parallel administration or a threat to the larger system or one that has become increasingly irrelevant; if the last point is true, then what steps should be taken to correct this trend?)

(Not more than 200 words)

3. Please state your views with regard to the future of such institutions mentioned in Question No. 2?

(Not more than 200 words)

4. What are your views on giving a specific, Constitutional role to traditional institutions to make the third tier of self-governance more effective?

Views

(Not more than 200 words)

5. Should a role be visualized for the traditional systems in the existing instruments of governance, such as the District Councils, either by reservation or direct election?

By Reservation ☐ By Direct election ☐ No role ☐

6. Should the traditional systems be made more democratic, gender friendly and representative of all communities living in the region, instead of being ethno-centric?

Yes ☐ No ☐

7. (a) Should the salient features of the Bhuria Committee's recommendations, i.e. the provisions of the Panchayat (Extension to the Scheduled Areas) Act, 1996 be extended to the Sixth Schedule areas?

(b) If so, which clauses should be included?

(Not more than 200 words)

8. Whether any part of your State, currently falling under the purview of the 73rd and 74th Amendments would be better served by being notified under the Sixth Schedule?

Yes ☐ No ☐

9. Should anti-defection legislation be introduced into all local government bodies?

Yes ☐ No ☐

10. Please indicate any other specific suggestions relating to the Sixth Schedule to strengthen self-government at the grassroots which you would like to make?

Suggestions:

(Not more than 200 words)

ANNEXURE I

EVOLUTION AND FUNCTIONING OF PANCHAYATI RAJ INSTITUTIONS IN ASSAM*

(I)

1.1.1 The Ahoms settled down in the Brahmaputra Valley as migrants from Upper Burma in the early thirteenth century, and initiated their kingdom in Upper Assam. With their growing political and economic influence, the Ahom established a strong state covering almost the entire Brahmaputra Valley by the end of the seventeenth century. The social formation and the politico-administrative arrangement of Assam during the Ahom rule fostered certain local institutions such as *mels*, *khels*, etc. which had some judicial functions.

1.1.2 The *mels* were, in fact, the estates conferred on the sons, brothers, wives and other close relations of the reigning monarch, and the chief of a *mel*, was empowered to settle the minor disputes. The *khels* were essentially occupational and territorial Panchayats at constituted primarily by the paiks. The *paiks,* i.e. the adult male manual workers were arranged in *khels* with regular gradation of officers, and the officer incharge of a *khel* had the power to settle minor disputes among the members of his *khel.*

1.1.3 In addition to that, the neo-Vaisnavite movement which secured a strong footing towards the last part of the fifteenth century under the leadership of Sri Sankardeva, also fostered a rapid proliferation of the *namghar* in almost every Assamese village. The *namghars* were initially set up for Panchayat functions of neo-Vaisnavism, but in course of time, this religious institution had become the nerve centre of the village community. Besides working for spread of intellectual and cultural activities, the institution of *namghar* also started playing political as well as judicial role as it became the centre for the village community to discuss and solve most of their day-to-day problems.

1.1.4 Therefore, the *mels*, the *khels* and the *namghars* were some of the very important social institutions of local character during the Ahom period. The political chaos in the mid-eighteenth century which led to the Civil War (1769 to 1806) and the Burmese invasion of Assam brought an end to the era of Ahom rule. Consequently, the *khel* system became irrelevant, but the institution of *mel* assumed the character of a broad social institution since beginning of the British rule. The *mel* thus became assembly of the village elders not only for settlement of disputes but also for arriving at important collective decision when required. For instance, the people of Kamrupa and Central Assam Panchayats themselves into local *mels* and decided to oppose enhancement of land revenue rates notified by the colonial authorities in 1892. There are many such instances, and the *mel* is still an important social institution of rural Assam.

1.1.5 Similarly the institution of *namghar* is also an intrinsic part of the Assamese rural life. The three institutions mentioned above i.e. *mel*, *khel* and *namghar*, however, can not be considered as institutions of local self government in true sense of the term.

1.1.6 The institutions of local self-government were gradually introduced in Assam by the colonial rule. The history of local self-government in Assam began with the Assam Local Self Government Act, 1915 which was enacted following the recommendations of the Royal Commission on Decentralisation.

1.1.7 The Royal Commission submitted its report in 1909 and the importance of village Panchayat. The Chief Commissioner of Assam accepted the major recommendations made by the Commission, and believed that certain problems of the villages such as sanitation and water supply could be solved by inducing the villagers to undertake these works themselves supplemented (by grant-in-aid from the Government) and the local boards.

* This annexure is based on a Paper prepared by the Omeo Kumar Das Institute for Social Change and Development, Guwahati, Assam.

1.1.8 The Chief Commissioner of Assam, therefore, proposed to include in the Local Self- Government Bill, provision for delegation by local boards to Village Authorities, of the powers and duties regarding sanitation; primary education and other such petty village works. Accordingly, the Assam Local Self Government Act was passed in 1915, and this Act empowered the Chief Commissioner to constitute Village Authority in each village. As per the provisions of the Act, the members of the Village Authorities could be wholly appointed or wholly elected or partly appointed and partly elected for a period of three years.

1.1.9 The Chief Commissioner was authorized by the Act to decide the number of elected or appointed members. The Act made provision for both election and nomination of the President of the village authority. The Village Authorities were established in Assam as per provisions of the Act and there were 80 Village Authorities in Assam in 1919. The newly established village Authorities, however, faced certain major difficulties.

1.1.10 The unit of a Village Authority was a cadastral village which was not always a homogenous unit. Quite often a cadastral village was a collection of hamlets, and therefore, the inhabitants of one hamlet were hardly interested in the matters of other parts although they belonged to the same Village Authority. Secondly, the elections to the Village Authorities were a force, and most of the Village Authorities contained only nominated members. As a result, the Act of 1915 had failed to achieve its limited objectives.

1.1.11 In the meantime, the Government of India Act, 1919 transferred the subject of local self-government to the Provincial Government. Thus in the ethos of Dyarchy, the Assam Legislative Council brought the Assam Rural Self Government Bill, 1925 and subsequently passed the Rural Self Government Act, 1926. The new Act provided that every village should have a Village Authority, consisting of not more than nine members elected on the basis of adult manhood franchise. As per the provisions of this Act, the members of the Village Authorities were to be elected for a term of three years.

1.1.12 The Rural Self Government Act, 1926 was passed with the objective of creating a machinery through which the villagers might undertake the management of their own affairs and develop capacity for self-help. The Village Authorities however, failed to bring about any significant change mainly due to inadequate financial support from the colonial government. The Village Authorities, therefore, had only nominal existence.

1.1.13 Independence and inclusion of village panchayats in the Directive Principles of State Policy of the Constitution of India inspired the Government of Assam to establish rural Panchayats in the State. With the stated objective of all-round development of the villages, the Chief Minister of Assam introduced the Assam Rural Panchayat Bill in the Legislative Assembly as early as in March 1948. The Bill was referred to a Select Committee which submitted the report with certain amendments in the same month. Subsequently, the Assam Rural Panchayat Act, 1948 was passed by the Legislative Assembly and it received the assent of the Governor General in November, 1948.

1.1.14 The Assam Rural Panchayat Act, 1948 provided for the constitution of two-tier system of Panchayati Raj Institutions comprising Rural Panchayats and Primary Panchayats. The Primary Panchayat would consist of all the resident adults of the area. The Executive Committee of a primary Panchayat would consist of not more than eleven but not less than five members including the President and a Vice – President elected by the adults of the area for a period of three years. Every Primary Panchayat was required to elect one representative for every five hundred of its members and an additional one when the fraction thereof was a figure between two hundred and fifty and four hundred and ninety-nine to the Rural Panchayat provided that the total number of members would not exceed five. A Rural Panchayat thus constituted, had to elect its President and Vice-President for a period of three years from among the members. The President had the power to constitute his Mantri Parishad by selecting five to nine members representing various interests.

1.1.15 The Act of 1948 empowered the Government to declare any area to be a Rural Panchayat Area. In each such area, there might be as many Primary Panchayats (not exceeding fifteen) as deemed necessary by the Deputy Commissioner or the Sub-Divisional

Officer. Covering almost all aspects of rural life, the Act included a long list of thirty four functions.

1.1.16 The Assam Rural Panchayat Act, 1948 was in operation for a decade, and the number of Rural Panchayats gradually increased from 29 at the end of 1950-51 to 422 in 1959. In 1959, the Rural Panchayats covered total 2,657 Primary Panchayats scattered in all the plain districts of Assam.

1.1.17 It may, however, be pointed out in this context that instead of involving the Panchayats in the task of rural development, Government of India emphasised on building up alternative institutions for implementing its major programme. The Community Development Programme was launched in October 1952, under which an entirely new unit of governance called Community Development Block was set up. Each Community Development Block was headed by a Block Development Officer. Similarly, the National Extension Service (NES) was launched in 1953. NES blocks were carved out as the lowest administrative units, each comprising 300 villages and functioning under the supervision of a Block Development Officer. Extension Officers were also posted in blocks to provide technical support to farmers and small entrepreneurs. Though both the programmes were initiated with great expectations, they failed to achieve the desired results in terms evoking popular participation. The failure may be attributed to the inability / unwillingness of the Government to get organically linked with the programmes. They got increasingly bureaucratized and elite dominated. Corruption and malpractice's leading to wastage of funds marred their efficacy and public image.

1.1.18 On 16 January, 1957, a committee was appointed under the chairmanship of Sri Balwantry Mehta, to review critically the working of the Community Development Programme and the National Extension Service and to suggest measures through which the participation of the rural people could be ensured. It was also asked to examine 'the extent to which community development movement has succeeded in utilising local initiatives and in creating institutions to ensure continuity in the process of improving economic and social conditions in rural areas'. The Committee submitted its report to the National Development Council on 24 November, 1957. The philosophy underlining the report was to move the decision making centers closer to the people. The main recommendations of the Mehta Committee report were (a) A three-tier system of Panchayati Raj from the village to the district level with multi-level linkages should be created. The institutions envisaged were the Zila Parishad at the district level Panchayat Samity at the Block level and Gram Panchayat at the village level. (b) There should be a genuine transfer of power to these institutions. (c) Adequate resources should be transferred to these bodies. (d) All developmental schemes at these levels should be channeled through these Panchayati Raj institutions.

1.1.19 In 1958, the Standing Committee of the National Development Council agreed broadly with recommendations of the Committee. The Union Government tried to persuade, guide and support the State Governments to establish the proposed system with minor modifications to suit local conditions. Consequently the period 1959-64 witnessed the establishment of the Panchayati Raj institutions in the States and Union Territories of the country.

1.1.20 The Legislative Assembly of Assam enacted the Assam Panchayat Act, 1959 which was enforced from 1960. This Act provided for a three-tier system with the Gaon Panchayat at the village level, the Anchalik Panchayat at the Block level, and the Mohkuma Parishad at the sub-divisional level. The Gaon Sabha was at the bottom of the three-tier system, and consisted of all adults, whose names were included in the electoral roll, of an area with minimum 2500 population. The Gaon Panchayat was the executive body of the Gaon Sabha. As per provision of the Act, the Gaon Panchayat would be consisted of eleven members including the President and the Vice-President, elected directly by the Gaon Sabha. The Act also made provision for co-opting one woman if no woman was elected, and one each from the Scheduled Castes and Scheduled Tribes if they constituted at least five per cent of the total population of the area. The term of the Gaon Panchayat was three years, and the Act empowered the Gaon Panchayat to appoint is own Secretary.

1.1.21 The Act of 1959 provided that every Gaon Sabha would elect one representative to the 'Anchalik Panchayat. The Act also provided for co-option of two

members, one each from Scheduled Castes and Scheduled Tribes. However, there was no such provision for co-option of woman. The Chairman of the Co-operative Societies falling within the area of Anchalik Panchayat could elect one representative, and the member of the Legislative Assembly representing the area would be an ex-officio member. In addition to that, the Act also empowered the State Government to appoint members to the Anchalik Panchayat without the right to vote. The President and the Vice-President of an Anchalik Panchayat were elected by the members from among themselves.

1.1.22 The Mohkuma Parishads consisted of the following four categories of members :

(i) Presidents of all the Anchalik Panchayats falling within its jurisdiction;
(ii) All the members of the Legislative Assembly and Parliament representing the area;
(iii) Chairman of the Municipalities, Town Committees and School Boards falling within the Sub-division as ex-officio members;
(iv) Officers appointed by the Government as ex-officio members.

1.1.23 The Act further provided for co-option of one member from the Schedule Castes and one from the Scheduled Tribes if no member was elected from such categories. But the Act did not make any provision for co-option of woman member to the Mohkuma Parishad also. The President and the Vice-President were elected by the members from among themselves.

1.1.24 After four years of enforcement of the Assam Panchayat Act, 1959, the Government of Assam appointed a study team to suggest the modifications required for satisfactory functioning of the Panchayati Raj in Assam. Following the recommendations of the study team, the Legislative Assembly enacted the Assam Panchayat (Amendment) Act, 1964.

1.1.25 The important changes made at the level of the Gaon Panchayat included abolition of the provision of direct election of the President and Vice-President. The Act of 1964 provided that the President and the Vice-President would be elected by the members from among themselves. The Act also deleted the provision for the appointment of a Secretary by the Gaon Panchayat and provided for appointment of the Secretary by the State Government. Further, the Act extended the term of the Gaon Panchayat from three to four years, and brought the system of secret ballot instead of open voting.

1.1.26 At the level of Anchalik Panchayat, the Act of 1964 provided that one-third of the total number of Presidents of the Gaon Panchayats or at least three, which ever was greater, were to be elected by the Gaon Panchayats. The Act provided for co-option of two women members if no one was elected, and one if one was elected. Further, the Act empowered the State Government to nominate some members representing the forest villages and the tea gardens falling within the area. So far as the Mohkuma Parishad was concerned, the Act of 1964 increased the number by including the Chairman of the Co-operative Central Bank, the Deputy Commissioner and the Sub-Divisional Officer. The Act also provided for co-option of two women members if no one was elected, and one if one woman member was elected.

1.1.27 Following the recommendations of the Estimate Committee of the Government of Assam, the Legislative Assembly of Assam enacted the Assam Panchayati Raj Act, 1972. This Act reintroduced a two-tier system of Panchayati Raj in the state with Gaon Panchayats at the base and Mohkuma Parishads at the sub-divisional level. Thus the Act abolished the Anchalik Panchayats that existed under the Act of 1959. The Gaon Panchayats, as per provision of the Act of 1972 covered an area with population not less than 15,000 and not more than 20,000.

1.1.28 The maximum strength of the Gaon Panchayat was fixed at maximum fifteen elected members. The Act empowered the State Government to appoint any officer as an ex-officio member to the Gaon Panchayat. Besides, the Councillor of the Mohkuma Parishad representing the area of the Gaon Panchayat was an ex-officio member of the Gaon Panchayat. The Act provided for direct election of the President, however, the Vice-President

was elected by the Panchayat members from among themselves. The Secretary of the Gaon Panchayat was appointed by the Mohkuma Parishad.

1.1.29 The Mohkuma Parishad consisted of the following four categories:

(i) One Councillor elected by each of the Gaon Panchayat;
(ii) One representative each, not being a member of the State Legislative Assembly or Parliament, from the Municipality, Town Committee, Regional Board of Elementary Education and the Central Co-operative Bank as ex-officio Councillors;
(iii) The other Government officer as ex-officio Councillor appointed by the State Government from time to time; and
(iv) Two Councillors nominated by the State Government from the tea gardens.

1.1.30 The Chairman and the Chief Executive Councillor of the Mohkuma Parishad were elected by the non-official Councillors from amongst themselves. The term of the Panchayati Raj bodies under this Act was four years.

1.1.31 The Act of 1972 was repealed by the Assam Panchayati Raj Act, 1986 which was adopted with effect from September 1990. It brought back the institution of Anchalik Panchayats in the Panchayati Raj thus reverting to a three-tier system. The term of office for all the three – tiers i.e. Gaon Panchayat, Anchalik Panchayat and the Mohkuma Parishad, was fixed at five years.

1.1.32 The Act of 1986 provided for constituting a Gaon Panchayat with an area having population of six to ten thousand. The tea gardens were included within the jurisdiction of the Gaon Panchayat. The Act also made the provision of 30 per cent reservation of seats for the women in Gaon Panchayat and the Anchalik Panchayats.

1.1.33 The Act provided for constitution of a Gaon Panchayat by ten elected members, and direct election for its President. The Anchalik Panchayat was formed by the Presidents of the Gaon Panchayats. The MLA, and the MPs were ex-officio members, and the Government could nominate such officers as deemed necessary to the Anchalik Panchayat. The ex-officio members, however, had no right to vote.

1.3.34 The Mohkuma Parishad established under the Act of 1986 consisted of all the presidents of the Anchalik Panchayats with the area of the Mohkuma Parishad; the Deputy Commissioner and Sub-Divisional Officer; MLAs and MPs representing the area of the Mohkuma Parishad; and the district heads of different departments nominated by the State Government. The President and the Vice President of the Mohkuma Parishad were elected by the members of the Mohkuma Parishad.

1.3.35 The 1986 Act had substantially enhanced the powers of the State Government and the bureaucracy. For instance, the power to appoint their own staff was taken away from the Panchayats. The Panchayats could retain only such staff as was prescribed by the State Government and appointed by the director of Panchayats. The Act of 1986 was amended by the Assam Panchayati Raj (Amendment) Ordinance, 1992 and it was replaced by the Assam Panchayati Raj (Amendment) Act, 1992. The few amendments, however, made the structure of Panchayati Raj more bureaucratic.

1.1.36 Broadly in conformity with the Constitution (73rd Amendment) Act, 1992, the State Legislature enacted Assam Panchayati Raj Act, 1994. The new Act repealed the Act of 1992, and it extended to all the rural areas of Assam except for the areas under the Sixth Schedule of the Constitution. The Act of 1994 reintroduced a three-tier system of Panchayati Raj consisting of the Gaon Panchayats, Anchalik Panchayats and the Zila Parishad.

1.1.37 The Assam Panchayat (Constitution) Rules, 1995 specified the rules relating to conduct of Panchayat elections, election of members to represent district planning committees, delimitation of constituencies for the different tiers, determination of constituencies reserved for STs/SCs and women, and allied matters. A five year term was fixed for the Panchayati Raj institutions in Assam by the Act of 1994.

1.1.38 The Act of 1994 provided for constitution of Gaon Sabha, consisting of persons registered in the electoral rolls. The area of Gaon Panchayat would be comprising a revenue village or a group of revenue villages or a Forest village or a Tea Garden area or hamlets forming part of revenue village or Forest village or Tea Garden area or other such administration unit or part there of with a population not less than six thousand and not more than ten thousand. Besides the seats reserved for SCs/STs, the Act provided that not less than one-third of the total number of seats would be reserved for women.

1.1.39 The Gaon Sabhas are given the responsibility of considering reports in respect of development programmes of the Gaon Panchayats, Promotion of unity and harmony among all sections of society in the villages, and considering other matters as may be prescribed. It may, however, be noted that the Gaon Sabha is only a recommendatory body, and therefore, it may make recommendations and suggestions to the Gaon Panchayats.

1.1.40 In accordance with the 73rd Amendment, a number of local functions have been earmarked for the Gaon Panchayats. The fund for the Gaon Panchayats, set up under the Act of 1994 includes contributions and grants if any, by the Central or the State Government besides other receipts such as local tax, share of market, Ghat/Ferry, etc.

1.1.41 The Anchalik Panchayats are coterminous with the development blocks, and the Act provided for the similar pattern of reservation of seats in the Anchalik Panchayats as in case of the Gaon Panchayats. Altogether twenty eight functions have been entrusted with the Anchalik Panchayats. The Anchalik Panchayat funds include contributions and grants, if any, made by the Central and the State Government, Zila Parishad grants, and other receipts including such part of the land revenue collected in the state as may be determined by the government. However, each Anchalik Panchayat is required to set apart annually such sums as may be required to meet the lost of its own administration including the payment of salary allowances, provident fund and other gratuity to officers and employees. The Act of 1994 provided for appointment of an ex-officio secretary to an Anchalik Panchayat.

1.1.42 The Act of 1994 provided for constitution of Zila Parishad having jurisdiction over the entire rural area of the district. Reservation of seats in the Zila Parishad for SCs/STs and women has also been the same with the Gaon Panchayat or the Anchalik Panchayat. The Act, however, further provided that if women form Scheduled Castes and Scheduled Tribes categories or even general category are not represented, the Government may by notification in the Official Gazette, nominate one member from such category.

1.1.43 According to the provisions of the Act of 1994, there will be a President and a Vice – President for each Zila Parishad, but its administration will be headed by the Chief Executive Officer. The government can appoint an officer not below the rank of the additional deputy commissioner of a district as chief executive officer of a Zila Parishad besides a chief accounts officer and a chief planning officer. The Act of 1994 also provided that it shall be lawful for the government to issue directions to any Panchayat in matters relating to state and national policies and such directions shall be binding on the Panchayat.

1.1.44 The fund of the Zila Parishad mainly comprises :

(i) The amount transferred to the Zila Parishad by appropriation from out of the consolidated fund of the state;
(ii) all grants, assignments, loans and contributions made by the government;
(iii) i.e.all fees and penalties paid or levied by or on behalf of the Zila Parishad; and all fines imposed under the Act;
(iv) all rents from land or other properties of the Zila Parishad;
(v) all interests, profits and other money acquired by gifts, grants, assignments or transfer from private individual or institutions;

1.1.45 The Act of 1994 provides for setting up of standing committees at all the three levels. At the Gaon panchayat level there are three standing committees: Development committee performing the functions relating to agricultural production, animal husbandry and rural industries and poverty alleviation programmes; social justice committee for performing functions relating to promotion of economic, social and educational reforms, etc. in respect of

SC/ST and backward classes; and social welfare committee performing the functions of education, public health and other public works of the gaon Panchayat. The Anchalik Panchayat has three standing committees, viz., general standing committee, finance audit and planning committee and social justice committee. The Zila parishad, however, has got four standing committees - the general standing committee, the financial and audit committee, the social justice committee and the planning and development committee. The planning and development committee is incharge of education, public health and industrial development including cottage industries but it is not involved in district planning.

1.1.46 The Act also made provision for the district planning committee which is to be constituted at the district level to consolidate the plans prepared by zila parishad, anchalik panchayats, Gaon panchayat, town committees, municipalities and municipal corporation in the district and prepare a draft development plan. The planning committee consists of MPs, MLAs, ZP, president, and mayor / chairperson of municipal corporations/boards/town committees. Four-fifths of the total number are members of ZP/municipal corporation etc. The deputy commissioner will be a permanent invitee. The president of the ZP shall be the ex-officio chairman and the chief executive officer of the zilla Parishad shall be the ex-officio secretary of the DPC.

1.1.47 As per provisions of the Act of 1994, the State Government has set-up a State Finance Commission to look into the financial aspects of the PRIs and sharing of taxes duties, tolls and fees which may be assigned to and appropriated by the PRIs at different levels. The Finance Commission will also look into grants-in-aid to panchayats from the Consolidated Fund of the State.

1.1.48 The changes in the new Act as compared to the 1986 Act are as under :

(i) The sharing of the cess from the hat is 20 per cent to the ZP (10 per cent to Mohkuma Parishad as per 1986 Act) 40 per cent in GPs (same as in 1986 Act) and 40 per cent in Aps (50 per cent in 1986 Act).

(ii) The clause for providing honorarium to president, vice-president and members under the 1986 Act has been deleted in the new Act and instead allowances / sitting allowances are to be paid subject to such rules as may be made in this context. No mention is made regarding allowances at a gram panchayat level for its members and president.

(iii) The total expenditure on establishment shall not exceed one-third of the total expenditure of the GPs. In Aps it can exceed one-third only with the approval of the Sate Government.

1.1.49 The Act of 1994 has been amended in April 1997, and under the Assam Panchayat (Amendment) Act, 1997, the minister-in-charge of the respective district has been made the chairman of the district planning committee in place of the President of the Zila Parishad. The Act was again amended in September, 1997. However, the amendments were regarding only some of the routine matters.

1.1.50 Mainly due to the controversy over an acceptable electoral roll in the wake of the Assam Movement (1979-85) against the presence of foreign nationals in Assam, Panchayat elections in the state had been stalled for a long time after the last elections held in 1979 under the Act of 1972. The first elections under the Act of 1986 were held in 1992. In 1993 the chief minister announced that a separate Panchayat election commission for the state would be established and the Panchayat laws would be suitably amended to ensure that elected Panchayats were not dissolved without any reason with every change of government. However, with the change of the government in 1996, the new government headed by the Asom Gana Parishad dissolved all rural bodies on 4 April 1997. As per relevant provision of the Constitution, elections should have been held within six months, nevertheless, these have not been held so far.

1.1.51 In the conference of Rural Development and Panchayat Ministers by the Eleventh Finance Commission at Delhi on 9 September 1998, the Minister of Panchayat and Rural Development, Assam reported that the Panchayat elections in the state have not been held "because of problems of insurgency and law and order". This clearly reflects the political

will and commitment of the political leadership to the constitution. The State Government apparently prepared for Panchayat elections in Assam in 2000, but this time the elections were held not due to certain unresolved issues of the autonomous councils of different plain tribes of the Brahmaputra Valley. In absence of elections, the Panchayati Raj in Assam has become a moribund institution. Besides elections smooth functioning of Panchayati Raj in the State will require certain amendments in the existing Act.

1.1.52 The Legislative Assembly of Assam enacted the Act of 1994 ostensibly in conformity with the 73rd Amendment. Although the mandatory provisions regarding enactment of state legislation was mechanically satisfied, many of the provisions of the Act of 1994 turned out to be repugnant of the ethos of the 73rd Amendment, the Act of 1994 contains obnoxious provisions which make elected Panchayat representatives subservient to the state bureaucracy. Sub-section (4) of Section 4 of the Act requires the Secretary of the G.P. to consult the B.D.O. even after receiving approval from the President of the G.P. for convening a meeting of the G.S. sub-section (5) of the same section authorises the Secretary of the G.P. to convene a meeting of the G.S. in time in consultation with the B.D.O. if the President fails the convening of the G.S.

1.1.53 Similarly, State Government has amended the act enacted after the 73rd amendment supposedly in consonance with its letters and spirit deliberately making the elected panchayat representatives subordinate to the political masters. The Assam (Panchayat) Amendment Act, 1997 provides that the Minister-in-charge of the respective district, to be notified by the government, shall be the Chairperson of the District Planning Committee. The 1994 Act provided that the President of the Zilla Parishad shall be the ex-officio Chairman of the District Planning Committee. Noteworthy that the President and the Vice-President of the Zilla Parishad are to be elected from amongst the members directly elected to it. This amendment is a retrograde step and an encroachment by the state political masters on the space earmarked for the elected representatives.

1.1.54 For forging vertical linkages among all the layers of elected representatives (Panchayat representatives, MLAs and MPs) it may be desirable to provide that the Members of the House of People and the Members of the State Legislative Assembly representing a part or whole of the district whose constituencies lie within the district shall be members of the Zilla Parishad in addition to the Zilla Parishad members directly elected and the Presidents of the Anchalik Panchayats. But conferring the right to vote also to the MLAs and MPs on issues exclusively falling within Zilla Parishad's jurisdiction is an over democratic provision which makes some people more equal than others.

1.1.55 Functional control over village level functionaries by G.P. is an indicator of the G.P.'s self-government status. This has not been ensured in Assam. Karnataka has placed VLW, ANM, Patwari, Anganwadi Sebika and Primary School teachers under the control and supervision of Taluk Panchayat. Madhya Pradesh has ensured functional control by G.P. over all village level functionaries except the Patwari. Similarly, G.P. in Rajasthan has control over VLW and Primary school teachers. In West Bengal, while some functionaries have already been placed under the control of G.P., reorganisation of the VLW cadre is under consideration.

1.1.56 Although Panchayats have been empowered to prepare area plan for economic development and social justice, in Assam G.P. can take up execution of only those small works which are financed by its own resources. In fact, except Kerala and Madhya Pradesh, other State Acts limit the power of the G.P. quite drastically.

1.1.57 All of the states with the sole exception of Bihar have received and accepted, either in full or in part, the recommendations of the State Finance Commissions. More important, however, is the financial devolution recommended by the State Finances Commissions, which reflects their perception on the issue of financial autonomy of the Panchayats. It is significant to note that States where the Panchayats more active have been recommended more favourable financial devolution by their respective State Finance Commission. For example, Kerala State Finance Commission recommends 25 per cent of surcharge on Stamp Duty, 25 per cent of M.V. tax, and 25 per cent of court fee stamps to the Panchayats. West Bengal State Finance Commission recommends 16 per cent of the net

proceeds of the state taxes, while Karnataka State Finance Commission recommends 36 per cent of the total non – loan gross revenue receipts. Madhya Pradesh State Finance Commission recommends 3.24 per cent of the net total revenue of the preceding year and 40 per cent of Plan funds. Punjab State Finance Commission recommends 20 per cent of the Stamp Duty, Motor Vehicle Tax, Electricity Duty, and Entertainment Tax. Tamilnadu State Finance Commission recommends 15 per cent of the state's tax revenue every year during the period 1998 to 2001. Tripura State Finance Commission recommends 20 per cent of the state's share of central taxes, 50 per cent of the revenue from Sales Tax, Purchase Tax and Luxury Tax, 35 per cent of Professional Tax, 32 per cent of Agricultural Income Tax and Land Revenue and 15 per cent of Forest Revenue. As against the above, Assam's State Finance Commission recommends merely 2 per cent of State taxes and 10 per cent of Motor Vehicle Tax. In the perception of Assam State Finance Commission, Panchayats are local bodies for performing activities of peripheral nature.

1.1.58 With the emergence of Panchayats as units of self government under the mandate of the Constitution, "the question of government agencies (like the DRDA) continuing to perform the very same functions is wholly untenable and anachronistic, if not hostile and repugnant to the constitutional scheme". This implication of the 73rd amendment is understood by a few states only (Karnataka, Kerala., Madhya Pradesh and Maharashtra) which have merged DRDA with the Zilla Parishads. A few other states have provided for Chairman of Zilla Parishads as Chairman of DRDA (Himachal Pradesh, Orissa, West Bengal, for example). Other State Acts, including the Assam Act, are silent on the issue.

1.1.59 Most of the state Acts (including the Assam Act) provide for suspension of G.P. members by the D.C. and dissolution of the Panchayat by the State Government, making a mockery in the process, of the self-government status of Panchayats.

1.1.60 It is clear that despite the 73rd Amendment, the Government of Assam is not taking initiative in setting up Panchayats as units of self-government. This may be reflective of the difficulty of changing the mind set or reluctance to share power with the elected representatives at the grass root level.

(II)

FUNCTIONING OF THE AUTONOMOUS DISTRICT COUNCILS IN ASSAM

1.2.1 Most of the tribal communities of north east India have their own socio – political institutions, customs and traditions to help them assert their autonomous existence. Considering all such institutions and the underlying ethos of autonomy, the framers of the Indian Constitution contemplated the instrument of tribal self-rule embodied in the Sixth Schedule. The Sixth Schedule was, therefore, designed to accommodate the collective aspirations of the tribal communities in a political system characterized by centralized bias. The Gopinath Bordoloi Sub-committee on North East Frontier (Assam Tribal and Excluded Areas) of the Constituent Assembly drafted the Sixth Schedule and it was passed by the Assembly with certain modifications.

1.2.2 Another significant development in respect of administration of the hill areas of Assam dominated by various tribal communities was the formation of the United Mikir and North Cachar Hills district in 1951. It covered some parts of the erstwhile districts of Nowgong, Sibsagar, Cachar and United Khasi and Jaintia Hills. This administrative reorganisation was followed by formation of the Karbi Anglong Autonomous Council and the North Cachar Hills Autonomous Council under the Sixth Schedule.

1.2.3 Consequent upon the further reorganization of administrative boundaries, a new district comprising the North Cachar Hills sub-division of the United Mikir and North Cachar Hills district came into being in 1970. The remaining part constituted the Mikir Hill district which was renamed as Karbi Anglong in 1976. Therefore, the autonomous council has been in operation in both of the autonomous hill districts of Assam since 1952.

1.2.4 For each autonomous district, the Sixth Schedule provides for District Council consisting of not more than 30 numbers for a term of five years. The Governor is empowered to nominate not more than four members to the Council, while the rest are elected on the basis of adult suffrage. The chief executive member, the chairman and the deputy chairman are elected from among the members. The chief executive member selects the other executive members.

1.2.5 Under different provisions of the Sixth Schedule, the Autonomous District Councils (ADC) had the powers and functions listed below:

A. Legislative Powers :

- Allotment, occupation or use, or the setting apart of land, other than any land which is reserved forest, for the purposes of agriculture or grazing or for residential or other non – agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town;
- The management of any forest not being a reserved forest;
- The use of any canal or water-course for the purpose of agriculture;
- The regulation of the practice of jhum or other forms of shifting cultivation;
- The establishment of village or town committees or councils and their powers;
- Any other matter relating to village or town administration, including village town police and public health and sanitation;
- The appointment or succession of chiefs or headmen;
- The inheritance of property;
- Social customs;
- Regulation and control of money-lending and trading by persons other than the members of the schedule tribes,

B. Judicial Powers :

For administration of justice, the district councils are vested with the following powers:

1. Constituting village councils and courts for the trial of suits and cases of the scheduled tribe communities. District council can appoint members of village councils and presiding officers of the courts. They may also appoint officers for the administration of the laws made by the district councils.

2. The district council or any court constituted on its behalf can exercise the powers of a Court of Appeal in respect of all suits and cases of tribals by the village councils or courts so constituted. No other courts except the High Court of that province and the Supreme Court of India have jurisdiction over such suits and cases.

3. District council may with the prior approval of the Governor, make rules regulating –

(i) the constitution of village councils or courts and the powers to be exercised by them.

(ii) the procedure to be followed by the village councils or courts in the trials of suits or cases.

(iii) the procedure to be followed by the district council or any court constituted by such council in appeals and other proceedings.

4. The Governor may, for the trial of suits or cases arising out of any law in force in any autonomous district confer on the district council or on courts constituted by such council or any officer appointed in that behalf by the Governor, such powers under the code of civil and criminal procedures, as he deems appropriate and thereupon the said council, court or officer shall try the suits, cases or offences in exercise of the powers so conferred.

5. The Governor is authorized to withdraw or modify any of the powers conferred on district council, court or officer so far as the judicial matters are concerned.

C. Executive Powers :

The following executive powers have also been vested with the district councils under the Sixth Schedule of the Constitution.

- The district council may establish, construct and manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads, road transport and waterways in the district and may make regulations with the approval of the Governor for their control.
- The Governor may, with the consent of the district council, entrust either conditionally or unconditionally to that council or to its officers functions in relation to agriculture, animal husbandry, community projects, co-operative societies, social welfare, village planning or any other matter to which the executive power of the state extends.

D. Financial Powers :

(i) The Sixth Schedule to the Constitution provides for the constitution of a district fund for each autonomous district to which all the money receive by the district council shall be credited.

(ii) For the management of the district fund, the Governor may make rules in respect of procedures of payment to the fund, withdrawal from the fund and other matters.

(iii) The Comptroller and Auditor General of India is uthorized to conduct audit of the accounts and his reports on audits shall be placed before the council.

(iv) The district council in their respective territorial jurisdictions have the powers to access and collect revenue on land in accordance with the principles followed by the Government of the State.

(v) The district councils in their respective territorial jurisdiction have the power to levy taxes on land and buildings and tolls on resident persons.

(vi) The district council has also been uthorized to levy and collect all or any of the following taxes :

(a) taxes on professions, trades, callings and employments;
(b) taxes on animals, vehicles and boats;
(c) taxes on entry of goods into a market for sale therein and tolls on passengers and goods carried in lorries;
(d) taxes for maintenance of schools, dispensaries and roads.

(vii) The district council has the right of sharing the royalties accrued each year from licences or leases for the purpose of prospecting for or the extraction of minerals granted by the Government of the State in respect of any areas within the jurisdiction of the district council as may be agreed upon by the State Government and the district council.

E. Other Matters :

(i) Laws and regulations made under the Sixth Schedule of the Constitution of India by a district council shall have the force of law only when they are published in the official Gazette of the State.

(ii) Any Act of the State Legislature or any act of the Parliament in respect of the subjects and powers vested with a district council shall not be applicable within the territorial jurisdiction of a district council unless the authority of such a council decides to accept them in toto or with

1208 LJ&CA/2002—27A

exceptions and modifications. The applicability or otherwise of such Acts shall have to be publicly notified by the Governor concerned.

(iii) The Sixth Schedule of the Constitution also clearly indicates the manner in which the annual budget of an autonomous district is to be reflected in the State Budget or Annual Financial Statement.

(iv) The Governor has also been empowered to appoint a commission to enquire into the report on administration of the autonomous district and autonomous regions in the State.

(v) The Governor is also empowered to annul or suspend an act or a resolution of a district council subject to the subsequent approval of the State Legislature if he is satisfied that the continuance of such an act or a resolution is detrimental to the national interest.

1.2.6 The district councils, with the powers and functions given by the Sixth Schedule could not fulfil the aspirations of the common tribal people. Apart from failure of the political leadership to sincerely utilise the available opportunities, the function of the district councils was also suffered from certain constitutional provisions. For instance, the district councils had the legislative power over the subjects pointed out earlier. However, the laws enacted by the councils required the Governor's assent.

1.2.7 Similarly, the district councils had no legislative or regulatory power on the subjects over which they could exercise executive power. In 1960, the committee appointed by the Governor of Assam to examine the financial conditions and working of the district councils reported that the financial conditions of the district councils was not satisfactory. The councils suffered from an excess of clerical staff and even spent government subsidy meant for development works on administrative expenses. There was no adequate effort to increase revenue and no coordination with the government. There was a great deal of compartmentalization in the council's office.

1.2.8 Despite such problems, the State Government transferred sixteen departments to the district councils in June 1970 to satisfy the political aspirations of the tribal leadership. The subjects were, (1) agriculture, (2) minor irrigation, (3) soil conservation, (4) animal husbandry, (5) dairying and milk supply, (6) forests, (7) fisheries, (8) roads and buildings, (9) general education, (10) cultural programme, (11) water supply, (12) health and family planning, (13) social welfare, (14) cottage industries, (15) community development, and (16) panchayat.

1.2.9 The subjects were transferred, nevertheless the State Government had a strong control over them. For instance, community development and panchayat were in the list of transferred subjects, but the centrally sponsored schemes were not given to the district councils for implementation. Similarly, education was transferred, but appointment of teachers was done by the State Government. Therefore, the State Government continued to interfere with the departments which were transferred to the district council.

1.2.10 In reality, there was no devolution of powers and fund. There were instances where the money for development works was transferred to the district councils towards the end of the financial year with an oral instruction to the principal secretary to deposit the money back to the treasury as unspent balance.

1.2.11 In such a situation, although the State Government transferred sixteen departments to the autonomous councils of the two hill districts of Assam i.e. Karbi Anglong and North Cachar hills, the discontent gave rise to the demand for constitution of an Autonomous State within Assam. The movement for an Autonomous State was led by the Autonomous State Demand Committee (ASDC) comprising the leaders and representatives of the students organisations of the two hill districts besides other groups and organisations. After a prolonged agitation under the aegis of the ASDC, a Memorandum of Understanding (MoU) was signed between the Government of Assam and the representatives of the ASDC in the presence of the Union Home Minister on 1 April, 1995 granting more autonomy to the district councils.

1.2.12 On the basis of the MoU, the State Government transferred altogether thirty subjects/department (including the earlier sixteen subjects) to the autonomous councils. The subjects are: (1) Industry, (2) Animal Husbandry and Veterinary, (3) Forest, (4) Agriculture, (5) P.W.D., (6) Sericulture, (7) Education (Primary, higher secondary and adult education), (8) Cultural affairs, (9) Soil conservation, (10) Co-operation, (11) Fisheries, (12) Panchayat and rural development including DRDA, (13) Handloom and textile, (14) Health and family welfare, (15) Public health engineering, (16) Irrigation, (17) Social welfare, (18) Flood control, (19) Sports and youth welfare, (20) Weights and measures, (21) Food and civil supplies, (22) Town and country planning, (23) College education including library, museum and archaeology, (24) Land reforms, (25) Publicity and public relations, (26) Printing and stationery, (27) Tourism, (28) Transport, (29) Excise, (30) Finance including sales tax, excise and professional tax.

1.2.13 Consequent upon the changes made, an office memorandum was issued providing details of the administrative changes and modalities adopted for the management of the above subjects. The salient features or the changes that have been brought forward through this office order are :

1. The money to be transferred by the State Government to the district council should be transferred in April and October.
2. Reappropriation of funds from one major head to the other by the council was allowed with intimation to the State Government.
3. A Principal Secretary is appointed to the district council who is in the rank of commissioner and secretary to the Government of Assam.
4. One of the secretaries is appointed from the technical departments.
5. All the officers below the rank of zonal heads and staff of the entrusted departments are to be placed under the administrative control of the council.
6. The departmental officers placed under the control of the council shall report directly to their heads of departments at the state headquarters in the matter of technical control and technical section.
7. The executive committee of the council shall prepare the budget estimates and the council will pass the budget of the entrusted subjects and send it to the finance department of the State Government for inclusion in the state budget generally without any change.
8. There shall be no common outlay (for both the districts). The existing schemes under 'common outlay' shall be transferred to the council as per their geggraphical locations.
9. All the centrally sponsored schemes/central sector schemes/NEC schemes/ external aided schemes will be implemented by the council.

1.2.14 It is, therefore, clear that a positive development in entrustment and empowerment of the autonomous councils has taken place in Assam from the original provisions of the Sixth Schedule to the signing of the MoU on 1 April, 1995. Consequently, the two autonomous councils established for the hill tribes of Assam have become much more powerful compared to the other autonomous councils created under the Sixth Schedule in other states of north east India.

1.2.15 The 73rd Amendment of the Constitution has added the Eleventh Schedule which lists 28 subjects as coming within jurisdiction of the Panchayats. Subject to the provision of the Constitution, the Legislature of a state may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institution of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to –

1. the preparation of plans for economic development and social justice;
2. the implementation of schemes for economic development and social justice as may be entrusted with them including those in relation to the matters listed in the Eleven Schedule.

1.2.16 When the provisions of the 73rd Amendment about the powers scope and functions of the Panchayat bodies are compared with those attached to the Karbi Anglong Autonomous Council and the North Cachar Autonomous Council, it is found that the councils are in a more advantageous position in respect of development functions. Similarly, the sources of finance for the autonomous councils are also more diversified. Nevertheless, mainly due to the strong intervening role of the State Government, both the councils are found to be crippled with financial crisis.

1.2.17 The Legislative Assembly of Assam enacted the Assam Panchayati Raj Act, 1994 and the three-tier system was extended to all the rural areas except for the areas under the autonomous councils. The autonomous councils of Karbi Anglong and North Cachar Hills have, however, neither accepted the Panchayat bodies nor taken any step for devolution of powers from the district. In the absence of any elected body such as regional councils or village councils, the autonomous councils pretend to reach the people at the grass-root through nominated gaon-buras who are relics of the colonial era.

1.2.18 With progressive empowerment and the scope for interference of the State Government, the autonomous councils of the hill districts of Assam are now emerging as a distinct organ of the state with frozen hierarchy, increasing bureaucratization and lack of initiative for further decentralisation. The autonomous councils of Assam are now marked by over centralisation of power in the hands of the executive committee, because all planning and plan implementation are decided at the central level. The scope for initiative at the level below the districts has been minimised by the political leadership. Consequently, the participation of people in the development process has been found to be absent.

(III)

STRUCTURE AND FUNCTIONS OF THE AUTONOMOUS COUNCILS FOR THE PLAIN TRIBES OF ASSAM

A. BODOLAND AUTONOMOUS COUNCIL :

1.3.1 The policy of reorganisation of Assam on Federal basis announced by the Prime Minister of India in January 1967 was essentially to fulfil the aspirations of some of the autochthon tribes which could assert themselves politically. That announcement also inspired the Bodos to form a regional political party called the Plain Tribal Council of Assam (PTCA) in February 1967.

1.3.2 The sole objective of the newly formed PTCA was creation of a autonomous region called Udayachal comprising the areas of the Brahmaputra Valley dominated by different tribes of the Bodo group. The demand of autonomous region became a demand of a separate Union Territory in 1973 and it plunged the Bodos into a vigorous movement which continued till 1974. The movement for a separate Union Territory was followed by the movement for Roman script for Bodo language till the declaration for internal emergency in 1975.

1.3.3 After the period of emergency, the PTCA made electoral alliance with the Janata Party in Assam in 1977, and subsequently the leadership of the party decided to give up the demand of a separate Union Territory. Such an abrupt decision of the leadership obviously led to split. The splinter group with the support of the All Bodo Students Union (ABSU) formed another party called the Plain Tribal Council of Assam (Progressive) in May 1979 to continue the movement for a separate Union Territory. The ABSU, however, made several attempts to reunite the two regional political parties of the plain tribes for a concerted movement for a separate state.

1.3.4 When the ABSU failed in its attempt for unification of PTCA and PTCA(P), it organised a convention of all the existing tribal organisation of Assam in April, 1984. That convention decided to dissolve the PTCA(P) and form a new regional party called the United Tribal Nationalist Liberation Front (UTNLF) in 1988, which was subsequently renamed as the

United Bodo Nationalist Liberation Front (UBNLF). The UBNLF demanded a separate "Homeland" or "Bodoland" for the Bodos covering the entire north bank of the river Brahmaputra, thus dividing Assam into two equal halves. Besides that, the UBNLF demanded inclusion of the Bodo language in the Eight Schedule of the Constitution of India, and formation of a District Council for the people of the Bodo group living in the south bank of the river Brahmaputra.

1.3.5 While the UBNLF violently intensified its movement in late 1980s, the Assam Government led by the Asom Gana Parishad (AGP) remained indifferent to the basic issues raised by the Bodos. The Congress(I) once again came back to the power in 1991, and the Government headed by Hiteswar Saikia sought to fulfil the political aspirations of the Bodos by providing them Autonomous Council in lieu of a separate State.

1.3.6 Accordingly, in February 1993, a Memorandum of Settlement, popularly known as the 'Bodo Accord', between leadership of the Bodo movement and the Government of Assam in presence of the Government of India was hurriedly signed. The leadership of the movement, therefore, agreed to the decision to set-up an "administrative authority within the State of Assam" within the framework of the Constitution to ensure social, economic, educational, ethnic and cultural advancement of the Bodos.

1.3.7 As the Accord stated, there should be formed, by an Act of Assam Legislative Assembly, a Bodoland Autonomous Council (BAC) comprising contiguous geographical areas between the Sankosh and Pansoi rivers, and the villages having not less than 50 per cent of tribal population shall be included in the BAC.

1.3.8 The BAC would comprise of a General Council comprising 35 directly elected, and 5 members nominated by the Government of Assam particularly from the groups which could not otherwise be represented for a period of five years. The Council would have powers to make by laws, rules and orders for application within the BAC area on total 38 subjects. As per provision of the Accord, the finance for the BAC would be earmarked under a separate sub-head within the State budget, and the Government of Assam would have no power to divert this earmarked allocation to other heads. Allocation of funds should be in the line and the spirit of the Constitution, particularly seventy third and seventy fourth amendment. Besides that, the General Council would have powers to raise finances from levies / fees / taxes etc. on the specified subjects.

1.3.9 To translate the avowed objective of the Accord in to reality, the Assam Legislative Assembly enacted the Bodoland Autonomous Council Act, 1993 which received the assent of the President of India on May 13, 1993. The Act *inter alia* made provision for a General Council to be constituted by 40 elected members including 30 seats reserved for the Scheduled Tribes.

1.3.10 The executive powers in the area relating to the subjects specified in the Accord are entrusted with the General Council. Besides that, subject to the general policy of the Government, the General Council has been given the powers to formulate integrated development plans for the Council area, appoint class III and class IV staff, regulate trade and commerce within its jurisdiction in accordance with the existing laws, and guide customs and traditions and social justice of the Bodos according to the traditional laws. The Act has also given power to the General Council to make bye-laws for regulation and control of the subjects entrusted with it. However, the by-laws framed by the General Council attain validity only when the same are published in the Official Gazette.

1.3.11 As per provisions of the Act, there shall be an Executive Council to be called the Bodoland Executive Council consisting of the Chief and the Deputy Chief as the ex-officio members and seven other members of the General Council all of whom shall be nominated by the Chief from amongst the elected members of the General Council. On completion of the General Election, the Governor shall invite the leader of the party enjoying the simple majority to be the Chief of the Executive Council. However, the Deputy Chief shall be elected by the members of the General Council in its first meeting held after the General Election.

1.3.12 The Act also makes provision for a secretariat for the Autonomous Council to be headed by the Principal Secretary who shall be appointed by the Government in

consultation with the Chief of the Executive Council. Being the principal executive officer of the General Council, the Principal Secretary shall act under the direction of the Chief of the Executive Council and shall be responsible to the General Council. The Government may appoint such other Secretaries for the General Council on such terms and conditions as the Government may determine in consultation with the Chief of the Executive Council.

1.3.13 It is, however, worth noting that the Bodoland Autonomous Council Act does not provide for creation and administration of Village Councils or other subordinate bodies. The Act stipulates that Panchayat and Zila Parishad have the same meaning as defined in Assam Panchayati Act. Therefore, it means that the BAC will work through the existing panchayat bodies as the grass-root level institutions.

1.3.14 In the spirit of the Accord, the Act has also stated that there shall be a fund to be called "Council Fund" under the separate sub-head within the state Budget to be held for the purpose of the Act, and the Government shall not divert the fund allocated under this sub-head except in exigencies when there is unavoidable budget deficit. In each financial year, the General Council is responsible for preparation of its budget for the following financial year and submit the same to the Government by 1st November of the current financial year.

1.3.15 The Government of Assam unilaterally demarcated and declared the boundary of the BAC on December 10, 1993 consisting of 2570 villages with a total population of about 21 lakhs. But, the political leadership of the plain tribes of the Brahmaputra Valley believed that such demarcation was not proper as it left out a major part of contiguous Bodo inhabited area including the 10 k.m. Belt comprising international and interstate boundaries, forest areas besides some of the towns such as Gossaigaon, Bijni, Bongaigaon North, Barpeta Road and Tangla. The Bodos do not constitute majority population of such towns, but these towns are encircled by the Bodo dominated villages. More over, a large number of forest villages of which about 65 per cent of the population belong to different tribes were also excluded from the jurisdiction of the BAC as such villages are located in the 10 km. Belt. In addition to that, more than 30 tea gardens probably could be brought under the jurisdiction of the BAC.

1.3.16 The dispute regarding jurisdiction of the BAC soon became a serious issue which resulted in large scale violence in different parts of Bongaigaon and Kokrajhar districts in 1993, and the most gruesome massacre in Barpeta district in 1994. A large number of people including women and children were butchered and merely 70 thousands rendered homeless in the series of ethnic violence in lower Assam in 1993-94, nonetheless, the boundary issue of the BAC remained unresolved till today. Consequently, no election to the General Council of the BAC could be held till now. In absence of General Council or Executive Council constituted by the elected members, the functioning of the BAC since its inception has been depending upon the interim arrangements made by the Government of Assam.

1.3.17 Section 24 of the Act provides executive powers to the BAC on the transferred subjects. Devolution of the executive powers as specified in the Act, however, has not been found in practice. The executive and other staff serving in the BAC area are still under the direct control of the state, and the BAC has no say in the matter of their appointment, posting, transfer or any other service matter. Their salary is being paid by the Government but the total amount paid to them as salary or otherwise is debited to the BAC account.

1.3.18 In fact, the BAC is not aware of the actual number of officers in different cadres actually associated with the BAC affairs. All the staff of a particular transferred subject of a BAC district area treated as BAC employees and their salaries etc. are debited to the BAC account although they are engaged in both BAC and non-BAC matters. As a result, in some cases, only the salary component of the employees of the department exceeds the total annual allocation to the BAC for the particular subject. It is also worthnoting in this context that the BAC has to spend about 70 per cent of its plan allocation only to meet the overhead cost.

1.3.19 In practice, the BAC in its present form has virtually no say in matters of normal maintenance of roads, bridges, buildings, irrigation system, medical services, veterinary services, land revenue and other normal administration of the BAC, notwithstanding

all these subjects are transferred to it by the Act. The Government of Assam has retained under its direct control both staff and funds related to all such services, and consequently the BAC has been deprived of the required non-plan fund.

1.3.20 In fact, there is a dual administration in the BAC in respect of all transferred subjects – one by the State Government for "Individual Schemes" and another by the BAC for the residual schemes termed as "Divisible". For instance, state Roads, National Highways falling in the BAC areas, RCC bridges, Municipal Roads, IRDP, etc. have all been declared as "Indivisible" and therefore, control, supervision, etc. and the fund for these works have not been handed over to the BAC. Such division of the departments as "Divisible" and "Indivisible" is contrary to the ethos of the Bodo Accord and the subsequent BAC, Act.

1.3.21 The mechanism thus adopted by the Government of Assam to release fund to the BAC with a direct control over the non-plan fund, and division of the transferred subjects into "Divisible" and "Indivisible" schemes has adversely affected functioning of the BAC. The total annual budget allocation to the BAC during the period between 1993-94 to 2000-2001 is more than rupees 394 crore, out of which the BAC has actually received only rupees 89 crore. In other words, the State Government has not released more than 77 per cent of the total annual budgeted amount to the BAC (shown in Annexure).

1.3.22 It has also been mentioned in the Act that the Council may collect certain taxes payable under the law for the time being in force as may be prescribed and from such date as the Government may fix. However, the Government has not yet prescribed the laws under which and the date from which the BAC may collect the taxes and duties including land revenue, and royalty in the BAC areas. Similarly, the BAC has not also been delegated with statutory power under departmental Acts for effective exercise of the power over the control of distribution of essential goods, issue of permit and licences, etc. and such other statutory powers where required.

1.3.23 Some of the major problems which have crippled the BAC in its inception are briefly pointed out. The Government of Assam, as it appears, has been deliberately ignoring the fundamental problems faced by the BAC. In this context, a brief discussion on some of the major recommendations made by the T.L. Baruah Committee on affairs of the BAC would be relevant.

1.3.24 The Government of Assam constituted a committee under the chairmanship of Shri T.L. Baruah, IAS (Retd.) in February, 1994 to work out the modality and quantum of devolution of funds to the BAC; to frame rules under the BAC Act 1993 to carry out various provisions of the Act; and also to identify the administrative difficulties which may crop up in implementation of the Act and methods of sorting them out.

1.3.25 To make the Council directly accountable to the people, the Committee recommended that the elections to the BAC should be held at the earliest, and the responsibility of preparation of the electoral rolls and conduct of the elections may be entrusted with the State Election Commission.

1.3.26 Regarding the problems of administration, the Committee suggested that the jurisdiction of the officers of various departments working in the BAC should be clearly defined. The officers on deputation to the BAC Secretariat should be paid from the BAC fund while all other field officers and staff in the BAC area should be paid by their respective departments as has been done in the past. Further, salary component of the staff working in the BAC should be clearly intimated to the Council at the beginning of the financial year to avoid the probable confusion about allotment funds to the BAC.

1.3.27 Considering the total population of the BAC area as percentage of the total population of Assam excluding the two hills districts, the Committee recommended that in respect of general population, 10 per cent of the funds from the divisible pool of the General Area Plan of the identified sectors should flow to the BAC. Similarly, considering the total ST and SC population in the BAC area as percentage of the total plain tribe and scheduled caste population of Assam respectively, the Committee recommended 30 per cent flow from the Tribal Sub Plan (TSP) and 3.5 per cent from Scheduled Caste Component Plan (SCCP) from

the identified sectors. The total amount of TSP and SCCP for the vested subjects should be treated as "Divisible."

1.3.28 However, categorising certain funds as "Indivisible" the Committee recommended that no share of such funds will flow to the BAC. Regarding allocation of non-plan funds, the Committee did not make any specific recommendation, but suggested that non-plan expenditure may be made by the State Government. The Committee also recommended that as funds have been separately earmarked for the BAC, there should not be fresh allocation of funds under decentralised sector.

1.3.29 The Government of Assam has been following the recommendations made by the T.L. Baruah Committee for devolution of funds to the BAC. The methodology for devolution of fund adopted by the Committee; however, is based on a mechanical approach. It takes into account only the population factor and ignores certain other important aspects such as remoteness of the areas inhabited by the Bodos, persisting relative deprivation and intensity of poverty among the plain tribes of Assam, and infrastructure required for socio-economic development of the areas covered by the BAC, etc. It is, therefore, essential to work out a more scientific method for devolution of funds to the BAC. Nevertheless, nothing can be done in absence of a democratically elected General Council, and it demands immediate demarcation of territorial boundaries of the BAC.

1.3.30 Similarly, the Committee arbitrarily categorised a good number of schemes as "indivisible" in certain transferred subjects such as Cottage Industries, Education, Land Reforms, P.W.D., etc. Therefore, the immediate need is to work out a better alternative to it, and also to ensure allocation of non-plan funds to the BAC for an effective decentralization of the financial powers of the State. Besides that, the required administrative rearrangements should be worked out urgently, if necessary by redrawing the district boundaries part of which are covered by the BAC, to make the Council a separate entity so that it can effectively exercise the maximum autonomy to meet the aspirations of the common people.

B. OTHER AUTONOMOUS COUNCILS :

1.3.31 Granting of autonomy to the Bodo tribe paved the way for the establishment of similar autonomous councils for other plains tribes also. In the wake of rising ethnicity, the Government of Assam adopted a flexible attitude towards the growing movement among different plains tribal groups seeking autonomy within the State for the preservation of their ethnic identity and managing their affairs in tune with the customary laws and traditional practices. The year 1995 witnessed a series of accords and legislations for constituting autonomous councils for Lalung, Mising and Rabha-Hasong plains tribes of Assam under the State Act. These Acts are patterned on Bodoland Autonomous Council Act but with the significant difference that these tribal councils will not have any specified territory but will have jurisdiction over the entire state. The autonomous councils will "comprise satellite areas of village councils formed out of the blocks of contiguous revenue villages, each having more than 50 per cent population of the (concerned) tribe without having any compact area".

1.3.32 The Act provides for the General Council and the Executive Council like the Bodoland Council. The General Council consists of 30 members of which 26 are reserved for the concerned tribe. The remaining members will be nominated by the State Government form among the groups and communities residing in the council area and not otherwise represented in the General Council. Besides, the Member of Parliament and Member of Legislative Assembly belonging to schedule tribe reserved constituencies of the council area are also ex-officio members of the General Council. There are three executive councilors including one chief executive coucillor who is also the President of the General Council. These autonomous councils have been delegated some powers and assigned some functions as in the case of Bodoland Autonomous Council.

1.3.33 One distinctive feature of these Acts is that it provides for formation of village councils for each block of villages or village having 50 per cent or more population of the concerned tribe. Each "village council shall consist of 6000 to 8000 population". Like the General Council, the village council is also a body corporate with defined powers and

functions. The village council consists of 10 members of which 5 are reserved for the specific tribe. The village council members shall elect one among them as the president of the village council who is also to be the chief of the village council.

1.3.34 The village council has been delegated executive powers in 26 subjects transferred to it. It is also uthorized to levy taxes and tolls on the lines of the autonomous councils and perform similar functions at the village level. The Act also provides for creation of two funds viz. (i) the general council fund and (ii) the village council fund. Each fund shall be under separate sub-heads within the state budget.

1.3.35 The autonomous councils, with their distinct ethnic character have been suffering from certain problems since inception. Some of the problems faced by the Bodoland Autonomous Council have already been pointed out. All the four autonomous councils were constituted of nominated members as an interim measure pending elections. Nevertheless, the elections have not yet been held, nor can be held without resolving certain basic issues.

1.3.36 It has already been pointed out that the demarcation of the boundaries of BAC is one of the most serious issues which should be resolved amicably. Similarly, identification of villages for constitution of village councils has become a major problem for the remaining three autonomous councils for their unique ethnic character as well as the demographic parameter stipulated in the Acts of 1995.

1.3.37 The Mishing Autonomous Council Act, 1995 provides that "there shall be a village council for each block of villages or village having 50 per cent or more Mishing population". The other two Acts i.e. the Tiwa Autonomous Council Act, 1995 and the Rabha Hasong Autonomous Council Act, 1995 also stipulated similar ethnic criterion in favour of the respective ethnic group. In the context of heterogeneous ethnic composition of most of the villages of the Brahmaputra Valley and growing identity consciousness of each ethnic group, it has become difficult to constitute the village councils. One village may have 50% or more tribal population, but all of them may not belong to the same tribe. As a result, all the tribal people of the same village may not opt for becoming a part of an autonomous council which is constituted apparently to promote the interests of a particular tribe.

1.3.38 Consequently, the autonomous councils in fact have become an additional authority alienated from the people and constituted by the members nominated by the ruling party of the state. Change of government, therefore implies change of the Executive Council of each of the autonomous council. The middle level political workers usually who can not come up to the level of the State Assembly, are provided with a platform to fulfil their political aspirations without being representatives of the people. Nevertheless, the common grievance of all the autonomous councils is that the council have been assigned 38 departments, but in absence of adequate devolution of powers and finances, the councils have failed to achieve the stated goals.

ANNEXURE II

HILL STATES OF THE NORTH EAST – GOVERNANCE AND TRADITIONS

Traditional and Constitutional institutions of self-governance in six Hill States of the North East*

ARUNACHAL PRADESH

2.1 The State of Arunachal Pradesh which was created out of the Frontier Tribal Areas of Assam, and formerly known as the North East Frontier Agency (NEFA), is the first hill state of the North-Eastern Region, to have introduced the Panchayati System. The state introduced the Panchayats as early as 1969. This was partly because it did not enjoy the benefits of Autonomous District Councils or Regional Councils provided under the 6th Schedule of the Constitution, and partly because of the shift in policy of the Government of India towards these areas following the Chinese aggression of 1962. It was only in 1987 that Arunachal Pradesh attained the status of a full-fledged State.

Traditional Institutions

2.2 The traditional village councils of the various tribes in Arunachal Pradesh served as effective institutions of Self Government at the grass root level. These village councils existed from time immemorial, where they enjoyed some sort of sovereign status, controlling and regulating all aspects of individual and community life as well as activity in the village.

2.3 A typical village council generally consists of the village chief, local priest and elderly mature, respectable and influential persons of the village. Since the Adis are among the most advanced of the ethnic groups in the state in their methods of democratic evolution of tribal administration, reference may be drawn to the Kebang (Adi Village Council).

2.4 The Kebang is generally informal in nature and importance for leadership is attached to age and ones oratorical power. Every adult male becomes an active member of the Assembly. In the past women were not active participants in the Kebang, although participation was not a taboo. However, of late, there has been significant representation and participation of women. For instance, amongst the Nishis, there is an example of a woman gram (chief) at Palin.

2.5 The Kebang represents a three tier structure.

* At the village level, there is the Bore Kebang and Atok Kebang (ad hoc body).
* At the inter-village level, the Bango Kebang.
* The apex body is known as the Bogum Bokang Kebang.

Bore Kebang

2.6 The Bore Kebang is a regular Village Council. Women generally are not allowed in its meetings. Such Kebangs can take decision on peace, war, agriculture, communication, education or any other problem pertaining to the village. Even government plans are discussed here. The Atok Kebang basically functions as a judicial body. However, its discussions are not final.

Bango Kebang

2.7 The Bango Kebang acts like a Parliament for the Adis, settling inter-village disputes. It includes all the Grams (headman) of respective villages, distinguished persons and reputed public leaders. This Kebang works as a representative body of member villages and makes people think in terms of a larger community above the village level.

Bogum Bokang Kebang

* This annexure is based on a Paper prepared by the North East India Social Science Congress.

2.8 The Bogum Bokang Kebang is the supreme Kebang, having jurisdiction over almost the whole district. Sessions are invoked to consider a particular case of high importance concerning Adi society. The chief difference between the older Bokang and the Bango is that the latter do not have the same super national or social authority. They are more sophisticated and official. The highest Kebang enacts the laws of society, formulates policies for Adi community, discusses matters regarding war, peace, culture, religion, language and development. Sometimes even resolutions are passed and forwarded to the Government for implementation or necessary action.

Constitutional Bodies

Panchayati Systems

2.9 The North East Frontier Agency Panchayati Raj Regulation was promulgated in 1967, after recommendations of the Dying Ering Committee, although with minor modifications. These included a Gram Panchayat at the village level; Anchal Samiti at the block level; Zilla Parishad at the district level. Besides, an apex body called the Agency Council, organically linked with the Panchayats was also created by the Regulation.

2.10 According to the Panchayati Raj Regulation, 1967, there was to be a Gram Panchayat member for every hundred persons and each Gram Panchayat was to have a minimum of three hundred electors – to be elected through a secret ballot. Besides the elected members, some village level government functionaries were also made *ex-officio* members, although with no voting rights.

Anchal Samiti

2.11 Every Gram Panchayat in the Anchal was to elect one member to the Anchal Samiti, which has a maximum of 25 members. These elected members were to elect their Vice-President from amongst themselves. Besides the elected members, the Anchal Samiti could have a maximum of 5 nominated members representing tribes which had not secured representation in it. Chairpersons of co-operative societies in the Anchal Samiti area were also its ex-officio members. The President and its executive officer could be appointed by the Deputy Commissioner. Apart from the elected and ex-officio members, the heads of all the development departments were associated with the Samiti in preparation of development schemes relating to their respective departments.

2.12 The Anchal Samitis had the responsibility of creating their own assets through remunerative schemes using grant in aid from the Government. They were empowered to acquire vehicles, build shops, barracks for bachelors, mini-cottages, rice mills with the grant and collect revenue in the form of rent or charges for use of the facilities. They could earmark certain forest areas of their jurisdiction as anchal revenue and earn revenue from the sale of forest produce. The Anchal Samiti also coordinated the activities of the Gram Panchayat.

Zilla Parishad

2.13 This comprised of one elected member from every Samiti in the districts, and their Vice-Presidents. The heads of all development departments in the district were also associated in their ex-officio capacity with the sponsorship of schemes pertaining to their respective areas. The Deputy Commissioner was the President of the Zilla Parishad while its Vice-President was elected by its members in their first meeting. The Zilla Parishad was mainly an advisory body and has no executive function.

Conclusion

2.14 The Arunachal Pradesh Regulation Act deviated from the Ering Committee recommendations on certain important issues. Although the Gram Sabha Panchayats were made an elective body, it was not given any specific function except electing the Anchal Samiti members. Nor was it provided with a President or Chairman. The tribal village councils were also not linked statutorily with the Gaon Panchayats. Thus while such traditional institutions continued to function along side the Gaon Panchayats, yet they even included the elected Panchayat members in their leadership structure to strengthen themselves. Ironically, however, it was because the Gaon Panchayats did not have any functions assigned to them which prevented any major conflict of interests that would have otherwise arisen.

2.15 Studies carried out by the Sub-Regional Workshop at Itanagar, 23-25 March 1995, came to the following conclusions –

The Panchayat institutions have succeeded in bringing a uniform pattern of village level institutions throughout the state, including a gradual change in constitution and mode of functioning of traditional village councils. It has also created a greater awareness among the people regarding modern political processes and creating a set of grass root leadership as recruiting ground for higher level leadership. However, it was also recognized that the Panchayats had failed to act as effective agents of rural development and had parted to integrate traditional village councils into Panchayat Institutions.

2.16 The Arunachal Pradesh Panchayati Raj Bill 1994, failed to receive the premier assent as the Bill made certain deviations from the 73rd Amendment Act.

These were as follows –

- It did not provide for a Gram Sabha at the bottom level
- It did not provide for direct elections at all levels.
- The government could dissolve a Panchayat but no time limit was prescribed.
- No reservation for Scheduled Caste population.

Later, there were modifications with provisions for Gram Sabha and direct election for reserved seats for Scheduled Castes.

2.17 The important issues which need to be considered concerning decentralization in Arunachal Pradesh include the following –

First, whether the traditional village councils should be integrated with the Panchayats, or exist as parallel bodies.

Second, reservation of seats for women has generated a major debate. In an interview[1], the Arunachal Pradesh Chief Minister Mukut Mithi, expressed reluctance to grant 33 1/3 percent reservation for women, as the percentage of educated women was low. It was also stated that the absence of Scheduled Castes in the State, makes it unnecessary to retain such reservation for the latter.

2.18 Prof. A.C. Talick[2] who observed that almost all persons welcomed the idea of introducing Gram Sabha into Arunachal Pradesh and integrating traditional village councils into the Panchayat systems. This is expected to take place once the statutory status of Gram Sabhas is established. But some fear that in areas where chieftainship is practiced, it may lead the commoner to acquire power which the chiefs may not like. But all individuals including the above, expressed the view that administration of justice should be left to traditional village councils till such integration takes place.

2.19 The proposed role of women remains controversial. While most men interviewed by Prof. Talick were of the opinion that there will not be enough women in rural areas capable of filling to fill reserved seats in Panchayats and tribal people may not like such an idea, yet all

[1] Eastern Panorama magazine, March 2000.

[2] Prof. Talick held interviews with a cross section of the population in Arunachal Pradesh between November 19-23, 1996.

women, students and social activists, among others, were convinced that given the opportunity sufficient number of women will be forthcoming in all areas to become members of Panchayats. A gradual introduction of women to Panchayat bodies seems to be the viable solution. In 1997, the percentage of rural female literacy rate already constituted 45 percent of the total. Lastly, the generation of funds also needs to be considered seriously. The Panchayats functionaries were not satisfied with financial arrangement and demanded direct funds and more discussion making powers. A leader of a prominent zilla parishad says that it was futile to expect Panchayats to impose taxes and raise funds in a tax free state where even the State Government is not able to impose any tax and raise revenue[3]!

Public Opinion

2.20 Public debate concerning decentralization in Arunachal Pradesh revolves primarily around the following issues:

- Whether traditional institutions should be integrated with the Panchayats or should exist as independent bodies.
- Deletion of reservations for Scheduled castes, as the population structure in the State does not justify the inclusion of such a provision.
- Devolution of more powers and direct access to funds.
- Deletion of 33 1/3 percent reservation for women.
  This issue has generated heated controversy because various women organizations, intellectuals, students, etc. have suggested inclusion of such provisions.

[3] Interview by Prof. A.C. Talukdar with Shri Tacher Hina, Vice-President of Upper Subansiri Zilla Parishad, Daprijo on 22.11.1996. From "73rd Amendment And Panchayati Raj in Arunachal Pradesh", op.cit.

References:

Sanjay Dubey: Dynamics of Tribal Local Polity and Panchayat Raj in Arunachal Pradesh, New Delhi, 1991.

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Tamo Mibang: 'Tribal Council and Modern Democracy in the Context of Arunachal', Paper presented in Seminar on Political Reforms, on June 18-19, NEHU, Shillong, p. 2.

Sanjay Dubey: op.cit., pp. 43-44.

Ibid.

George Mathew (ed.): Status of Panchayati Raj in the States of India – 1994, New Delhi, 1995, p. 30.

A.C. Talukdar: "73rd Amendment and Panchayati Raj in Arunachal Pradesh", Paper presented in Workshop on Panchayats, Jan 9-11, 1997, Administrative Staff College, Guwahati.

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Penge Mathew (ed.): Status of Panchayati Raj in the States and Union Territories of India – 2000, New Delhi, 2001, p. 61.

MEGHALAYA
SYSTEM OF LOCAL GOVERNANCE
WITH SPECIAL REFERENCE TO THE KHASIS

Traditional Institutions

Traditional Khasi polity was regulated under a three tier system, with the Durbar Shnong, i.e., Village Council presided by the Rangbah Shnong (headman) at the bottom, and the Durbar Hima, i.e., State Assembly presided by the Syiem or the equivalent of a king at the apex. In between, was the Durbar Raid presided by an elected headman known as Basar or Lyngdoh, or Sirdar.

The Rangbah Shnong, is elected to the office by all inhabitants of the village irrespective of their clan affiliation. However, till today, this form of selection is conducted by voice vote.

Representation at the Raid and Hima level is more rigid. For instance, the Syiem can be elected only from the Syiem's family or its legitimate branch. The electoral council besides Myntries also comprise of other heads of clans. This electoral council used to elect and appoint the Syiem. In some cases the Bakhraws proposed the name of the candidates, whereas the people chose the Syiem.

Powers and Functions of Durbar Shnong

* Developmental - such as construction and maintenance of roads, bridges, water sources and sanitation.
* Establishment and maintenance of markets including settlement of disputes and collection of dues.
* Welfare works and community service.
* Judicial powers to solve petty cases.
* To initiate and organize cultural festivals.

In several urban areas, the Durbar Shnong works together with government agencies, functionaries and NGOs on local issues such as water supply, electricity, roads, schools, as well as tackling anti-social elements such as bootleggers and drug peddlers. It also collaborates with Church organizations to construct Churches, cremation grounds. Recently, the Khasi Jaintia Presbytarian (KJP) Synod, sponsored by the North Eastern Council (NEC), was instrumental in bringing non-conventional solar energy to a few villages in West Khasi Hills. The Durbar Shnong is usually approached to implement other government programmes like Adult Literacy and Non-Formal Education, Public Distribution System, Navodya Vidyalayas, etc.

Legislative these include rules and regulations to be followed by members of the village such as compulsory participation in community service, and regulations concerning social conduct.

Financial Resources

The Durbar Shnong has limited funds which are generally self generated. These include the imposition of fines, contributions, duties from households to meet general expenses.

Constitutional Bodies
District Councils

The Autonomous District Councils were constituted according to the provisions of the Sixth Schedule to the Constitution of India since 1950's.
Paragraph 2(i) of the Sixth Schedule provides that the council shall consists of not more than 30 members, of whom not more than 4 persons shall be nominated by the Governor and the rest shall be elected on the basis of Adult Suffrage. All the political parties (National or Regional) can participate in the elections. A person not belonging to a Scheduled Tribe is not be entitled to vote unless he/she is a permanent resident.

Powers and Functions

Communications relating to roads and ferries; primary education; establishment of dispensaries; establishment of markets which also included the regulation of money-lending and trading by non-tribal; cattle pounds; fisheries, etc.

In addition, the 1969 Amendment to the 6th Schedule further empowered the State Governments to entrust the Autonomous District Council's with functions relating to the following

* Agriculture
* Animal Husbandry
* Community Development Projects
* Co-operative Societies
* Social Welfare
* Village Planning
* Land Reforms and Land Development
* To constitute Village Courts, Subordinate Courts and District Council Courts for the trial of cases of Scheduled Tribes within autonomous areas. However, these do not include cases connected with security related matters.

Legislative Powers

To make laws and regulations on all matters relating to the

* Customs, traditions and practices of the tribal people;
* Land tenure system;
* Water courses;
* Forests;
* Marriages;
* Divorce;
* Inheritance;
* Appointment and succession of chiefs and headman, including an acting chief;
* Trading by non-tribals;
* Laws relating to establishment of town committees and village committee for local administration including village or town police;
* To make laws relating to the establishment of town committees and village committee for local administration including the village or town police. All such laws were however subject to the approval of the Governor of the State.

Financial Resources

* To assess and collect land revenues and impose taxes to raise funds for its administration, such as follows
* Land revenue
* Forest royalty
* House tax including local rates
* Sale of local markets, fishery ponds including cattle ponds
* Grazing tax including residential toll
* Royalty on mineral shared with the State Government on 60/40 basis
* Motor vehicle tax share with State Government on 60/40 basis
* Fees for trading license (TNT).

Public Opinion

Issues concerning decentralisation and devolution of powers in the context has generated intense political debate in the hill state of Meghalaya. The crux of the matter lies in the demand made by the traditional institutions (represented by the Federation of Khasi State) for Constitutional recognition to such self governing institutions of local polity which says in one memorandum (see References): "The inclusion of the Khasi States within the framework of the Indian Union was glaringly violative of the true and underlying spirit of the Instrument of

Accession and was not consistent with the provisions of Section 290-A of the Government of India Act 1935. A remedy of this Constitutional anomaly can be found by giving due recognition and protection of the traditional institutions under the Constitution of India".

The Congress Party (Meghalaya) in its Election Manifesto to the Assembly Elections 1993, clearly stated that Panchayat Systems was not necessary in Meghalaya. Support was offered to the traditional institutions for constitutional recognition. The Bharatiya Janata Party (BJP), Peoples Democratic Movement (PDM) also held similar views.

On the other hand, the issue has generated controversy between the District Council and traditional institutions, whereby the very effectiveness and validity of District Council are being questioned. In particular, the Federation of Khasi States (FKS) have strongly opposed the Appointment and Succession of Chief and Headman Act, 1959, which thereby condemn as a "draconian piece of legislation" passed by the Khasi Jaintia Hills Autonomous District Council (KJHADC).

The failure of the District Council to purportedly effectively safeguard and develop tribal interests also provides further legitimacy to traditional bodies for vocalising their demands. There are many who have reportedly experienced the view that District Council have become redundant in the state. For instance, T.H. Rangad, the then Home Minister of the State, opined that District Councils should be dismantled, to be reconstructed along political lines. Such views are also held by the academia, social workers, etc. In an interview with Eastern Panorama, the columnist and development worker, Ms. Patricia Mukhim, stated that since District Councils had become redundant and that, after statehood, there was no longer any need to retain them.

It is however obvious that the main problem confronting local elites representing traditional institutions, with those of District Councils, borders on the issues of power and financial resources. A spokesman for FKS, while denouncing the District Councils as an 'unnecessary burden and a white elephant on the State exchequer', also asserted that developmental funds should be sent directly to the Durbars. Under the prevailing setup, not only are the existing powers and functions of the traditional bodies extremely limited, but their access to resource allocation is severely poor.

It is obvious that the demand of traditional institutions for constitutional recognition, and greater devolution of powers and functions cannot be overlooked. However, two crucial issues need to be taken into consideration.

In the first place, there has to be a proper co-ordination or adjustment between traditional practices and usages with changes that have occurred within the Khasi society today. These imply specifically to system of election to the Syiem's post, which is still reserved for members belonging only to the Syiem family or its legitimate branch.

Secondly, the issue on representation needs to be seriously reconsidered, which still has limited participation of women in the decision making process, and also excludes the non-tribals of the State.

Lastly, adequate accountability and transparency of funds generated should be entrusted to authorities such as the Comptroller-General and Auditor-General of Accounts to prevent misuse.

APPENDIX I

OFFICE OF THE DORBAR HIMA MYLLIEM,
MAVIS DUNN ROAD, MAWKHAR
SHILLONG 793001
MEGHALAYA
NO. DHM/SC/2001/1

Dated: Shillong the 28th February 2001-07-06

To,

Your Excellency/Respected Sir,

Enclosed, please find herewith the Memorandum submitted by the Steering Committee, Dorbar Hima Mylliem seeking constitutional recognition and protection of the traditional institutions of the Khasi race for the favour of the perusing it and exercising your good office to meet the just and legitimate demand of the Khasi People.

We are now looking forward to getting positive response.

JAI HIND

Yours Faithfully

Sd/-

(H.P.Oflyn Dohling)
General Secretary,
Steering Committee,
Dorbar Hima Mylliem
Shillong

MEMORANDUM
SEEKING CONSTITUTIONAL
RECOGNITION AND PROTECTION OF
THE TRADITIONAL INSTITUTIONS OF
THE KHASI RACE

Submitted by

STEERING COMMITTEE : DORBAR HIMA MYLLIEM
Mavis Dunn Road : Mawkhar
Shillong-793001
Meghalaya

I-Historical Perspective

For many centuries, the Khasi Hima had existed as independent principalities with all the parameters of sovereign status. Their boundaries were traditionally demarcated by rivers or streams or foothills or any other natural markings or pillars.

In the gradual evolution of the Khasi Hima, Geography, History and Tradition had worked as powerful mechanisms. The Khasis have consistently cherished and recapitulated the working of this trinity with a sense of pride.

According to the Khasi tradition, the institution of the Rangbah Kur has been maintained as the oldest institution. With the passage of time and due to the pressure of social and occupational forces, the Khasi clans were united together to form a village, which resulted in the emergence of the institution of the Reangbah Shnong. This has been held an elective institution with the

male residents forming the electoral college. The progressive nature of the Khasi civil organisation had generated the need to unifying the villages and brought them under one administrative arrangement of the Khasi Raij with the institution of the Syiem Raij as the administrative head. In the ultimate and final stage of the administration formation, the Hima was formed comprising of the Khasi Raij and other independent areas as constituent units. With the formation of the Hima, the institution of the Syiem was constituted. This institution was and is, till now, an elective institution held in deep respect by the Khasi People.

The administrative hierarchy of the Khasi Hima is traditionally governed by the principle of accountability and transparency with the following traditional pillars:

First, the institution of the Dorbar Hima;
Second, the institution of the Dorbar Synshar Hima;
Third, the institution of the Dorbar Synshar Raij;
Fourth, the institution of the Dorbar Synshar Shnong;
Fifth,the population of Khasi residents known as ki khum-ki hajar, recognised by tradition as the natural citizens of the Khasi Hima.

II-Post Independence Scenario

India became free and independent on August 15, 1947. "The independence of India witnessed the incorporation of the Khasi States into the Indian Union, some willingly, others with persuasion and still others with tact and intimidation. The Khasi States had hoped their future in the new India would safeguard their interests."

The Constitution of India was inaugurated on January 26, 1950

The inclusion of the Khasi States within the framework of the Indian Union was glaringly violative of the true and underlying spirit of the INSTRUMENT OF ACCESSION and was not consistent with the provisions of Section 290-A of the Government of India Act, 1935. A remedy of this 'constitutional anomaly' can be found by giving due recognition and protection of the traditional institutions under the Constitution of India. The independence of India, and the inauguration of the sovereign Constitution notwithstanding the most potential issues confronting and convulsing the mind of the Khasi people have been:

Can there be adequate protection of their age-old traditional customs and usages under the Constitution?

Will the Constitution of India recognise the unique and distinct status of the traditions institutions of the Khasi?

Giving his reply to the Welcome Address given to the Viceroy of India on the 3rd October 1933 by the Khasi ruling heads, the Viceroy inter alia said:

".there is no place within our Indian Empire where wider diversity is found within a smaller compass than in the uplands of Assam where the Syiem and princely houses of the Khasis represent, perhaps, the oldest and certainly one of the most interesting of the ancient tribal migrations. It is proof of the stamina and virility and competence of your people that when greater empire in the East and the West have throughout the ages come and gone, you still maintain in your pleasant hills the freedom of your small republics based on the ancient ways and tenets of your race."

In the words of Pandit Jawaharlal Nehru, the first Prime Minister of free India. "The Khasis are an extremely discipline people, often more democratic than most of India. Without a constitution, they function democratically and carry out the decisions made by their elders and representatives without exception."

The much-talked-about issue has been the District Council under the Sixth Schedule vis–vis the traditional administrative heads of the Khasi Hima. The late Reverend J.J.M. Nichols Roy, member of the sovereign Constituent Assembly of India had experienced his 'Great

Disappointment on seeing how the Sixth Schedule was not able to generate a sense of celebration and achievement in the mind of the Khasi People due to the glaring deviations made by forces inimical to the Khasi interests in the final stage of drafting it. The late Reverend had recorded, with a sense of prophecy, in his MEMORANDUM OF PERSONAL VIEWS how the five thousand Khasi women "stormed the District Council hall while they were in session" protesting against the suspension of the Syiem of Mylliem and how "the suspension of the Syiem of Mylliem had to be withdrawn afterwards."

Soon after India became independent, the Federation of Khasi States constituted the Khasi States Constitution Making Dorbar. This Constitution Making Dorbar had urged upon the Constituent Assembly of India to provide adequate constitutional safeguard as will not interfere with and undermine the democratic and traditional institutions of the Khasi race.

III-Popular Mandate

The Dorbar Hima of Hima Mylliem was held December 12,2000. It was attended by the discipline crowd of traditional chiefs, village elders and ki khum ki hajar. The main theme of the Dorbar Hima which had received unanimous endorsement underlined the need TO PRESERVE THE AGEOLD
CUSTOMS AND USAGES AND THE TRADITIONAL INSTITUTIONS OF THE KHASI RACE AND HOW BEST THEY CAN BE MODIFIED IN THE CONTEXT OF CHANGES WHICH ARE TAKING PLACE IN THE KHASI SOCIETY. The Dorbar Hima has also given the mandate to seek constitutional recognition and protection of the Khasi traditional institutions.

As an instance, voices of dissent have been recorded about how the Khasi traditional chiefs have been stripped off their traditional status by the APPOINTMENT AND SUCCESSION OF CHIEF AND HEADMEN ACT, 1959, a draconian piece of legislation passed by the Khasi Jaintia Hills Autonomous District Council.

IV-Chosen Alternatives

In keeping with the popular endorsement given to the theme of the DORBAR HIMA field on December 12, 2000 and the subsequent endorsement given by other Khasi Hima, this MEMORANDUM submitted with due respect to the corridors of decision-making of the Union Government places before their consideration the following:

To initiate constitutional measures aimed at restoring and preserving the traditional status and powers of the traditional institutions by a suitable constitutional amendment;

That, the constitutional amendment will define the legislative, administrative and judicial jurisdiction of the Khasi traditional chiefs in Dorbar in accordance with the customs and usages practised and respected by the Khasis since time immemorial.

According to tradition, the Rangbah Shnong in Dorbar and the Syiem Raij/Banggthai Raij in Dorbar constituted the traditional limbs in the hierarchical organisation of the politico-administrative system and the Syiem in Dorbar is being recognised as the institution representing the uniqueness and distinctiveness of the Khasi race.

(L.M.S.Syiem), Syiem of Hima Mylliem President Steering Committee Dorbar Hima Mylliem

(Dr.B.R.Kharlukhi), Chairman, Drafting Committee Dorbar Hima Mylliem

(H.P.Oflyn Dohling) General secretary Steering Committee Dorbar Hima Mylliem

Dated/Mawkhar
Shillong 1,
The 22th February 2001

Explanatory notes:

Rangbah Kur-head of Khasi clan;
Rangbah Shnong-village headman;

Syiem Raij/Bangthai Raij-traditional administrative heads of Khasi commune;
Raij a commune as a combination of several villages;
Hima territorial conglomeration of communes and independent villages falling under the jurisdiction of administrative heads known as Syiem or Lyngdoh or Sordar or Wahadadar;
Syiem traditional administrative head of the Khasi Hima. The office is traditionally occupied by members of the Syiem Clan.
Myntri elected representative of Khasi clan functioning as traditional aids to the heads of Khasi Hima;
Lyngdoh priestly clan exercising temporal and/or religious functions;
Basan elders exercising administrative functions;
Ki khum ki hajar a Khasi administrative terminology applicable only to the Khasi residents of the Khasi state recognised by tradition as the natural citizens;
Dorbar Hima a popular assembly of the Khasi Hima and recognised by tradition as the highest body in the administrative set up of the Khasi Hima.

Respectfully submitted

His Excellency the President of India, New Delhi;
His Excellency the Vice President of India, New Delhi;
His Excellency Prime Minister of India, New Delhi;
The Honourable Speaker of Lok Sabha, New Delhi;
His Excellency Home Minister of India, New Delhi;
Chairman of National Commission for Review of the Working of the Constitution;
The Honourable Leader of Opposition in Parliament, New Delhi;
His Excellency the Governor of Meghalaya, Shillong;
Shri P.A. Sangma., MP (Lok Sabha);
Shri. P.R.Kyndiah., MP (Lok Sabha);
Shri. O.L.Nongtdu, M.P. (Rajya Sabha).

sd/-	Sd/-	Sd/-
(L.M.S.Syiem),	(Dr.B.R.Kharlukhi),	(H.P.Oflyn Dohling)
Syiem of Hima Mylliem	Chairman,	General secretary
& President	Drafting Committee	Steering Committee
Steering Committee	Dorbar Hima Mylliem	Dorbar Hima Mylliem
Dorbar Hima Mylliem		

1208 LJ&CA/2002—29A

OFFICE OF THE DORBAR HIMA MYLLIEM
Mavis Dunn Road, Mawkhar
SHILLONG 793001
MEGHALAYA

THIRTEENTH SCHEDULE
(Article 244 (3)

Article 244 (3) the provisions of the Thirteenth Schedule apply to the Khasi Hima(s) in the state of Meghalaya.

Provisions as to the giving of constitutional recognition and protection of the customary usages and practices and the traditional institutions of the Khasi (s) in accordance with the Instrument of Accession and the Annexed Agreement.

Interpretation In this Schedule, unless the context otherwise requires:

Traditional institutions means:

Dorbar Shnong (village dorbar) presided over by the Rangbah Shnong (village headmen);
Dorbar Raid (commune dorbar) presided over by the Syiem Raid or Lyngdoh Raid or Sordar Raid or angthai Raid or any other traditional designation;
Dorbar Synshar-Hima (State dorbar) presided over by the traditional administrative heads known variously as Syiem or Lyngdoh or Sirdar or Wahadar with the Myntri (s), the Bakhraw (s) and the Basan (s) representing their respective clans or villages. It exercises legislative, executive and judicial functions;
Dorbar Hima the apex body in the administrative set up of the Khasi Hima (s) presided over by the traditional administrative heads;
Hima (a territorial conglomeration of villages and/or communes with boundaries traditionally demarcated by rivers or streams or foot hills or pillars);
Ki Khum ki Hajar (the Khasi population of the Khasi Hima).

B. Steering Committee means the Steering Committee of the Dorbar Hima Mylliem duly recognised by the Federation of Khasi States.

Note The Khasi administrative heads are elective and permanent and in the exercise of their functions, they are guided by the principles of transparency and accountability and the Khasi democratic tradition.

There shall be the Federal Council of the Khasi Hima (s) to be hereinafter referred to as Federal Council.

The Federal Council shall be composed of:

The ruling administrative heads of the Khasi Hima (s);

Four members to be nominated by the Dorbar Synshar Hima or Dorbar Hima as the case applies from amongst person belonging to ki khum ki hajar subject to future administrative arrangement as the Federal Council may decide;

Ten members to be nominated by the Steering Committee, from amongst its members, for a term of five years. The term is extendable as the Federal Council may decide. The Steering Committee shall evolve the modalities for the nomination of members.
The term of the nominated members as specified in paragraph 2, sub para (A) (ii) and (iii) shall be five years, subject to recall by the Dorbar Synshar Hima or Dorbar Hima or Steering Committee as the situation so warrants.

The Federal Council shall exercise legislative, executive and judicial functions and it shall be the custodial and protective body of the customary usages and practices and the traditional

1208 LJ&CA/2002—29B

institutions of the Khasi (s) in their several, collective and respective Hima (s), and of the traditional rights of the Khasi Hima (s) over land, forest, water and their natural resources and excise.

The Federal Council shall elect any of its members as Chairman to preside over its meetings. It shall frame its own rule of procedure and conduct of business.

No acts of the Union Parliament or of the State Legislature or of the District Council shall apply to the Khasi Hima (s) without the consent of the Federal Council, if such acts interfere with or bring about changes of the customary usages and practices, and the traditional institutions of the Khasi (s), and the traditional rights of the Khasi Hima (s) over land, forest, water and their natural resources and excise.

The Federal Council shall maintain its administrative staff under the overall supervision of the Chairman, and it shall frame rules regarding staff emolument and service conditions.

There shall be the Federal Fund from central assistance and other modes of income generation, as the Federal Council may decide.

The Federal Council shall make rules and regulation for the control and management of the Federal Fund in respect of payment of money into the said fund and withdrawal there from

The Federal Council shall function as a transitory body and it shall evolve the mechanisms for the exercise of its functions during the transitional period.

From the Office of:
Bah Johri E. Kharshiing, Smit

Meghalaya Pradesh Congress Election Manifesto Assembly Elections, 1993.

Traditional Tribal Institutions and Powers to Local Authorities:

"The State of Meghalaya was exempted from the purview of the Panchayat Bill 1992 because there already exist very strong local institutions of Syiemship, Nokmanship, Laskership and Dolloiship in rural areas. The Central Government decided that there is no need to introduce Panchayat Raj System as functioning in other areas. The Congress Party shall take steps for strengthening these Traditional Tribal Institutions in the State and make efforts to vest them with statutory"

Bharatiya Janata Party

Chapter IV-Political Policies and Programmes, Article No.: 24, On Old Agreement/Instrument:

"The Party shall pay full respect to any or all the old agreements or instrument's solemnly entered in between the tribal rulers and the then Dominion of India immediately after India's Independence and shall take appropriate steps in confirmation and fulfilment of the spirit enshrined therein".

Constitution of the Hill State People's Democratic Party (HSPDP)

Article 2. Ki Jingthmu: sub-clause (a) is as follows:

(a) Ban iada ia ki hok ki trai ri ha kaba iadei bad ka khyndew ka shiap, ki khlaw ki btap, bad ban pynshlur pynbah ia ka jingtbit babha barim bajah bad ruh ban ialeh ban pynroi pynpar ia ki trai ri katkum ka jinglong tynrai jong ki hi.

Constitution of the United Democratic Party (UDP)

Article 3. Aims and Objects: sub-clause 1 and 4 states as follows:
3(1) To secure the rights, justice, liberties and progress of the tribal people and for their all round development according to their own genius.
3(4) To safe guard and preserve the identity of the tribal people and in particular to protect their interest, especially in respect of their inalienable rights to land, forest minerals and such other resources germane to their economic development.

Manifesto of the People's Democratic Movement (PDM):

6. Traditional Identity

The indigenous people of the State are living in perpetual fear and cherish great pride at the uniqueness of their traditional systems and rights. The party stands committed:

To preserve the unique identity of the indigenous people by promoting their democratic institutions, customs, culture, languages, values and aspirations.

To strengthen the provisions of the Sixth Schedule with regard to the protection of the traditional rights of the people over land, forest and minerals, and develop more powers to the Traditional Local Institutions.

Ka jinglong tynrai ki riewlum:

Ki riewlum jong kane ka jylla ki lm ha ka jingtieng bad jingsyier; hynrei ki long pat kiba sngewsarong ia ki jinglong tynrai halor ki hok la jong. Ka Part ka Kular:

Ban pynneh pynsah ia ka jinglong kyrpang jong ki paidbah riewlum da kaba kyntiew is ki rukom shynshar paidbah kaba bat tynrai is ki riti ki dustur, ka ktien ka thylliej bad ki jingangnud jong ki ban pynneh ia la ki jong. Ka party ka kwah ban pynkhlain bad pyntreikam ia ki kyndon kiba don ha ka sixth schedule kiba iadei ban iada ia ki hok tynrai jongngi halor ka khyndew ka shiap, ki khlaw ki btap bad ki marpoh khyndew; bad ruh ban ai bor shuh shuh sha ki Durbar Hima.

Nationalist Congress Party

Political Resolution, North East People's Convention, August 21, 1999, Guwahati.

"The Party shall take appropriate steps in confirmation and fulfilment of any or old agreements or instruments solemnly entered in between the tribal rulers and the Government of India, immediately after India's Independence. The Party shall also take appropriate legal measures to resolve this long pending issue".

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Traditional Institutions

3.1 Panchayats have existed in Manipur for long. However, these were confined only in the valley districts and Jiribam Sub-division. In the hill districts, there were village authorities almost similar to village Panchayats. The hill districts were dominated mainly by the tribal people, who formed 32.5 percent of the total population of Manipur in 1971. These tribal villages were administered by village councils consisting of Khunbu, Luplakpa and other village elders headed by Khullakpa, the village headman. These councils settled all disputes of a civil, criminal, religious and social nature. Under the Manipur State Courts Act, 1947, such village institutions were conferred with powers of the lowest court for administration of justice in criminal and civil cases.

3.2 In the hill districts, the chiefs are represented as the ex-officio chairman of the Village Authority Systems (VAS). Elected members of the VAS are also included within the Block Development Committees (BDC), but with the Panchayat Samitis in the valley, these BDCs do not have regular offices or establishments.

3.3 District Autonomous Councils are in existence in the hill areas of Manipur. These have few real powers: they have several regulatory powers subject to state control. In the exercise of developmental functions, they are at the mercy of the State Government. Since their incomes are unstable, they become more dependent on the State Government.

3.4 With the exception of the hill areas (tribal dominated), cantonment areas, municipal areas and notified areas, the Panchayat System has been introduced in Manipur since 1960.

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Traditional Institutions

5.1 Traditional Mizo polity was under an authoritarian system of chieftainship. The chief of the village was the supreme administrative head whose word was law within the limits of territory. Succession to the post of chieftainship was on a hereditary base.

Powers and Functions

5.2 As protectors of village life and property, the entire village land belonged to the chief who accordingly distributed jhum land (land under slash and burn cultivation) to villagers. The chiefs also administered justice according to customary Mizo laws. They saved men from revenge and took them under their protection. Regarding financial resources, the chiefs, were entitled to tribute from the villages, and royalty from natural resources within his territory. This traditional system of village administration under the system of chieftainship was abolished in 1954 by the Mizo District Council, under the Lushai Hills Districts 'Acquisition of Chiefs Rights Act, 1954, and replaced by the Village Councils.

5.3 The initiative to abolish chieftainship in Mizoram came from the emerging educated elites. The disillusionment of the people with the system of chieftainship can be gauged from the results of the village council elections. For instance; in 1960, the United Mizo Freedom organization (UMFO), pro-chief party captured only 83 seats while the anti-Chief Mizo Union won 280 seats. The same trend continued in the 1963 and 1971 elections, where the UMFO's support base further dwindled.

5.4 The Mizo District Council continued until 1972, when it was replaced by the Legislative Assembly. However, the Pawi, Lakher, and Chakma Autonomous District councils continue to exist but the first two have been renamed as the Lai and Mara. These three Councils fall under the provisions of the Sixth Schedule of the Constitution.

Structure, Composition and Representation of the Lai Autonomous District Council (LADC):

5.5 The council has an executive committee consisting of the Chief Executive Member and the Executive Member. The Chief Executive Member is elected by members of the council, while Executive Members are appointed by the Governor on the recommendation of the Chief Executive Member. In addition, there is a deputy chairman, who is elected by Council members.

5.6 The power and functions of the District Council include executive powers such as the construction or management of primary schools, dispensaries, markets, cattle ponds, ferries, roads and road transport.

Legislative powers

5.7 The ADC has powers to make laws with respect to the following i.e., allotment, occupation, use and setting apart of land; management of any forest that was not reserved; use of canal or water ways for purposes of agriculture, regulation of the practice of jhum or other forms of shifting cultivation, establishment of village or town committee, any matter relating to village or town police public health, Sanitation, appointment or succession of chiefs or headman, inheritance of property, marriage and divorce, power to control money lending and trading among non-tribals.

Financial

5.8 The Sixth Schedule had entrusted the District Councils with the responsibility of constituting a district fund and also making rules for the management of this fund. Its internal resources are, however, limited, and it depended mostly or government grants for running its administration. For example, the total internal revenue generated during the period 1972-1980 constituted only 3 percent of the total income.

Village Councils

5.9 With the coming into being of the Mizoram Assembly, the Village Councils were placed under the Local Administration, Town Planning and Housing Department. The Councils comprised of 5 to 11 members depending upon the size of the village. Two-thirds of the members were to be elected on the basis of adult franchise and one-third were to be nominated by its executive committee. The term of a village Council was three years.

Powers and Functions

5.10 Construction and repair of footpaths, roads, bridges, playgrounds, community halls, school buildings (mostly repairs); allotting land for jhumming, to enforce public work; judicial - a village court consisting of not less than there members appointed by the village Council which followed the customary laws for scheduled tribes to try cases involving petty offences. Criminal cases were rarely tried. The village council did not look after elementary education, public libraries, recreation games, regulation of market places and public entertainment.

Financial Resources

5.11 The resources of the Village Councils are extremely limited and they depend on financial grants from the government.

Public Opinion

5.12 Decentralisation of power as per the provisions of the 73rd Constitution Amendment Act has received a favourable response from the people of Mizoram. The keen interest of the State Government for implementing these provisions was seen as early are 1995, when the Department of Personnel, Administrative Reforms wing constituted the Administrative Reforms commission to study the implication of the 73rd and 74th Constitution Amendment Acts, and explore the possibilities of harmonious implementation in context of the state. All other political parties and village council activists also agreed to the applicability of the Act. 1

5.13 A voice of dissent was raised by the Mizo students union, which was reluctant to accept the implementation of Panchayati Raj institutions in the State. The students also wanted a revival of the District Council system. Their argument revolves around three crucial issues, i.e., that the District Councils would provide greater access to developmental functions, greater devolution of financial powers, protection of tribal interests. The example of Karbi Anglong District Council which has 30 departments (developmental functions) is cited. Similarly, in the absence of a State Finance Commission, it is argued that District Councils could use funds without interference from local politicians. PRIs, do not have judicial functions, whereas District Councils have various courts to try cases under customary laws and lastly, introduction of PRIs would grant reservation of seats for non-tribals.

5.14 It is, however, important to remember here that these issues i.e. conflict situations between traditional vis--vis constitutional bodies of local polity, has not assumed the magnitude it has reached in Meghalaya. For example, a majority of the Mizo students in North Eastern Hill University are not even aware of the 73rd Amendment Act. What can be sensed, however, is growing disillusionment with the working of the village councils which, it is claimed, have not only failed to protect tribal interests, misappropriated developmental funds, but are also marginalised by members of the state legislature and influential politicians and district-level officials.

5.15 Research on the LADC itself showed that between 1972-1982, the District Council spent 44.5 per cent of its total income on general administration and only 14.6 per cent on developmental activities.

5.16 The progressive thinking among the Mizo people is evident from two developments which are cited here. In the first place, chieftainship was abolished as early as 1954, which came through a consistent and united effect of the Mizo elites themselves. Secondly, Mizoram provide a model example of a state which has successfully adapted and modified tribal customs and usages to suit changes in the modern set up.2

5.17 However, an important issue which needs to be seriously considered before the implementation of PRIs is the precise role of the village council and whether it should be retained or abolished. The state Administrative Reforms Commission contemplated the retention of the powers of the present village council and at the same time given the powers and privileges under the 73rd Constitutional Amendment. This may imply modifications of some laws and rules now in force.

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Notes:

1 A draft Bill was even prepared but by the time it reached the Select Committee of the State Assembly, the life of the legislature expired and the proposal lapsed. It has not been revived.

2 However, lack of extensive public knowledge about the 73rd Amendment Act does not necessarily mean that this debate does not have much significance or there is little interest in the relevant issues. Indeed, field research and extensive interviews with a wide cross-section of Mizo public leaders in July 2001 indicated a growing demand for the implementation of relevant "provisions" of the 73rd and 74th Amendments and the need for an Intermediary tier of self-governance. **See main Consultation Paper for details.**

Traditional Institutions

6.1 There are 16 tribes in Nagaland, each occupying a distinct area. Each tribe tends to treat itself virtually as a race apart. As a rule all villages are mono-tribal, though there has of late been certain changes, especially in the foothills bordering Assam. The traditional system of Naga polity therefore varies from autocracy (Konyaks), gerontocracy (Aos, Tangkhuls) and democracy (Angamis, Chakesangs, Rengmas, Maos). Amongst the Semas, the position of the chief is a little less arbitrary then among the Konyak, but is nevertheless highly autocratic.

6.2 In a village consisting as a rule of people of one particular tribe but belonging to different exogamous clans, the supreme decision – making body was the council of elders and leaders, with each member representing a clan. The tenure of a council varied from tribe to tribe, but two broad patterns were discernible.

6.3 The most widespread one was the one in which the clan replaced its representative following his demise or on his reaching the age of about sixty years or so, or when the clan families came to the conclusion that their representative was incapable of discharging his duties. In the second system, the council had a fixed tenure in 30 years and all members were replaced at the same time. There was yet another system, where each village was governed by a hereditary chief, who owned all land and parcelled it out to families for cultivation.

6.4 Amongst the Angamis, the policy formulation and implementation is more democratic, the village chief is only a prima inter pares. Though he is chosen for his wealth, physical prowess and skill in diplomacy, the authority exercised by the chief is very nominal. For all important decisions, the villagers usually assemble and take a collective decision.

Constitutional Bodies

6.5 After the formation of the State of Nagaland in 1963, these traditional village councils were restructured and replaced by village, Area and Regional Council under the village, Area and Regional Council Act. In general, the village councils had the following duties -- to function as the highest court in the village, to function as the custodian and manager of village common property and to function as the war council of the village.

6.6 At the village level the members were to be chosen by their respective clans. The size of the village council was to be determined according to the customs of the village. The supra-village councils i.e. the Area and Regional Councils, were much more intimately linked with the next lower level. In 1978, a new act was passed which did away with the regional councils, while the duties and powers of the village councils were more elaborately defined – including that of constituting a village Development Board. In 1980 statutory rules were promulgated to cover the latter also. In 1990, the Act was amended to do away with the area councils leaving only the village councils.

Village Councils – Representation and Composition

6.7 The members of village council are chosen by the villagers in accordance with customary practices and usages for a period of five years. The names of the members are then submitted to the government through the Extra Assistant Commissioner/Sub-Divisional Officer (civil) for formal approval. The elected members choose a chairman and a secretary, from among the men, who are assigned with certain duties and responsibilities. different clans are represented in the village council and existing rural institutions.

Powers and Duties

6.8 The powers and duties of the Village Councils are:

(a) To formulate village development schemes, to supervise proper maintenance of water supply, roads, forests, education, etc.

(b) To help government agencies in carrying out developmental council in village, or on its own initiative. This is carried out through the Village Development Boards.
(c) To initiative preventive measures on outbreaks of epidemics
(d) To administer justice according to customary laws and usages
(e) To act as a supportive agent of the government in village administration, including maintenance of law and order
(f) To handle all aspects of application and receipts of funds for the village
(g) To constitute a Village Development Board

Village Development Board Structure

6.9 Members of the Village Development Board (VDB) to be chosen by the village Council could include - (a) members of the village council or non-members (b) those who are ineligible to be chosen in the Village Council (VC) by virtue of age or tradition and custom (c) the deputy commissioner of the district was the ex-officio chair-person of all VDBs in his district (d) At least one women was to be a member of the VDB (e) government servants could be chosen as members of the board with permission of the government. The tenure of the members was three years unless decided otherwise by the village council. The VDBs cannot be dissolved by the State.

Functions

6.10 The VDBs were entrusted with a number of developmental activities in coordination with the Block Development officers. A number of state development programmes are also coordinated with the VDB such as I.R.D.P., TRYSEM, DWCRA and JRY.
Under the model list scheme, the village was asked to choose from a list containing only infrastructure items, but over the past decade this pattern has been undergoing a change to include production oriented items within its scope.

6.11 For example, schemes undertaken in Kohima Block from this list are cited below:

- Education – construction, extension and improvement of school building.
- Agriculture - cash crop cultivation, community orchard; kitchen garden.
- Animal husbandry – poultry form, piggery, goat and cattle rearing
- Construction of public wells
- Construction of footsteps
- Construction of latrines
- Small scale industry – construction/procurement of rice mills, Weaving units, biscuit factory, charcoal production unit
- Construction of community granary/purchase of paddy
- Social forestry
- Rural electrification
- Construction of community fishery pond
- Construction of resting shed, market shed, women welfare centre, community hall, approach road, community shop, community building outside village
- Purchase of mini-bus.

Financial Resources

6.12 The VDB is the recipient of two forms of grants from the state plan funds: (a) a one-time grant equal to the amount of common fund which the VDBs can invest in fixed deposits in a bank, called a matching grant; this fund also had to be invested in fixed deposits, thus enabling the VDB to draw from the banks, either for community use or to give to needy individuals. (b) An annual recurring grant-in-aid for executing developmental schemes chosen by the VDB out of a list of model schemes. One-fourth of this grant was reserved for schemes chosen by women of the village. The total of the fixed deposits of the VDBs in the state stood at Rs. 700 lakhs.

The VDB is also free to receive funds from sources other than the state exchequer.

Public Opinion

6.13 In the state of Nagaland, traditional political systems have been accommodated and amalgamated with the provisions under the constitutional status accorded to the state. Many still question the very creation of the state in 1963, saying that this was a knee-jerk reaction by the Centre to a broader demand. Yet, this has not prevented a reasonable turnout at most elections to the state assembly. Yet, a sense of ownership of the system is still missing in many parts of the state although there is also a growing feeling that, after nearly 50 years of struggle and bloodshed, there is a need for realism in the political context.

6.14 The conflict between traditional elites adopting a revivalist stand, and those deviating from it does not arise because of the issues cited above. The issues concerning decentralization and devolution of power and responsibilities, has therefore not generated the form of debate as seen in other states, particularly Meghalaya.

6.15 The public to a large extent is passive to such issues, but this passivity has to understood in the background of insurgency, inter-tribe clashes, years of torture and abuse from the army and even insurgent groups themselves. Along with it arises the question of compulsory donation of money to the militants, which the latter define as taxes for their cause. It is in fact an open secret that 25-30 per cent of village development funds are earmarked for such insurgent groups.

6.16 However, amongst Naga scholars, political thinkers and planners, there has been an attempt to discuss the possibilities of restructuring such units of local polity. The primary motivation for such a move has been the ineffectiveness of VDBs, which has actually exposed the hollowness of claims of rural development and has failed to solve the socio-economic problems of the people. In this context, the most important stumbling block for proper development is alluded to the inappropriateness of the present system of state sponsored elections, which is marred by rigging and squandering of money and violence. It is therefore believed that a local restructuring of existing socio-political structure requires urgent attention.

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Traditional Institutions

7.1 Like other hill tribes of the North-Eastern states, the traditional system of local chieftains in Tripura is based on their social customs and cultures and to attend to their day-to-day needs and for arbitration of local disputes. The Reangs have a three-tier system with the supreme traditional council at the apex and village council at the bottom. In between, there is the zonal office.Such systems of traditional polity do exist but in most areas they have become almost defunct.

Constitutional Bodies

Panchayat Raj Institutions

7.2 Tripura was the first state in the North-Eastern Region to adopt (with modifications) the United Provinces Panchayat Raj Act 1947. The Tripura Panchayati Raj Rules 1961, called for a single tier system of Self Government Gaon Sabha and Nyaya Panchayat. The Nyaya Panchayat over looked judicial functions. Under the Tripura Panchayat Act of 1983, the Nyaya Panchayat was abolished and Gaon Sabhas replaced by Gaon Panchayat.

7.3 The strength of a Gaon Panchayat varied from 7-15 depending upon the total population of the Gaon members of the Gaon Panchayat were to be elected through secret ballot and political parties were permitted to participate in the elections. The tenure of Gaon Panchayat was fixed for 5 years. The Pradhan and upa-pradhan were to be elected from the members.

Powers and Functions

7.4 The act of 1983, assigned a wider range of functions to the Gaon Panchayat. They were entrusted with the State Government programmes and schemes, including an innovative scheme called the state rural employment programme. Its purpose was to help the landless labourers and the poorest sections, whose identification lists were maintained by the Panchayat. This was an omnibus Act which empowered the panchayat to look after an array of functions including the following:

> construction and maintenance of public streets, ponds, wells, tanks, fairs, markets, cremation grounds, registration of births and deaths; marriages, prevention of diseases (epidemics), maternity and child welfare; development of agriculture, commerce, corporation and industry; other responsibilities included the planting and maintenance of roadside trees, library schools, hospitals, gymnasiums, playground, relief to the destitute and sick, preservation and improvement of public health, general care of livestock and preservation and goodwill and harmonious relations among various communities. It alsc was authorised to act as a channel through which government assistance may reach the villages.

7.5 The Panchayats in Tripura had control over streets, waterways and other public places; it could acquire, own, improve, maintain and dispose khas lands and other properties, to own and establish public institutions, to impose certain taxes, to undertake profitable business, to lodge genuine complaints against government employees, to impose penalty on Gaon Panchayat members, to appoint, punish and discharge staff.

Financial Resources

7.6 Each Gaon Panchayat can derive income from fees, tax, loans, grants and gifts. These fees and taxes can be imposed on domestication and sale of animals, simple vehicles, Octroi, fairs, festivals, entertainment, slaughter houses, trade, profession, supply of water, latrines drains etc. However, financial grants remains the biggest component of the Panchayats revenue receipts grants in kind are also provided.

7.7 After the Constitution 73rd Amendment Act was brought in the Tripura Panchayat Act of 1993, provided for a three-tier Panchayati Raj structure with Gaon Panchayat at the village

level, Panchayat Samiti at the block level and Zilla Parishad at the district level. This Act does not cover those areas of the State which are under the provisions of the Sixth Schedule which constitute 75 per cent of the state's total geographical area.

District Councils (1982)

7.8 The Tribal Areas Autonomous District Council (TTAADC) was constituted under the Sixth Schedule of the constitution.

Powers and Functions

7.9 The TTAADC has its own rules, regulations for performing activities within its domain. These include, settling private disputes, administrative – market, water supply, footpath, judicial – murder, theft and divorce.

7.10 The TTAADC passed a resolution in September 1991 seeking the enforcement of the Inner Line Permit System. In 1997, a bill was passed to set up ots own police force.

Public Opinion

7.11 In Tripura, public debates concerning decentralisation and devolution of power do not revolve around the traditional vis-à-vis constitutional bodies of polity. In the first place, the traditional system of local polity does not acquire much significance and influence today, unlike other tribal hill states of North East India. Secondly, this state has had a long history of extreme violence and militancy in the backdrop of more crucial issues, such as the tribal, non-tribal divide and the threat of militancy. It is therefore not surprising that the tribal consider the Chief Executive Member (CEM) of TTAADC as their Chief Minister rather than the actual Chief Minister himself who is a non-tribal and thus a member of the majority ethnic and linguistic community.

7.12 In the same way, the headquarters of TTAADC, i.e. Khumulang is considered as the capital by many tribals who seldom venture to Agartala. Tribe-based political parties such as the Tripura Upajati Juba Samiti (TUJS) demand the creation of an autonomous state for the tribals.

7.13 The main area of confrontation exists between the TTAADC and the State Government in relation to devolution of power and functions.

7.14 It is argued that the terms of representation and devolution of power runs contradictory to the spirit of the Sixth Schedule. For instance, three non-tribals are represented in the District Council.

7.15 The TTAADC is entirely dependent upon state funds, and there exists a great gap between approved funds from the state. For instance, out of the approved budget of Rs. 21.23 crore between 1985-86 to 1993-94, only Rs. 15.63 crore was received by the District Council. Blaming the government for an "economic blockade" against the tribal council, the TTAADC has urged devolution of more powers and direct funding by the Centre.

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ANNEXURE III
[See para 2.2.98(i)]

List of subjects under the Karbi Anglong Autonomous District Council

1. Industry,
2. Animal Husbandry and Veterinary,
3. Forest,
4. Agriculture,
5. P.W.D.,
6. Sericulture,
7. Education (Primary, higher secondary and adult education),
8. Cultural affairs,
9. Soil conservation,
10. Co-operation,
11. Fisheries,
12. Panchayat and rural development including DRDA,
13. Handloom and textile,
14. Health and family welfare,
15. Public health engineering,
16. Irrigation,
17. Social welfare,
18. Flood control,
19. Sports and youth welfare,
20. Weights and measures,
21. Food and civil supplies,
22. Town and country planning,
23. College education including library, museum and archaeology,
24. Land reforms,
25. Publicity and public relations,
26. Printing and stationery,
27. Tourism,
28. Transport,
29. Excise, and
30. Finance including sales tax, excise and professional tax.

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REPORT

OF

THE NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

VOLUME – II
(Book – 3)

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REVIEW OF THE WORKING OF THE CONSTITUTION

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VOLUME—II
Book 3

CONTENTS

VOLUME I

		Page No.
Letter from the Chairperson forwarding the Report		**(i)**
Acknowledgements		**(iii)**
Chapters		
1.	Introduction	1
2.	Basic Approach and Perspective	27
3.	Fundamental Rights, Directive Principles and Fundamental Duties	83
4.	Electoral Processes and Political Parties	119
5.	Parliament and State Legislatures	154
6.	Executive and Public Administration	175
7.	The Judiciary	198
8.	Union-State Relations	222
9.	Decentralization and Devolution	259
10.	Pace of Socio-Economic Change	289
11.	Summary of Recommendations	315
Notes of Members		371

VOLUME II

BOOK - 1

1.	**Gazette Notifications**		1
2.	**Advisory Panels**		13
3.	**Consultation Papers**		
	(i)	Enlargement of Fundamental Rights	23
	(ii)	Pace of Socio-Economic Change under the Constitution	55
	(iii)	Literacy in the context of the Constitution of India	233
	(iv)	Social Security and Employment	285
	(v)	Effectuation of Fundamental Duties of Citizens	369
	(vi)	Review of the Working of Political Parties specially in relation to Elections and Reform Options	419
	(vii)	Review of Election Law, Processes and Reform Options	473
	(viii)	Immunity of Legislators: What do the words 'in respect of anything said or any vote given by him' in article 105(2) signify?	539
	(ix)	Efficacy of Public Audit System in India: C&AG	559
	(x)	Probity in Governance	583
	(xi)	Liability of State in Tort	665
	(xii)	Superior Judiciary	703
	(xiii)	All India Judicial Service	749

BOOK – 2

3. **Consultation Papers (Contd.)**

(xiv)	Financial Autonomy of the Indian Judiciary	765
(xv)	Constitutional Mechanism for the settlement of Inter-State Disputes	831
(xvi)	Treaty-making power under our Constitution	861
(xvii)	The Institution of Governor under the Constitution	889
(xviii)	Article 356 of the Constitution	925
(xix)	Review of the Working of the Constitutional Provisions for Decentralisation (Panchayats)	955
(xx)	Decentralization and Municipalities	1007
(xxi)	Empowering and Strengthening local self-government in Cantonments	1093
(xxii)	Empowerment and Strengthening of Panchayat Raj Institutions/ Autonomous District Councils/Traditional tribal governing institutions in North East India	1135

BOOK – 3

4. **Background Papers**

(i)	Working of Parliament and Need for Reforms	1213
(ii)	Some ideas in Governance	1229
(iii)	Concurrent Power of Legislation under List III of the Indian Constitution	1245
(iv)	Fiscal and Monetary Policies	1259
(v)	Barriers to Inter-State Trade & Commerce – The Case of Road Transport	1273
(vi)	Article 262 and Inter-State Disputes relating to Water	1353
(vii)	Pace of Socio-Economic Change and Development under the Constitution	1385

5. **List of Organisations/Individuals who sent representations to the Commission** 1423

6. **List of Organisations/individuals who responded to the Consultation Papers/Questionnaires issued by the Commission** 1451

7. **List of Organisations/Delegations/individuals who interacted with the Commission** 1465

8. **List of Seminars sponsored by the Commission** 1469

9. **Minutes of meetings of the Commission** 1473

10 **Report of the Drafting and Editorial Committee** 1581

BACKGROUND PAPERS

A

Background Paper*

on

WORKING OF PARLIAMENT AND NEED FOR REFORMS

*This Paper is reproduced from Dr. Subhash C. Kashyap's book "Reviewing the Constitution ?" (New Delhi, 2000 Edition) and also based on his History of the Parliament in India, Vol.6, New Delhi, 2000, pp. 541-559. The views expressed are personal to the author.

WORKING OF PARLIAMENT AND NEED FOR REFORMS

CONTENTS

		Page No.
1.	Introduction	1217
2.	Nodal Standing Committee on Economy	1218
3.	Building a better image of Parliament	1218
4.	Panchayats and Parliament	1219
5.	Improving the quality of members	1219
6.	Reducing the expenditure	1220
7.	Improving information supply	1221
8.	Planning Legislation and improving its Quality	1221
9.	Setting up a Constitution Committee	1222
10.	Departmental Committees and Improving Accountability	1222
11.	Parliamentary Control Over Borrowing	1224
12.	Discussing Committee Reports on the Floor of the House	1224
13.	Codifying Parliamentary Privileges	1224
14.	Reforming the functions of Parliamentary Parties	1224
15.	Other Procedural Reforms	1225
16.	Conclusion	1227

1 **Introduction:** That representative democracy and parliamentary institutions have endured in India for five decades is a great tribute to their strength and resilience. There has, however been in recent years quite some thinking and debate about decline of Parliament, devaluation of parliamentary authority, falling standards of debate, deterioration in the conduct and quality of Members, poor levels of participation and the like. A certain cynicism towards parliamentary institutions and an erosion in the respect for normal parliamentary processes and the parliamentarians present a disturbing scenario. Very little effort, seems to have been made to examine and analyse what really plagues Parliament or to find out the reasons for the erosion of the traditional authority, high esteem and pristine glory of the institution of Parliament.

1.1 During the last nearly 50 years, the structure and functions of Parliament had developed under the shadow of the Fabian slogans of democratic socialism, economic democracy and distributive justice. The information explosion, the technological revolution, the growing magnitude and complexities of modern administration and the concept of Welfare State cast upon Parliament vastly extended responsibilities of social engineering through legislation and of managing the lives of citizen from the bedrooms to the cremation or burial grounds. Inadequacy of time, information and expertise with Parliament resulted in poor quality legislation and unsatisfactory parliamentary surveillance over administration. As B.K. Nehru once said, during the entire period of nearly 200 years of their rule in India, the British passed only some 400 laws while in the first 40 years, Parliament had passed nearly 4000. The big difference was that the 400 laws were obeyed or had to be obeyed while the 4000 pieces of legislation were not obeyed. Those to whom many of these laws relate did not even know or understand them.

1.2 Little effort has been made to develop the essential prerequisites for the success of parliamentary polity - discipline, character, high sense of public morality, ideologically oriented two party system and willingness to here and accommodate minority views.

1.3 In a situation where the government lacked comfortable majority of its own and the opposition was too weak to emerge as an alternative, the options were very limited and the Parliament was bound to remain less effective. This is what happened during the 1989-1999 decade. Members irrespective of their party affiliations had themselves become a new caste and parts of the establishment and co-sharers in the spoils. Politics and Membership of Parliament had emerged as a whole-time, highly lucrative, hereditary profession. Following the changed composition of the successive House, there was faster devaluation of all the old values and increase in disorders and pandemonia on the floor during the so-called "Zero Hour" and at other times. There was general apathy among Members, Ministers and public at large towards the work of Parliament. Absenteeism among Members had assumed alarming proportions and defections for money and office were a common phenomenon.

1.4 Several of the archaic practices and time-consuming procedures most unsuitable for present-day needs continued. Legitimacy of government and of representative institutions under the system were inextricably linked to free and fair elections and to the system being able to bring to power persons who truly represented the people's will and had the necessary abilities to govern. Recent efforts, notwithstanding, due to the role of mafia gangs, muscle power and money power, free and fair elections continued to be difficult in some parts of the country thereby affecting the representative credentials of our elected representatives. Therefore, it would be necessary to reform the electoral system and the political party system before parliamentary reforms could be thought of.

1.5 Reforms and urgent remedial action seem imperative for making parliamentary institutions and processes effective and potent instruments of ensuring sustainable economic growth so vital for the success of the new economic policy also. Role expectation of Parliament is linked with the role perception of the State. NEP should lead to cutting back on Government involvement and drastic reduction in the role of the State in national economy. This should naturally get reflected in the reduced role for Parliament and its Committees. Also their processes, control mechanisms, debating and decision making procedures would have to be revamped and made faster. Floor management techniques would have to be professionalized at the level of whips, parliamentary officials and the Presiding Officers.

1.6 For Parliament, it is of the utmost importance constantly to review and refurbish its structural-functional requirements and from time to time to consider renewing and reforming the entire gamut of its operational procedures to guard against putrefaction and decay. The case for reforming Parliament is unexceptionable and, in a sense, has always been so. The real question is of how much and what to change to strengthen and improve the system. We have to be clear about the precise need, the direction and the extent of the reforms that would be desirable at present. It is obvious that mere tinkering first-aid repairs and trifling cosmetic adjustments would not anymore be enough. What is needed is a full-scale review. We have to be prepared for fundamental institutional - structural, functional, procedural and organisational - changes. The overriding guiding norm and purpose of all parliamentary reforms should be to make both Government and Parliament more relevant to meet the challenges of the times and the changing national needs in the context of the objective of faster economic growth.

1.7 Both the Parliament and the Government should be collectively concerned with concurrent and contemporaneous monitoring and evaluation of the implementation of economic reforms, scrutiny of the overall performance of the economy, targets, achievements, shortfalls etc. Some serious thinking is called for in the matter of reforming the budget procedure in Parliament and bringing it closer to the needs and constraints of the new situation. The number of occasions on which voting by divisions may be needed during a budget session is very large. Also, the defeat of any demand for grant is deemed to be tantamount to expression of lack of confidence in the Government. There is every possibility of a division being asked for more often only to embarrass the Government. It would be unrealistic to expect all the Members to be present all the time through the session. It would, therefore, be wise to reduce to the barest minimum the number of days on which voting by division is considered imminent. Also, the time may be fixed by agreement and announced in advance with appropriate whips issued and attendance ensured otherwise.

2. **Nodal Standing Committee on Economy :** It may be advisable to have a nodal Standing Committee on national economy with specific subject-oriented study groups aided by experts and concerned with economic policy formulation and implementation. The study groups would make internal study reports to the main Committee based on operational research in performance evaluation against physical targets. The Committee would in its turn make annual reports to Parliament. These reports would prove valuable to various Ministries and Departments of the Government. Also, they would serve the purpose of constant vigilance and constructive appraisal directed to preventing erosion of credibility, plugging loopholes and strengthening the system as a whole. The Committee recommendations would help to evolve and adopt better means of monitoring, analysing and evaluating performance in implementing policies and prescribing correctives to ensure the best use of available resources. The reports would provide valuable feedback to Parliament and should be discussed by the two Houses each year.

3. **Building a better image of Parliament :** Parliament is the communication link between the people and the government. Bad public relations job has resulted in a poor image of Parliament and of its members. People talk of happenings in Parliament and of the Members of Parliament as things quite remote and different from themselves. There is little consciousness of Parliament being their own and Members being from among themselves. It is necessary to establish a new rapport between the people and the Parliament. The two must be brought closer to each other. Parliament belongs to the people and not the M.Ps. The latter themselves are responsible to Parliament and to the people outside. It is ordinary people who have to be enabled to feel that they are participants in the decision-making and legislative processes and that through Parliament their voice can reach the Government and that it counts. Parliament must have access to public opinion and public must have access to Parliament. If corruption is suspected inside the portals of legislatures, the press and the public must be free to question it and expose it without being threatened under the law of parliamentary privileges. In its own long-term interest, Parliament as an institution cannot afford to place itself beyond all scrutiny by anyone. There is every need for a parliamentary Ombudsman. If stories that are current about payments demanded, offered or paid for favours like gas connections, telephone connections, questions etc. or of subletting of official

residences, or of misuse of coupons and passes these need to be thoroughly investigated and, if untrue, publicly contradicted.

3.1 Deliberate and concerted efforts are needed also at the professional level to rebuild Parliament's image as the supreme institution of the people. The people should know what their representatives are doing for them. Better press and public relations job and image-building for Parliament are legitimate and necessary and there should be no hesitation to use the latest tools and techniques for the purpose. The mass media - the radio, television, newspapers, films etc. - should all be suitably harnessed to the service of Parliament. These, particularly the print and electronic media can play a vital role in building a healthy image of Parliament.

3.2 The recent innovations of televising the Question Hour and other important debates would go a long way to bring Parliament to the door-steps of the people. Even if the level of debate has not improved much, parliamentary politics has become more alive. Conscious of the fact of the people watching them, members find it difficult to be absent during the Question Hour. Also, they are better dressed and more careful about their behavior before the camera. But much remains to be done. To give a faithful and complete picture of what actually happens in the Houses of Parliament, it is necessary to telecast nationally other important debates live. The edited version becomes stale, ceases to be newsworthy and remains suspect for having omitted the most 'interesting' parts of the proceedings. Care also has to be taken to see that televising of proceedings does not turn some members into demagogues and mountebanks playing more and more to the gallery and to the vast number of viewers and listeners all over the country.

3.3 It is necessary that the press and public relations in Parliament are suitably reoriented and developed as a highly specialized and dynamic service charged with the responsibility, *inter alia* of educating public opinion in regard to Parliament and its activities through :

(i) publication and distribution of handy monographs, folders and handouts;

(ii) attending to enquiries from the public, publicising the telephone numbers and addresses from which information about Parliament and its activities may be sought and providing some public computer terminals and an internet website from which any citizen can hope to get any information he may need regarding the Parliament and its activities.

(iii) Managing publication of write-ups in newspapers and periodicals;

(iv) arranging interviews, talks and discussions on Radio and T.V.;

(v) using audio-visual means like audio and video cassettes to publicize the work of Parliament;

(vi) issuing Press Notes and supplying backgrounders; and

(vii) having regular briefing sessions for the Press, as is done in some countries.

4. **Panchayats and Parliament:** The role of M.P. must undergo change as a result of Panchayati Raj. The functions of Parliament and role expectation from Parliament should be transformed. Meticulous caution has to be taken to avoid any role conflicts between the Panchayats and Members of Parliament. Ideally, Members of Parliament are Members for the whole of India and should concern themselves basically with the national issues leaving the local problems to the care of Panchayats and Nagar Palikas. Schemes like those placing two crores of rupees each year at the discretion of each Member of Parliament to be spent on local projects are bound to create role conflicts and tensions.

5. **Improving the quality of Members:** Quality of Members is the most important variable in the working of any Parliament inasmuch as a Parliament would be what its Members make of it. It is the primary duty of every Member irrespective of his party

affiliations to maintain and project a good image of Parliament by his conduct both inside and outside the Houses of Parliament. Corporate image of Parliament is bound to remain poor unless the quality and conduct of individual Members improve and every Member is imbued with a sense of purpose and responsibility. Also, every backbencher should be enabled to feel relevant and that he matters in what goes on in Parliament. Members of important parliamentary committees need to lay down a strict code of conduct for themselves, never to ask the senior Government officers appearing before the Committee for personal favours, avoid Committee tours unless really necessary and never accept any gifts, dinners, free transport, five star hospitality and the like while on tours.

5.1 Politics has become a highly professionalised business and should be understood as such. Irrespective of ones talents and professional background, every new member when he first enters a legislature feels completely lost in the dense forest of the mass of conventions, traditions, rules, regulations and formalities of the highly sophisticated parliamentary procedures, processes and practices. Institutionalized arrangements are, therefore necessary to provide the much needed professional training and orientation to every newly elected Member irrespective of his ideological or party affiliations. The curriculum should include, among other things, adequate knowledge of the political system, the Constitution, the Rules of Procedure and Conduct of Business, the practices and precedents, mechanisms and modalities of the working of the Houses and the Parliamentary Committees, the do's and don'ts for Members, the rules of parliamentary etiquette and the like. The emphasis should be on the practical know-how, the technicalities and the operational realities and the concrete situations and not the rule book.

5.2 Inadequacy of education and training in the sophisticated operational mechanics of parliamentary polity and the working procedures of modern parliamentary institutions has adversely affected the performance of both the legislators and the bureaucracy. The orientation seminars for new members that are now arranged have become too routinized, insipid and more in the nature of a ritual both for the participants and the organizers.

6. **Reducing the expenditure:** Financial cost of parliamentary democracy have been skyrocketing. During the last five decades they have gone up by over 100 times. Also, the figures of costs e.g. on Parliament seem fudged inasmuch as much of the expenditure gets reflected under other heads.

6.1 A matter often raised is that of the salaries, allowances, amenities, facilities etc. extended to Members. While for some, entering Parliament involves financial sacrifice, for many others it provides much sought for rewards and benefits. There are two extreme views on whether Members are heavily pampered and overpaid or they misunderstood and grossly underpaid. Much can be said on either side. According to one guess, if every member is paid Rs.100,000 to 200,000 per month in cash and all perks and direct and indirect financial benefits from the State are withdrawn, the public exchequer would be a gainer. This would imply that at present, a member on an average gets in cash or in kind not less than Rs. One lakh (One hundred thousand) per month. If the State Legislators are included, the total numbers comes to above 4000. Besides, we have Ministers, Chairmen of Boards, Public Undertakings etc. and politicians occupying innumerable offices with Minister's status at the State and Union levels, each one costing ten to fifty times the cost of an M.P. All this put together makes the cost of maintaining our huge army of whole-time professional politicians very heavy and hardly commensurate with the returns to society. While stressing the need for cutting down the administrative expenditure under SAP, we have to think of cutting down the staging cost of democracy as well. There is need to drastically slash parliamentary spending under various heads. Even if the resultant economy in the context of the overall national budget may not seem very large, the psychological impact is bound to be massive. Strictest self control is necessary also because parliamentary budget, by convention, is not questioned or debated.

6.2 A strict limit needs to be placed on the number of Ministers and equivalent posts both at the Union level and in the States. In countries like U.K., the number and names of departments are fixed. Ministers may change but not the departments. In India, on the other hand, departments are created, merged or split from time to time to suit the whims of the

Prime Minister or the changes in the Ministers in charge. This causes confusion, instability, uncertainty and wasteful expenditure.

7. **Improving information supply:** Information is power. For any effective surveillance over administration, Parliament needs information. Members need information. They have to be fed with latest information and kept uptodate in regard to developments in all areas of parliamentary concern and more particularly in matters coming up before their House or Committees. Instead of depending almost entirely on published documents – which are almost always outdated and - other official sources, Parliament must build its own independent national information reservoir with a network of feeding and retrieval points. In this connection, computerization of storage and retrieval of information in Parliament was well conceived. But much depends on the data files that are built and what is actually fed into the computer or the internet. Unfortunately, it seems there has been no qualitative change in information gathering processes. Members need first hand information and fresh inputs on various subjects of interest to Parliament and particularly in regard to the activities of the Ministries and Departments of the Government so as to facilitate monitoring and evaluating progress, performance and efficiency and lead to better surveillance of administration as a whole. Even if no other parliamentary reform was brought about, the single step of developing an infrastructure of information support system in Parliament would have been profound effect on revitalizing and transforming the institution of Parliament.

7.1 Some of the modern tools and techniques that may be used to keep our Members better informed may be:-

(b) briefing sessions by experts on topics of current parliamentary concern;

(b) provision of audio-visual aids, setting up of separate well-equipped audio-visual rooms, loaning of cassettes of Seminars, Conferences, Briefing Sessions and the like;

(c) problem and practice oriented quickies (quick studies) – current awareness series, background notes, issue briefs, information bulletins, fact sheets, digests, etc. on parliamentary, procedural and other immediate or anticipated problems of concern; and

(d) Selective Dissemination of Information (SDI) on selected subjects to members in their respective interest areas.

7.2 An essential prerequisite for any such assistance being available in satisfactory measure would be the presence of highly qualified and competent staff in the Library, Research and Reference Services of the Secretariats of Parliament.

8. **Planning Legislation and improving its Quality:** Our legislation has often been criticized for hasty drafting and for its being rushed through Parliament in an *ad hoc* and haphazard manner. There is need for a dynamic – not mechanical – approach to legislative engineering and systematic programming of laws which may be proposed for enactment over a period of time. This can be done by:

(i) streamlining the functions of the Parliamentary and Legal Affairs Committee of the Cabinet;

(ii) making greater use of the Law Commission;

(iii) setting up a new Legislation Committee of Parliament to oversee and coordinate legislative planning; and

(iv) referring all Bills to the newly set-up Departmental Standing Committees for consideration and scrutiny, consulting concerned interest groups and finalization of the second reading stage in the relaxed atmosphere of Committees aided by experts thereby reducing the burden of the House

without impinging on any of its rights and improving the quality of drafting and content of legislation.

9. **Setting up a Constitution Committee:** While executive power of the Union is co-extensive with its legislative power, the constituent power under the Constitution belongs exclusively to Parliament. The responsibility of Parliament, therefore, become much greater in the case of Constitution (Amendment) Bills. As such, instead of the Constitution Amendments being presented to Parliament like ordinary pieces of legislation in the form of Bills for introduction sometimes at very short notice, it would be desirable if Parliament is associated right from the initial stages of formulation of proposals for constitutional reform, i.e., the actual drafting of a Constitution Amendment Bill may be taken up only after the principles involved have been thrashed out in a parliamentary forum and subjected to appropriate a *priori* scrutiny by the constituent power. The proposed involvement of Parliament and a *priori* scrutiny can be achieved through the device of a Constitution Committee of Parliament which may be constituted by resolution or otherwise as a standing joint Committee of the two Houses. The members of the Committee may be elected by the respective Houses. Rather than delay, this might expedite the process of constitutional reforms besides bestowing greater authority, legitimacy and wider acceptability to the reform proposals. As an alternative, after a Constitution Amendment Bill has been formulated but before it has been introduced, it may be subjected to a *priori* scrutiny of the 'Constitution Committee'. If this is done, even the Government would be saved many an embarrassment.

9.1 Also, where an enactment is placed beyond the power of judicial review by being included under the Ninth Schedule, it may be desirable for Parliament itself to provide an alternative forum and remedy by way of review, etc. to any aggrieved citizen. The proposed Constitution Committee may perform this function as well. In view of the fact that several laws are struck down by courts as being *ultra vires* the Constitution, it would be desirable to subject all legislation to prior scrutiny from the point of view of constitutional validity. Scrutiny by a Parliamentary Committee should help in ensuring that legislation purporting to be in furtherance of the Directive Principles does, in fact, have a reasonable nexus with the objectives in view and does not curtail the Fundamental Rights of the citizens beyond a measure that can be considered to be reasonable and strictly necessary.

10. **Departmental Committees and Improving Accountability:** The setting up of the 17 subject based Standing Committees has been the most historic development in recent years in the area of parliamentary reforms. Seventeen, however, is perhaps too many. Three such Committees were set up in 1989 on an experimental basis. Subsequently, the Rules Committee recommended ten Committees to cover all the Ministries and Departments. But, perhaps hard bargaining and needs for compromise and accommodation of various interests and considerations raised the number to seventeen. Although it may not be easy to reduce the number now, it is strongly felt that 7 to 10 such Committees would be enough and in fact might prove more effective than the 17. Also, it is important from the angle of reducing the overall costs and need for economy.

10.1 Parliamentary oversight of administration is not an end in itself. It is never intended to adversely affect administrative initiative, effectiveness and discretion. It is meant to galvanize, not supplant action. The purpose of accountability mechanisms is to strengthen efficient functioning of administration and not weaken it. It is reasonably well established that parliamentary scrutiny over public finance is at present inadequate and patchy and there is need for simplifying presentation of the budget and strengthening executive control and parliamentary scrutiny of expenditure.

10.2 If the Subject/Ministry based Standing Committees have to have real meaning and fulfill the purposes for which they were conceived and not to become merely part of a spoils system and distribution of perks and benefits, they should embrace the entire spectrum of administration for an in-depth and continuous study to provide:

(i) close pre-budget scrutiny of the estimates and complex expenditure plans (Demands for Grants) before they are voted on the floor of the House;

(ii) concurrent and contemporaneous examination of the activities of Government departments and matters of national concern in cool, non-partisan atmosphere;

(iii) monitoring and evaluation of performance, relating to financial input to the policy objectives and actual results to measure effectiveness, and detailed examination of supplementary estimates;

(iv) feed-back of valuable insight and information to Parliament and to the Government to reappraise economic proposals;

(v) closer and more competent scrutiny of all legislative proposals – all Bills introduced in the House may automatically stand referred to the appropriate Committee for detailed consideration and discussion;

(vi) review of the implementation of laws passed by Parliament in respective subject areas;

(vii) leadership recruitment and training ground for higher responsibilities in Government, participation by backbenchers and building a second line of leadership; and

(viii) development of specialization and expertise among members.

10.3 The Committees could, in fact, strengthen the Government by providing valuable insights into its own working, provide to Parliament sharper and more effective surveillance tools and restore the balance between Parliament's legislative and deliberative functions and its role as a representational body; and, above all, save valuable parliamentary time to the advantage both of Parliament and the Government. Working away from the glare of publicity, in a truly corporate sense, free from the normal partisan spirit that often characterizes the debates in the House, the new parliamentary committees could play an important, substantial and useful role. These Committees could provide a potent mechanism for a meaningful multilateral dialogue between the Government and the Members of Parliament enabling a proper appreciation of each other's views, reasonable accommodation of varying viewpoints and harmonization of conflicting interests. In the ultimate analysis, such parliamentary committees alone can ensure that we are making the best use of parliamentary system of Government.

10.4 Since the functions of every Ministry and Department are covered by the Departmental Standing Committees and also in view of the proposed new Constitution Committee, Legislation Committee and the Committee on National Economy, it does not seem at all necessary to continue the existing Committees on Estimates, Public Accounts, Public Undertakings and Subordinate Legislation. Their functions should also be most appropriately handled by the Departmental Standing Committees. This would rationalize the new Parliamentary Committee structure, streamline the functions of each individual committee, prevent overlapping and duplication of roles and above all lead to greater economy of expenditure under the head of Parliament and various Ministries of the Government.

10.5 The development of an integrated system of committees would reduce the pressures on floor time – cost of floor time was estimated several years ago as being over Rs. 900 per second (later, Sangma put it only Rs. 7000 per minute) – and strengthen parliamentary surveillance over administration and contribute to economy, speed, efficiency and smooth working both for Parliament and the Government. Scrutiny of the Committees should be based on developed information collection, retrieval and management techniques and research tools and methods of enquiry and supported by independent study and assimilation of information and analysis of data. The approach of committees would have to be one of internal achievement audit or modern management efficiency study strengthening the system as a whole. The reports that have recently come out from the 17 Committees unfortunately do not bear much evidence of such an approach or effort.

10.6 The role of the Committee staff is vital. It should constantly and concurrently monitor the working of the concerned Ministries. The professional staff member should have the necessary competence in his Committee's subject area. He has to scientifically feed the committee with all the relevant information and data. To avoid diffusion of responsibility, there should be just one competent professional staff with one secretarial support in each Committee.

10.7 Success of the committees and strengthening of accountability mechanisms through them would, however depend on (i) quality of members, (ii) willingness of government to provide timely, factual and full information and (iii) the orientation, independence, objectivity and research expertise of the Committee staff.

10.8 If, however, the Joint Parliamentary Committees on Bofors and on the multicrore Bank/Securities scam were any indication, the portents for the system were not very encouraging.

11. **Parliamentary Control Over Borrowing:** While the budgetary demands for grants of various ministries may now be examined by the concerned standing committees, still there is no provision for a parliamentary scrutiny or control of public borrowing. Unlike U.K., in India, the Constitution and the laws place no limits on the borrowing powers of the Executive. Parliamentary approval for any amount of internal or external borrowings as such is not required except that it is a part of the budget. This is a significant lacuna and must be plugged. For, public borrowing is a charge on the future generations and must be duly controlled. Beyond certain prescribed limits, borrowing proposals should also be subjected to scrutiny by the proposed parliamentary committee on National Economy or the Standing Committee for the Ministry of Finance.

12. **Discussing Committee Reports on the Floor of the House:** Under the present practice regarding not discussing on the floor of the House reports of some of the important Committees like Financial Committees, some very useful recommendations remain unappreciated and infructuous. It is time for modifying the practice. It would be most desirable to discuss as a regular feature all important reports of Parliamentary Committees particularly in cases of disagreement between the Committee and the Government.

13. **Codifying Parliamentary Privileges:** In a democratic society, any privileges for a section or class of the people are anachronistic, any undefined privileges like the privileges of Parliament are even more so. It is, therefore of the utmost importance that the weapon of parliamentary privileges is used with great circumspection. As a great institution, Parliament should be able to take in its stride, a great deal of the criticism and adverse comments against it. Privileges of Parliament are intended to be privileges enjoyed by Parliament on behalf of the people, to enable members to function freely and fearlessly, in the interest of the people.

13.1 These privileges should not be allowed to be used in such a manner as to nullify themselves and become rights against the people. The specific parliamentary privileges which may be deemed to be in conformity with contemporary thinking and absolutely necessary for the free and independent functioning of the institution of Parliament should be clearly defined, delimited and simplified. There is a strong case for codifying privileges and ending the necessity of every time referring to the 1950 position in the House of Commons in U.K.

13.2 Time is now ripe for removing the existing uncertainty and anxiety of the press and the people through early codification. A joint Committee of the two Houses may be set up to lay down the privileges in precise terms and to recommend appropriate piecemeal or comprehensive legislation.

14. **Reforming the functions of Parliamentary Parties:** It is the duty of Parties in Parliament to train and guide their members and to advise and inform them on political, economic, social and procedural problems coming up before Parliament from time to time.

This should be done by the Party Secretariat providing party position papers, speech notes and write-ups and arranging issue discussion or briefing sessions and the like.

14.1 Inside Parliament, recognition may be given to the Government and to the official opposition only. No recognition may be given separately to other parties and groups. Inside the Houses of Parliament, there would thus be only two recognized bodies; one, the majority party or coalition of parties forming the Government and two, the Official Opposition comprising the parties, groups and persons in Opposition. The Rules of Procedure, Directions from the chair and the anti-defection law (10th Schedule to the Constitution) may be amended accordingly.

14.2 Further, party whips may be issued on very vital matters of policy only. It would be desirable to allow free vote on most of the issues and discussions on the floor of either House thereby giving weightage to the real views of the majority of members on specific issues of national concern and possibly leading to the emergence and consolidation of national will and consensus on most matters. Only defeat on a No-Confidence Motion proper may be deemed to be defeat of the Government calling for resignation of the Council of Ministers. This might incidentally reduce the incidence of unprincipled defections and instill a new sense of responsibility, relevance and importance in each member irrespective of ruling party or opposition affiliation.

15. **Other Procedural Reforms:** Each House of Parliament is complete master of its procedure. The Rules of Procedure and Conduct of Business are intended to be merely for guidance, for regulating the business of the House and for facilitating the orderly expression of members' views. Precedents and conventions may not be allowed to become shackles to imprison and destroy the institution. Procedures must keep pace with the changing needs of the national economy, composition of Membership and the prevailing mood of the Members. On the other hand, it has to be appreciated that the use of various procedural devices to engage the attention of the House calls for a certain restraint. Sometimes, completely unrestricted and unlimited right of discussion can itself become a weapon of tyranny. It is in this context that the adequacy of the existing parliamentary procedures in the context of the need to help the new economic reforms and liberalisation policies needs to be examined.

15.1 (i) **Reorganising Parliamentary Time Table:** Houses of Parliament are proverbially hard pressed for time and find difficulties in completing their business despite long sessions and late hours. While Parliament must perform its oversight role and its weapons of open debate, scrutiny and accountability should not be blunted in any way; it has also to be seen that time consuming procedures do not hamper the smooth transaction of public business. As it is, much of the valuable time of the House is taken up by a variety of local and other unimportant issues. The House as a whole can ill-afford the time for lengthy discussions on such issues which drag on for day after day. It may, therefore, be in the fitness of things to suitably amend the Rules of Procedure in order to more firmly prevent Members raising in the House matters of local or limited interest with which the Houses as a whole is not vitally concerned. These may be raised in the committees. Similarly, the many controversial issues which are now usually raised during question time or soon thereafter in what has now come to be known as the 'Zero Hour' could better be dealt with in the Committees. Incidentally, in the Committees they could be discussed in greater detail. It can hurt only those who may be anxious to hog newspaper headlines by creating scenes during the 'Zero Hour'. The floor time ought to be better utilised for major policy matters, matters of vital national interest and important legislative and financial business. There is an urgent need for a reorganisation of the parliamentary timetable and rationalisation of the methods and procedures of the House. This is of the utmost importance inasmuch as many a problem of reforming the parliamentary system, in one way or the other, concern the question of the proper use of the very limited parliamentary time that is available. As John Freeman once said, in every parliamentary democracy, "the clock and the calendar are the most dreaded enemies of ministers and back-benchers alike".

15.2 Several items of business like the Questions, Adjournment Motions, Calling Attention Notices, Motions of No-Confidence, etc. initiated by Private Members are at present taken up during the time allocated for Government business and not in the time already reserved for

Private Members' business on Fridays. A better alternative would be to allocate time on a weekly basis between the Government and the Private Members and to leave the priorities to be decided within each.

15.3 (i) While parliamentary sessions may continue to be held thrice in a year as at present and for the same duration, the parliamentary business can itself be shared between the House on the one hand and the Committees on the other. The time during the sessions could be divided in such a way that the Committees have also enough time to meet and complete their task. The forenoons could be reserved for the sitting of the Houses and the afternoons for Committee meetings or there could be a three day week for Parliament, with the Houses sitting on, say, Tuesdays, Wednesdays and Thursdays for 7 hours daily from 11 to 6 without lunch break. The Committees could sit on Mondays and Fridays, if necessary, on Saturdays as well. In the 21-hour week, 11 hours of floor-time could be set apart for government business i.e. legislation and other matters initiated by the Government, and the remaining 10 hours of floor-time could be made available to Private Members for Questions, Calling Attention Notices, Private Members Bills and Resolutions, No-Day-Yet-Named Motions, Privilege Issues and other non-official business.

15.4 **(ii) Freedom of Expression:** It is perhaps the most fundamental parliamentary right of a Member of Parliament. Every member is entitled to freely and fearlessly express himself on the floor of the House *inter alia* on burning issues of the day and matters of urgent public importance. If a member fails to do so under one of the available procedural devices, he often takes recourse to what has come to be known as the "Zero Hour". While unparliamentary or objectionable expressions may be expunged from the proceedings of the two Houses of Parliament by their respective Presiding officers under the existing rules, 'shutting off' or 'blinding' the proceedings of any House under the presiding Officer's direction that 'nothing of what is said without his permission would go on record' may be of questionable desirability inasmuch as in that case the reports of the Proceedings cannot really be regarded any more as a faithful record of all that happened. This applies equally well to the expurgated and edited version of the selected proceedings that may be telecast. In any case, when the Question Hour or any other part of the proceedings is telecast live, how can the Presiding Officers' expunction orders operate? Also, those sitting in the Public, Press and other Galleries do hear and know in full, what is said on the floor of the House. The entire matter may need to be examined in depth and reconsidered.

15.5 **(iii) The Petitions Committee:** It needs to be strengthened and put to greater use. It has tremendous potential as a substitute or supplementary to the Ombudsman institution. It may be advisable to pay greater attention to publicising the committee's existence and the scope of its functions.

15.6 **(iv) The Question Hour:** Each of the two Houses of Parliament devote an hour each day to questions. Referred to as the showpiece of parliamentary democracy, the Question Hour nevertheless reveals an inadequate appreciation among members of its real purpose and scope and of their own responsibility in the matter. Thus, instead of being an hour during which questions are asked to elicit information from the government, it has, in practice become a discussion hour. While 20 questions are listed for oral answers each day, usually not more than 4-5 are covered. Lengthy arguments and orations are made in the name of supplementaries with the actual questions being preceded by introductions and preambles. Often replies by Ministers also tend to be evasive or an exercise in the art of giving technically correct answers without 'giving away' any information.

15.7 Notices of many questions may be without any pubic purpose or general or national interest being involved in getting replies thereto. Scrutiny of Question lists would show that many of the admitted Questions are also on matters of local interest and trivial or routine in nature. It is not unknown that very often Questions are suggested or drafted by persons other than the Members themselves. Sometimes, the Member giving notice is himself absent from the House when his Question comes up for answer. In some cases, very extensive information involving considerable expenditure and effort in collection may be called for even though the benefits, if any, may not be commensurate with the costs. Also, the necessary top priority given to parliamentary Questions causes serious dislocation of normal work in the

Ministries and offices of the Government. All this is not satisfactory and involves considerable waste of public money and parliamentary time.

15.8 **(v) Adjournment Motions:** The purpose of an adjournment motion is to bring before the House for immediate discussion a matter of urgent public importance which is not already included in the List of Business for the day and in regard to which a motion or resolution with proper notice will be too late. An adjournment motion is admissible if the matter sought to be raised is definite, urgent and one of public importance. The Speaker may, however, in his 'absolute discretion', refuse to give his consent to moving of an adjournment motion without giving any reasons. When consent is so refused, Members nevertheless try to raise the subject-matter of their notices before the House and what follows often gives the impression of a tug-of-war between the Speaker and the Members. This is unfortunate and can perhaps be avoided if the Speaker concerns himself only with seeing if the cardinal conditions for the admissibility of an adjournment motion are satisfied. That is, if the matter sought to be raised is definite, urgent and of public importance, he should give his consent to the moving of the motion. Instead of taking it upon himself to be arbiter of the relative merits or otherwise of the various adjournment motions of which notices are received and which are in order under the rules, he may leave it to the House to decide if any of them and if so which one should be taken up for discussion by leave of the House being granted. After all, adjournment motions need no more be viewed as expressions of no-confidence in the Government. Since, after independence, the device of No-confidence Motion itself has become available, stiff resistance to admitting any Adjournment Motions at all may be perhaps somewhat misplaced, overdone and unnecessary.

15.9 Discussions in the House, on a motion of adjournment, of a matter of urgent importance which may in any case, be upper most in the minds of the members and of the people at large outside at a particular time, can do no harm. It may, if fact ease tensions and help to create a better and healthier atmosphere both inside and outside the House.

15.10 **(vi) Absenteeism of Members:** Absenteeism of Members threatens to become a serious malady. Members for whom the quorum bells ring too often have many pressures on their time and energy outside the House. In practice, the quorum requirement is often ignored by not questioning the quorum. Suggestions have sometimes been made for reducing the present minimum ($1/10^{th}$) to constitute the quorum. What is required is ensuring better and longer attendance by the Members in the Houses of Parliament. The citizens have certain claims on their representatives and perhaps expectation of some minimum hours of presence in the house and some minimum hours of parliamentary work each day would be quite legitimate. Those Members who are not so present in the House may, therefore, under their own self-regulatory procedures, lose their salary and allowances for the day.

15.11 **(vii) Secretariats of Parliament:** Independence and impartiality of the secretariats of the two Houses and their officers and staff are absolutely necessary for the success of the system. The Secretariats of Parliament need the very best staff. The second best is not good enough. But, developing a large legislative bureaucracy may be dangerous, it must never become a rival to executive bureaucracy. Parliamentary staff must be small but of high quality and calibre e.g. each Committee should have only one professional staff and one secretary.

15.12 It is most unfortunate that no law has so far been passed under article 98(2). Desirability of doing so at the earliest may be considered and efforts made to reorganise the Secretariats as dynamic instruments with stress on independence, efficiency, economy an promptness. Suitable arrangements may be made on a regular basis for providing to all parliamentary officials special training and orientation in parliamentary political science and legislative management techniques and tools.

16. **Conclusion :** While we can legitimately proud of the reasonably successful working of Parliament during the last five decades, Parliament is relevant only as a dynamic institution ever adjusting its functions and procedures to the changing needs of the times. If democracy and freedom are to endure, if representative institutions are to be made impregnable and if the new economic reforms and an all round effort at liberalisation are to bear fruits, it is

essential to restore to Parliament and its Members their traditional esteem and honour in the affections of the people. Reforming the Parliament in essential respects is already a categorical imperative. An integrated approach to political and economic systems reforms is necessary. No single reform can provide a miracle cure. Also, parliamentary reforms cannot be effected in a hurry. We must proceed with care and caution and begin by setting up a Parliamentary Reforms Commission or a 'Study of Parliament Group' outside parliament as was done in U.K. before the procedural reforms. Finally, of course, the Rules committee or a Special Procedure Committee of the House should report on the matter.

16.1 Parliamentary reforms, political party reforms, electoral reforms, judicial reforms, etc., all have to be taken up together in an integrated approach to political and economic reforms and as part of the overall review of the working of our Constitution. No single reform can provide a miracle cure and no reforms should be effected in a hurry. We must proceed with utmost care and caution and evolve a national consensus on desirable changes.

A

Background Paper*

on

SOME IDEAS ON GOVERNANCE

*This Paper was prepared for the Commission by Dr. Abid Hussain.

SOME IDEAS ON GOVERNANCE

CONTENTS

		Pages
1	Introduction	1233
2	Inadequacies and Failures	1233
3	Reallocation of Subjects in the 7th Schedule	1235
4	Rationalisation of size of Governments & Devolution of their functions	1235
5	Human Resource Management and Involvement of Community	1236
6	More Powers to Local Elected Bodies	1237
7	Civil Services	1237
8	Making the Civil Servants amenable to discipline	1239
9	Methods of Evaluation	1240
10	Lok Pal	1240
11	Civil Services Board	1240
12	Transparency in Administration & Right to information	1240
13	Accountability	1241
14	Specialists and Generalists	1242
15	New Challenges	1243
16	Governance and Foreign Policy	1243
17	Prime Minister, the Undisputed Leader	1244
18	Comptroller and Auditor General	1244

SOME IDEAS ON GOVERNANCE

1. **Introduction:** The Constitution of India has clearly articulated the social and economic goals and has specified agents for achieving the promised social revelation. Matters concerning formation and working of the executive agencies (both political and civil) are spelt out. Citizens have been assured that the executive together with other organs of the State (Legislative & Judiciary) would uphold their rights and remove the inequities from which the anti-democratic forces derive their sustenance. Good Governance, it was hoped, would transform the social, political and economic life of the people, within the framework of democracy.

2. **Inadequacies and Failures:** In the beginning the constitutional arrangements relating to governance worked more or less to general satisfaction and provided the law abiding citizens with a fairly safe, and secure life. However, as time passed their inadequacies have become evident and Government has lost its élan as it has failed to live up to the expectations of the Constitution to give real substance to the policies designed to promote social well being even the most modest expectations have remained unfulfilled.

2.1 The present situation is characterised by a pervasive disenchantment with the way things have worked out. It is futile to debate whether it is the institutions provided by the Constitution that have failed or whether the men who work these institutions have failed. Probably both, but while we cannot abolish the men we can only endeavour to improve the environment in which these men function hoping that a more conducive environment would improve behaviour and performance of the men and women who command the strategic heights of governance.

2.2 Failure to ensure the socio-economic goals is now no longer attributable to scarcity of resources but to the failure of Governance. It is the insufficient attention paid to such a transformation that has deepened the fissures between the people and the administration. The failure to regenerate society lay in the basic conceptual weakness that encouraged the untested assumption that people are best served when the ruling classes originate, execute and administer policies, plans and programmes for their welfare from above. This misconceived paternalism has reinforced the tyranny of the Status Quo and has gravely weakened forces of change. The Indian problem, Nehru had recognised, was not to foster stability in the system but to transform it. The 'Law and Order' pre-occupation of the bureaucratic mind led to the entrenchment of the system that the Constitution had promised to transform. This mind-set thwarted the initiates for legislative to socio-economic well being of all sections of people. Repeated surgery, in the shape of constitutional amendments, had to be resorted to instill even minimal transformative features. Examples include land reforms and steps to deal with the entrenched injustices of the caste system and halting measures for evoking rights to property as transcendental.

2.3 Another fundamental flaw vitiating governance emanated from the lack of conviction that the consent of the people is the basis of democratic government. The over-arching theme, a legacy from the Colonial days, that people remain a passive category subjects rather than citizens remained firmly rooted on official mind. People aroused only at intervals of five years or there about to choose their rulers and to go back again to a life of political passivity. Political mobilisation of masses mostly remained neglected. This produced all manner of infirmities and has given rise to alienation of the people from the political system.

2.4 Rights of the people are inalienable. The words "we the people" signify not only the moral and historical insight of founding fathers but they serve to reaffirm they are the source of all constitutional authority and that the test of Good Governance was measure of people's well being. However, the functionaries of the State have failed to realize that they are servants of the people and not their masters. Test of a vibrant democracy is the degree of success in calling its Executive to be accountable to the people.

2.5 The words 'we the people.....' were not empty rhetoric; they were earnestly inscribed to recognise and respect India's political sovereign – the people. The highest rank of a person in a democratic country is to be its citizen. But the new administration class, working under the mesmeric spell of colonial attitudes, was reluctant to consider the people at large as citizens. They continued to treat them as subjects or 'ryots' both owing allegiance to a superior master. This denial robbed them of power and made it possible for the executive to snuff out the significance of the people. It is the possession of power that gives people control over their destiny and authority over those whom they have chosen to serve them. Ambedkar had cautioned: "By independence we have lost the excuse of blaming the British for any thing going wrong. If hereafter things go wrong, we will have nobody to blame except ourselves".

2.6 Self Government is better than even good Governance. Unless self-government is ensured by clear devolution of power from the centre to the periphery, people are prevented from participation in Governance. They can not eliminate arbitrariness in executive actions which generally tilts the balance in favour of the privileged. Moreover the 'top-down' state of affairs does not legitimise 'self-government' which is of primordial value. 'Top-down' administration stifles public initiative. To make people effective they must consciously enjoy and assert their constitutional entitlements and not be mere supplicants for or objects of administrative largesse. That is the rationale of the 73rd and 74th amendments to the Constitution. A strong sense of public duty comes from empowerment. People's attitude changes from one of obedience to authority to active participation in governance. It is only when the gap between the executive and the people is narrowed down through decentralisation that democratisation can occur. The whole configuration of governance changes if democratic order is conceived not as a 'once in five year ritual' of changing the guard but as a continuous renewal of democratic life from a knowledgeable and participative citizen body. A citizen as a political and social unit could alone take responsibility for transformation of the state of the society. Adequate constitutional amendments in this regard could alone make it possible for strengthening people's say in governance involving beneficiaries in implementation, introducing flexibility through greater autonomy to States and local bodies, enabling greater involvement of voluntary agencies, introducing better delivery systems through self-help groups and so on. The essence of the matter is that there should be effective participative democracy at all levels; once people become the fountainhead of power, their role in governance becomes meaningful and effective. It encourages an active sense of public duty, replacing emphasis from authority and obedience to active participation. The system can deliver the goods through devolution, decentralization and democratization, thereby narrowing the gap between the base of the polity and its super-structure.

2.7 Institutions and structures do impinge on the working of the fundamental law of the land. There is, however, a substantive problem of the philosophy that underlies such institutions and structures. And that has to do with the role of the State. Immediately after the Second World War, when the decolonised world began its quest for development, the intellectual context favoured a strong, in fact a leading, role for the State in the development process. It was partly a legacy of the Great Depression, but it was also a reflection of the major changes brought about by the October Revolution in 1917. An alternative route to the process of industrialisation, which held the key to the removal of poverty, in which the role of the market in the allocation of resources was believed to be marginal, was the lynchpin of the strategy for development enshrined in our Constitution.

2.8 Some of the shortcomings in the governance outlined above are inherent in the centralized nature of the Indian State which lays down the parameters of the administration. There is an indissoluble link between the two. This was evident when the norms of colonial administration, with their long ancestry, came early to stamp their features on the post-independence dispensation. Colonial administration had created a top-down system of command and obedience in which State and local units of government were treated as subordinate to the Central Government.

3. **Reallocation of Subjects in the 7th Schedule:** Reallocation of subjects from the three **Lists given in the Seventh Schedule** is a prerequisite in this context, to make governance come closer to the people. The Central List of subjects should contract drastically, confining the Centre to subjects of national importance such as defence, National Security, foreign policy, Interstate-rivers, communication, macro-economic, planning, environment, etc. The list of subjects meant for the States and for other layers of government will have to be augmented with the Centre refraining from involvement in matters best addressed at the lower levels.

4. **Rationalisation of size of Governments & Devolution of their functions:** There is no reason why the central government should have large and unwieldy ministries handling subjects like education, health, agriculture, rural development, social welfare, industry, power, etc. when these areas can more conveniently and appropriately be handled at the state, regional or district levels. The centre can at best be a clearing house of ideas and knowledge but for it to be actually involved in shaping policy and in allocation of resources is an over-lapping of jurisdiction. Down sizing of the Government should also follow. Big Governments are not always conducive to efficiency and promptness. People should know where the buck stops.

4.1 Similarly, if the state governments do not delegate authority and resources to units below the state, similar acts of aggregation and aggression occur depriving local bodies of initiative, capacity for innovation and experimentation. The richness and diversity of experience across tens of thousands of communities in locations across the country is sought to be standardised and homogenised by such straitjacketing as is involved in the present arrangements. We need to break away in a decisive manner from this dogma of centralisation which had its counterpart in centralised planning. There must be power in the local governments to remould through experimentation, our economic practices and institutions to meet the changing social and economic needs. A single courageous unit of local government may serve as a laboratory and try a novel, social and economic experiments without risk to the rest of the country.

4.2 However we need a few cautionary sign posts. A major achievement since the attainment of independence has been the creation of a common Indian market that approaches in size some of the biggest markets in the world. This is the foundation of political unity. Anything that weakens or threatens to weaken or destroys India's political unity has to be prevented. Therefore no unit of the Union can be empowered to weaken the foundations of the common market. It is because of this predominant consideration that currency belongs pre-eminently to the realm of the Union government. So does the defence of the realm, the hallmark of national sovereignty. Further it should always be kept in view that when the Centre does not hold societies become polarised. Similarly, the fact that some items belong to the union list does not mean that the Union can act in any manner it things fit as long as it is assured of legislative support. The concept of continuous renewal of consent means that, within limits central policies are publicly debated and agreed to. The citizens should have access to information, data, arguments that go into the making of executive or legislative decisions. Only then can citizens feel that they have contributed to the functioning of the polity.

4.3 This has to be considered with devolution of authority, responsibility and resources to appropriate levels. Decentralisation cannot work without the devolution of resources. If the major sources of revenue remain with the centre then the notion of the state autonomy would lack substance. Therefore, along with re-configuration of the three lists of the constitution there has also to be a re-configuration of the sources of revenue. The states should be able to raise resources for the tasks they have to undertake. This would bring into broad relief issues of regional imbalance. However they cannot be swept under the carpet by making the comfortable assumption that the centre can act as a big brother to help the weaklings. The last four decades have amply demonstrated that regional imbalances have grown in spite of these subventions provided by the centre to help the weaker states.

4.4. The principle that responsibility must be accompanied by corresponding resources can be dispensed with only at the cost of perpetuating the beggars mentality. The gap between the rich and the poor states within the country has to be bridged by policies that stimulate growth in the poor states, rather than by handouts which end up in the hands of the undeserving. The existing policy regime has only stimulated competition between the states on the size of the plan. The bigger the size the more successful is the political leadership of the state supposed to be. Performances and outcomes do not matter. Thus U.P. and Bihar can continue to wallow in illiteracy while state leaders go about trumpeting the size of the plan they have secured from the Planning Commission. The states must have the matching resource to do what they ought to but they must also take the responsibility, fiscal, political and administrative, for what has to be done.

4.5 The present policy regime is an elaborate subterfuge for seeking scapegoats. The Constitution has encouraged this charade. The sooner it ends the better it will be. This is the only way to harmonise the imperatives of all round development with those of reducing, and ultimately eliminating, caste-based iniquities. The list of subjects allocated in the 3 lists indicated under Schedule 7 will have to be drastically reallocated to make the States operate on a more federal bases than at present. This is inseparable from an equal insight in financial framework in which generation of fiscal resources acquires greater and balanced autonomy. Consistent with this principle; it would be desirable to provide in the constitution that the additional terms of reference under Article 280(3)(d) in the interests of sound finance should be finalised in consultation with the States, preferably through an endorsement of the National Development Council. Also the time would appear to have come to give to the recommendations of the Finance Commissions the status of a legally binding award. This would enforce accountable and responsible behaviour throughout the spectrum of the institutions of governance.

5. **Human Resource Management and Involvement of Community:** When one talks about resources it does not only mean financial resources, it implies human resources as well. You cannot ask a district councillor to take charge of primary or secondary education at the district level without giving the elected district council control over administrators and teachers who run the school system. If a primary school teacher looks to a distant education director or the education minister or state level elected representative from the area for his promotion or any other improvement in his conditions of service, he is not going to be accountable and responsive to the needs of the local community. This simple example raises the question of the present structure of social and economic services and how it needs to be remodelled or refashioned to bring it in line with the requirements of the age of decentralisation. We have to think in terms of services being owned by the communities which use these services. There is no reason why the district councils cannot recruit, train, manage cadres of school teachers, supervisors, administrators for primary and secondary education, leaving the area of high speciality professionals like curriculum developers to be handled by regional or state level bodies. This would bring local communities in intimate relationship with the education personnel and create appropriate environment for bringing forth responsibility and accountable behaviour from services to the local communities that pay them. It will also ensure that the communities themselves fulfil their obligations towards such personnel and towards the larger objectives of creating and sustaining a healthy and vibrant education system. Similar logic can be employed in regard to other services which are needed at the district levels and it can be extended upwards to the state level.

5.1 What is urgently required at this juncture is a straightforward recognition in the fundamental law, cutting through the verbiage of devolution, that a district is the basic unit of planning for development - social, cultural, economic and human. Along with this it is necessary to provide that creation of new districts has to conform to the criteria of viability. Otherwise the political process already under pressure of the forces of fragmentation would be unable to at least moderate the present trends.

6. **More Powers to Local Elected Bodies:** Functions, finances and functionaries would have to be placed under the direct supervision and command of elected bodies at relevant levels of operations. This would, to a substantial degree, correct the existing distortions and make officials answerable and accountable to the people. This has implications in respect of devolution of political and financial powers from the Centre, too. Devolving as much power as possible to local and regional levels of government increases the ability of the system to foster citizenship and to enhance the citizen's decision-making abilities. Officers at local levels have greater initiative in implementation under the watchful eyes of the people directly effected.

6.1 Dispersal of power through local autonomy maximises opportunities for popular participation and helps change the nature of the relationship between the State and the civil society. Instead of being merely the passive recipients of rights, citizens become active agents. A democratic society cannot function properly if everything in it is left only to the state or even to statutory bodies. Statutory action will be infractuous if it is not underpinned by voluntary action. The driving force for regeneration comes not from the state or its institutions but from social movement. People acquire more characteristics of a ruler than ruled where they set up associations and NGOs to assert their rights and preferences in the domain of public policies. This exercise of political power through civil society originated as different from statutory (bodies) opens the way for concomitant democracy. Civil society consists of open and secular institutions that mediate between the citizen and the state. Thereby state and civil society do not work as antithetical or substitutable but as complementary to each other. Private associations and pressure groups act as a powerful brake on state Institutions and also monitor the conduct of public servants. In the absence of civil societies the state machinery and civil servants becomes the dominant nexus of power. The modern idea of self-government requires emergence of civil society which would make people self-reliant rather than remain dependent on state institutions and subject to their control.

6.2 One of the marked weakness of the present regime has been its failure to effectively play its role in the socializing process. It has failed to use the machinery of the state to create a society of equals founded on the principles of social justice, secularism and eradication of casteism. In this regard, the situation of the Dalits and backward castes points to glaring failure of the state. In spite of several programmes launched by it, the state has failed to energetically lift up the Dalits and members of other lower castes. As the executive has overwhelmingly identified itself with the stratified sections of the privileged few, it remained insensitive to the calamities that befell the weaker sections of the society and reluctantly took steps to repel the most injurious actions perpetrated against them. Large sections of these people remained docile, submissive, passive and tame. Piecemeal changes improved the conditions slightly, but the very spirit of the people by which the Constitution was to be sustained continued to rap.

6.3 Poverty which had its roots in the old system of land holding and wealth accumulation also remained by and large unvanquished by the programmes launched to eradicate it. The executive machinery failed the basic aims of the Constitution to eradicate mass poverty and illiteracy and to improve the standard of health and general well-being. These received scant support from the regime in spite of big promises made to fulfil the scheme of things enshrined in the Constitution. The administrative classes emerging as an elitist class failed to identify themselves with the meek and helpless, nor did they strengthen social movements wedded to social transformation. Relevant provisions of the Constitution in this respect remained mostly neglected by the executive agencies.

6.4 The arrangements of administration (bed-rock of governance) under the Constitution now appeared inadequate to meet the situation. The effectiveness of premier services to play its role in augmenting the socialising process remained limited and foreclosed possibilities of finding just solutions.

7. **Civil Services:** One of the problems that remains to be addressed in the context concerns the All India Services. The structural problem is that these two services (Administrative & Police) were founded on the imperial idea of territorial control. It was at the district level that the Raj

really became an operational reality. The territorial integrity of the imperial domain rested on the territorial control over hundres of districts from over the length and breadth of the country. Therefore services were recruited for the purpose of maintaining political control over the vast territories of the empire – and their counterparts could be found everywhere in the colonised world governed by Britain – but were expected to do sundry other jobs such as tax collection once again the major part being from land, regulating trade and industry and supervising urban centres, but the numbers involved in staff jobs in the central and provincial secretariats were miniscule compared to the presence of the services at the district level.

7.1 This colonial idea was not abandoned when the country became free for reasons which become clear from the constituent assembly debates. Be it as it may, the present situation is that the structure of the All India Services would appear to be incompatible with the development or full fledged democratic representative government at the district level. In plain words it means that law and order has also to be brought within the ambit of the elected district council which should also be in-charge of developmental activity. It may well mean the disappearance of the post of the district collector, an institution traditionally venerated by the advocates of the All India Services. We would need cadres trained to detect, prevent and investigate crimes and to maintain the peace and public order but the need for a generalist officer to maintain public order may be questioned. In fact if the force to combat crime and maintain public order should in a substantive sense be subjected to the control of the elected representatives at the district level. It is only thus that public service at the district level would acquire significance and be the real stepping stone for leadership at higher levels.

7.2 The end of the imperial continuum in the administrative set up may require a different conception of the generalist services. The brightest university graduates who wish to enter I.A.S. (Indian Administrative Service) could then be trained in a variety of subjects having to do with the economic and financial administration of the states and the centre and policy making in higher branches of administration such as security, science and technology, international trade to constitute a truly elite corps of administrators which would be mobile within defined fields but would not perform the present generalist jig of moving from animal husbandry to defence to women welfare which makes a total mockery of any concept of administration in these days of knowledge explosion.

7.3 These are several ways in which the IAS can be improved and rationalised and made to play an important role in transforming governance and attention should be given to them. Above a certain level – above the present Joint Secretary to GOI level – the posts should be manned by persons drawn from different services and sources and even from industry, corporate houses, NGO's and the Posts of Secretaries should not be the near monopoly of IAS officers. We should specialise some of the generalists and generalise some of the specialists through proper career management. Such persons alone should hold the top posts. Career management has to improve greatly and be freed from day to day political manipulation. The system which has come into vogue of a minister choosing his Secretary to Government from among the oficers of his own State has to be given up at once. In the early years upto 1970s it was recognised that a Secretary was Secretary to Government and not Secretary to the Minister and case was taken in postings most of the time to ensure that the two did not belong to the same State. Exception was made only on the basis of the individual work of officer for a particular job and not because 'x' minister wanted 'y' officer from some State or community.

7.4 For career management and preparation of lists of persons suitable for senior appointments on an objective basis, international experience is available. The political leadership should be willing to give up its hold.

7.5 The absence of clear cut relationship between the people and the state functionaries is responsible for much which has gone wrong. All this happened because, inadvertently or otherwise, we allowed the colonial legacy of administration to continue to hold sway in the post-independence era as well. For instance, the change of nomenclature from ICS to IAS did not

even constitute a cosmetic change. The so-called 'steel frame' of the British Empire became the role model for the fledgling IAS fraternity. The 'guru mantra' of the old guard, viz, the I.C.S., was the maintenance of the status quo and the new guard, viz. the IAS, was only too willing to oblige and follow suit. It is a naive hope to expect status quoists to initiate or welcome changes for a variety of reasons. First, they have a vested interest in perpetuating their dominant advantageous position along with the privileges flowing from it. Second, being for the most part bureaucrats rather than intellectual leaders, they lack the vision and imagination to devise new and innovative policies, preferring to tread the beaten track and to continue familiar programmes.

7.6 Many other failings of the executive machinery leading to violation of fundamental rights have also become obvious. The obscene and atrocious acts systematically employed by certain sections of the executive devalued and debased the moral authority of the Government. The civil and police services failed to serve the people well. Corruption and illegal ways vitiated the course of justice and fairplay. Hardships, negligence and injustices accumulated, which had adverse political consequences. Perks, fringe benefits, special arrangements and privileges provided exclusively to executive officers and political masters set them apart from the people. What is still more galling is that most of these freebies had no legitimate sanction but were self-appropriated by the high and mighty ruling elites as some sort of a divine right. A massive decline in the prestige of public office occurred in the public eye. Corruption, like cancer, proliferated in the whole body politics. Delivery agencies were rendered ineffective and partial. Credibility of government organizations suffered very badly with the run-away expansion in the bureaucratic apparatus of the State does not serve society but it served itself. Disillusionment with democratic governance became pervasive.

8. **Making the Civil Servants amenable to discipline:** The need for well-orchestrated administrative effort on the part of the Union and State level administration in achieving constitutional goals and national targets is well recognized. While it cannot be denied that administration have assisted the government of the day in making and implementing the policies. Cases are increasing where they have failed morally and professionally and yet remained immune from imposition of penalties due to complicated procedures provided for taking action against them as per Article 311 of the Constitution (against the erring officers). This has had a bad effect on the overall discipline. The safeguards provided to civil servants could only be justified if they were to exercise exceptional probity in their activities and conduct and were to put public service before self, not otherwise. Though the state functionaries do need safeguards against harassment, malice and witch-hunting by superiors and political masters or even from some self-styled activists, in practice it is carried too far, becoming counter productive. The excessive safeguards have emboldened the civil servants to flout or circumvent rules with impunity and engendered a feeling of irresponsibility. It has also become a principal threat to the doctrine of accountability to the people. Thus it has become extremely difficult to punish the guilty and put the working of the executive on proper rails. (CBI and like agencies have not proved equal to the task either.) Hence the need to modify the existing provisions and procedure and make the civil servants more amenable to discipline without any injustice being done to them. The doctrine of permanency will have to undergo a radical change. Measures weeding out personnel lacking probity or competence and induction of outside talent on contractual basis should also be encouraged.

8.1 There is no doubt that the way the administrative law has operated in the country and the way it has been interpreted by the higher courts has tended to confer an immunity against action to meet out swift punishment to the delinquent officers. But that only points to the need for a thorough reform of the administrative law as well as an overhaul of a judicial system. One cannot take away guarantees of fair and impartial treatment of services and still hope to get competent and devoted performance from public servants. The need is not to discourage good people; the need is to discourage bad people which objective can be served only by efficient and speedy procedures to bring the guilty to the book.

9. **Methods of Evaluation:** Stability of tenure and guarantee against arbitrary punishment are essential if you want to get the best out of public servants. AT the same time the present methods of evaluation of performance need drastic reform. At present neither the quantity nor the quality of output of individuals and collective units in myriad organizations of government is properly measured with the result that the good, the bad and the indifferent are all lumped together and mostly chronology determines who goes ahead and who does not. These would also require extensive changes in the civil service regulations. This has to be a continuous process of bringing knowledge of organization into play in relation to our institutional set up.

10. **Lok Pal:** Cases have multiplied, giving rise to questions regarding the impartiality of the civil service. Critics blame them for putting self-interest above public interest and bending too willingly to do extra-legal dictates superiors and political masters instead of performing duties impartially and conscientiously as per law. Sections of people ill-served clamour for relief and for restoration of the rule of law and justice in transactions. Amidst a spate of corruption scandals and financial scams, it is imperative that the long-awaited Lok Pal Bill becomes a law. The other institutional arrangements like 'whistle blowing', etc. should also be put in place to curb corrupt practices.

10.1 A pliable civil service influenced and manipulated by the political executive has severely strained the authority of governance and the executive personnel have lost confidence in their own value of service to the people. They are consumed by a desire to achieve and hold high offices for their own personal gains. People have remained secondary and are treated more as subjects than citizens. It alienated administration from people and contributed to the prevailing malaise of misgovernance and significant demoralization all over. The system seems unable to solve problems that people face. Unsolved problems at times start driving some sections of society to violence, while the powers that be little realize that sporadic violence can lead to major upheavals in society.

11. **Civil Services Board:** Arbitrary and questionable methods of appointments, promotions and transfers of officers by political superiors also led to corrosion of the moral basis of its independence. It has strengthened the temptation in services to collusive practices with politicians to avoid the inconvenience of transfers and to gain advantages by ingratiating themselves to political masters, which was at the expense of being fair and independent. They would do the politicians' biddings rather than adhere to rules. Lest the situation becomes more vicious, it is necessary that a better arrangement be conceived under the Constitution. The question of appointments, transfers and placements is not to be left to the discretion of the politicians or administrative bosses but be entrusted to independent and autonomous boards constituted (under the Constitution) on the lines of UPSC. Clear and predictable guidelines and revised rules of service may also be worked out.

11.1 The vertical hierarchy as against the horizontal one makes officers less accountable to the people for whom they have been employed to serve and more accountable to their official or political superiors situated away from the people lodged in places far away. This is inherent in the present arrangement where functions, functionaries, and finances are not placed in one place in the hands of those who run and preside over the local affairs, including local government. This requires to be changed.

12. **Transparency in Administration & Right to information:** A major promise of a different style of governance is the citizen's excess to information. The right to information cannot be hedged by so many restrictions as to render it meaningless. The idea is not as it is often supposed by the supporters of the proposal that people at the district level or village level would know what has been allocated for their respective territories and how it is being spent. The concept is much broader and much richer. How much should a country spend on its defence preparedness? What kind of weapons it ought to have and why? If democracy has to have any meaning in the modern context, questions like this kind cannot be reserved exclusively for the experts to discuss and decide. Political education of the citizens has to embrace these and other similar questions that have bearing on the kind of society that we wish to build. It is only if the

right to information is legislated and develops from precedent to precedent that rights and responsibilities will begin to go together. Currently we only worry about our rights but do not spare any thought for our responsibilities because we do not either care to know or have no means of knowing what is involved in making one policy choice rather than another. We therefore also do not know what kind of obligations go with different options that we can choose from. It is comparatively easy to mislead people about the consequences of a policy option. If a full knowledge about the implications is vouch-safed only to the chosen few, and the common folk, the unshaven lot, are ignored on the ground of their ignorance and irresponsibility, then the act of detonating a bomb can be represented as a major enhancement of the country's status without altering the existential reality of the weakness within.

12.1 Much of the common man's distress and helplessness could be traced to his lack of access to information and lack of knowledge of decision-making processes. He remains ignorant and unaware of the processes which vitally affect his interest. Government procedures and regulations shrouded in a veil of secrecy do not allow the clients to know how their cases are being handled. They shy away from questioning officers handling their cases because of the latter's snobbish attitude and bow-wow style. Establishment of **right to information** should be promulgated and needs to be given real substance. In this regard, government must assume a major responsibility and mobilize skills to ensure flow of such information to citizens. The traditional insistence on secrecy should be discarded. In fact, we should have in place of an oath of secrecy, an **oath of transparency.** Administration should become transparent and participatory. Right to information can usher in many benefits, such as speedy disposal of cases, minimizing manipulative and dilatory tactics of the babudom, and, last but most importantly, putting a considerable check on graft and corruption.

13. **Accountability:** Social audit of official working would be another way of developing accountability and answerability to the people. Without such an arrangement, neither performance nor delivery systems could be monitored or improved. The social audit by free and independent agencies could also lay the ground to harness resources of men and material to improve human conditions. This would also be a pre-condition to secure the over-riding objective of people's participation in government and a means to evaluate the utility of the services on the touchstone of its performance.

13.1 It may also be worth considering that officials, before starting their career, take an oath of loyalty to the Constitution and swear to abide by the basic principles of good governance (see Annexures I and II). This would give renewed sense of commitment by the executives to the basic tenets of the Constitution and would prove important both substantially and symbolically. This might also clear their minds marvelously.

13.2 During the course of these fifty years that our Constitution has been in operation, many new avenues of work and responsibility have come up which were not there earlier. Government was responsible for maintenance of general law and order apart from implementing certain governmental programmes of economic development. Government cannot any longer confine itself to these only. The role of government and civil servants has to undergo a striking change. If the new services and new avenues are to be harnessed and put in the service of the people, governance has to recast its responsibility to tap the wells of new avenues based on new technologies and new knowledge by employing expertise and agencies specially engaged to handle them. Indeed many new professional services have since been harnessed. In fact, in relative terms, the importance of general service administration has receded into background and the need for technical professional services are in the forefront of developmental activities. The new services have indeed found the way up. But it is nevertheless imperative that their role, status and importance, vis-à-vis the IAS should be clearly spelt out, reformulated and given a meaningful and dignified status. Other non-IAS, Secretariat Services which have many legitimate grievances should also be upgraded to play their role more effectively. General administration would remain important but its role has to be clearly redefined. Controversies between the new

and the old services, and within the services if allowed to develop, would become a formula for disaster.

14.7 **Specialists and Generalists:** Technocrats and experts have been employed in the past, but they had to play second fiddle to the generalists. But specialization has reached such levels of sophistication that a specialist is no longer going to be satisfied with a subservient position in the dispensation where changes in the field science and technology are taking place at a bewildering speed.

14.1 All this calls for suitable legislative action, provision for which should clearly be laid down in the form of an Act for which a provision exists in article 311 and which has not yet been done (except that an Act related to IAS was promulgated).

14.2 Over the years several Committees were appointed to review the state of administration. Their reports have spelt out measures to correct malpractices. Some of their recommendations, though sharp and sound, have failed to redeem the situation. While all efforts should be made to take full advantage of these reports and implement their recommendations, the malaise is far too deep to be set right by mere technical or administrative reforms. Much more is needed to be done. It is imperative to devolve power from the Centre to the periphery and modify and add some provisions to the existing constitutional arrangements to gear up the working of the executive machinery by making it more accountable to local government.

14.3 The decline in quality of governance has been augmented by the excessive governmentalisation of all public activities. Autonomous public institutions like para-statals, banks, financial institutions, universities and even cooperatives were micro-managed resulting in failure to achieve their declared objectives. Because of micro-management they could not held responsible or accountable. Every organisation had an alibi for failure.

14.4 It should be recognised that a mature democracy is a polyarchy of several institutions and not merely Government at various levels. Government's role is to get the laws enacted, provide for the framework of a category of public institutions and provisions to regulate them and protect the public from fraud. As stated above, an even more important role is to implement the laws fairly and effectively, but not to interfere and micro-manage.

14.5 The decline in governance is no less due to the failure of professional groups (which are privileged sections of the society) to uphold standards. It is the duty of a member of each profession to uphold the dharma of that profession. It is the duty of each professional organization to prescribe and uphold standards and take action against the deviant. That is the whole object of setting up self-regulating organizations like, Institution of Engineers, Chartered Accountants, Medical Council, Council of Technical Education, Bar Council, etc. But these organisations have been functioning more as lobbies for each profession. Professions are instruments of public service. They and the perceived benefits of their members have become ends in themselves. For example, it has now come to the position in judicial administration that courts are for lawyers and not for the public. Every suggested reform of the judicial system is obstructed by strikes and agitations of lawyers. No low-cost alternative redressal system is allowed to come up. Even simplified systems incorporated in statutes regarding family courts, consumer protection, etc. are subverted and made complicated. Examples can be cited from every other profession.

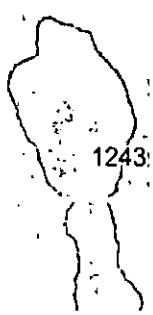
14.6 The contribution of the judicial arm, with the assistance of lawyers as mentioned above, in the decline of governance has to be recorded. It is not a small contribution. The delays in courts, the frequent adjournments, the lengthy trials and hearings, the insistence on special privileges and perks during service and after retirement, the subordinate corruption etc. are well known. Of course, one has to record that the higher courts have in recognising public interest litigation become the last refuge of the harassed citizen and have done a magnificent job in drawing attention of the executive to its failures. At the same time, in the High Courts, the writ

jurisdiction has been used indiscriminately in the opposite direction resulting in protection of tax evaders, delinquent and inefficient civil servants, forest and works contractors and so on. In many cases, the public position has been faulted on technical grounds and the dishonest let off against public interest. The judicial system has to reconcile this paradox.

15. **New Challenges:** The advent of globalisation presents a new series of challenges to the administration. Activated by technological improvements, a new inter-national relationship of our interests across issues and boundaries has come into being. Trade and financial developments have tightened to mesh of economic linkages across boundaries and regardless of preferences. The new state of affairs just cannot be wished away but must be engaged with. We should build up expertise to ensure that the interests of our country and the people are not overwhelmed by the forces of globalization and that our interests are properly served. We must evolve our foreign and domestic policies to control our future and serve our interests better. We cannot mortgage our interests nor can our security be left to the mercy of others. Government cannot abdicate its responsibility to affect international events and conditions to our advantage. Without the capacity to handle this new situation, we would be striking empty postures and would fail to seize the opportunity to develop in the context of globalization. The executive of the State should learn to anticipate global developments and endow our policy with more knowledge-packed inputs to handle them to our advantage. At the same the aim has to be to tap the wellsprings of patriotism and give our people a sense of patriotic duty to harness the energy for economic and social development to spearhead programmes and, develop pride and self-confidence. Mass political education and raising of political consciousness become inescapable. This is the task to be performed by political parties. To remain actively involved in new development programmes the people would also need the support of well organized, well prepared, knowledge-oriented personnel and well thought out policies. Think-tanks and organized intellectual groups would have to be promoted through state funding, etc.

16. **Governance and Foreign Policy:** The structural problems of foreign policies would be to constantly aim at making the best possible use of the international order and use it to our advantage. Use of force to impose the will of one country over another has become less potent. A totally different style of foreign policy has to be designed to attain the basic principles laid down in the Constitution. In the country's governance, the duality of foreign and domestic policy in country's governance should end. The two should not be antithetical. A serious effort is implied to combine the two to recast relation and launch a creative initiative to achieve strategic partnerships the world over. Recasting of relations with other countries on the principles of inter-dependence so that domestic interests are furthered through it. Our domestic interests cannot be put off. We must know how to implement our constitutional convictions in this regard. This calls for a thorough change in the form, working and structuring of Foreign Affairs mechanisms including the Ministry. Foreign policy implementation is now more than mere diplomacy.

16.1 There is lost of fuzziness in widespread talk about erosion of moral values, loss of character so and so forth. This kind of debate leads nowhere. There are no constitutional remedies against downright theft, cheating, chicanery, moral and political hypocrisy and deliberate falsehood . We cannot produce good people out of nothing and out of nowhere. The basic thing is to adopt right policies in all spheres – education most of all, but also economic and security. The government that fails to protect the life and property of citizens and their human rights and dignity can hardly face the challenges of prejudices, habits and failings of peoples morality. These are not matters of high metaphysics. There is a great deal of accumulated wisdom available on the subject. That it has not been used is true. It stands to reason that its non-use must benefit some people. Very often, people who benefit may be found in the garb of rulers. The fundamental political question before the country is how can such people be unmasked and overthrown? Only organised political parties can answer this question. If they do not societies may crumble. History offers many consolations but rarely if ever solace for the politically naïve.



16.2 Good governance proveset on the ability to strike a balance between morality and pragmatism. The educational institutes, think tanks and media should play an important role in this regard.

16.3 Good governance also calls for good leadership. It is imperative that such a leadership should be sensitive to the needs of the people and should have knowledge of the alternatives which would meet their needs and possess the capacity to mobilize public opinion in their favour. Such a leadership would also guide political and civil executives to ensure good governance.

17. **Prime Minister, the Undisputed Leader:** One of the methods for restoring stability and cohesion of functioning to governance in a parliamentary government is to empower the Prime Minister to emerge as an undisputed strong leader in office. One of the ways of doing this (apart from other Parliamentary reforms) is to empower the Prime Minister to dissolve the House when he thinks that the house has exhausted its mandate and an appeal to the country is called for. This will reinforce leadership in maintaining standards of integrity and public morality in the performance of the ministers and members of parliament and reduce the influence of special interests. This is really a matter of stating a political doctrine of high constitutional import and getting it ratified by the Supreme Court.

18. **Comptroller and Auditor General:** As and when the office of the ombudsman, or in local parlance the Lokpal, comes into being, there is legitimate hope that the scope for veniality and gross willful negligence by political and administrative bosses will be appreciably reduced. However, the Lokpal cannot act effectively as a 'lone ranger', his hands will have to be strengthened from all possible sources. One such unfailing source is the periodical mandatory reports of the Comptroller and Auditor General of India (CAG). Hitherto, CAG reports have not often been treated with the seriousness and sincerity they demand. At times they are treated in a somewhat cavalier fashion. Preparation of CAG reports understandably time-consuming and by the time they appear, the officials indicted for financial malpractices or some other grave lapses have retired or gone to pastures new and in the process the domain of accountability and answerability gets a severe jolt. The constitutional office of CAG, therefore, need some more teeth to expeditiously and effectively back individual malefactors and delinquent agencies even if virtually speaking some of them are half lying in their graves. (Read separate chapter on CAG)

18.1 Power not only corrupts but also inebriates. This attribute of power leads the state or its agencies, at times, to use unwarranted or excessive force or to indulge in some other reprehensible activity. Today public opinion of media are alert enough to compel the state to institute a commission of enquiry in the event of some such act of commission by an official agency. However, an enquiry commission lumbers upon with its tortuous sittings and hearings and by the time its findings come out, the passion of the agitated public have almost cooled down if not altogether vanished. Moreover, for lack of full judicial status to an enquiry commission equivalent to that of a judicial court politicians, officials and other concerned persons do not take the summons and proceedings of the commission with appropriate seriousness and deference. And to top it on the findings of the commission are reluctantly acted upon, if not all, especially when the indicted party happens to be politicians or officials in power. An impartial enquiry commission, whenever deem necessary, acts as a healthy check on the arbitrariness and high-handedness of the state and its agencies, provided, of course it completes its findings without avoidable delay and the state is mandatory obligated to act on its findings within a reasonable time-frame. Hopefully, the Constitution can take cognizance of this aspect so that enquiry commissions can become effective tools for initiating corrective or even punitive measures wherever government or administration exceeds its brief.

A

Background Paper*

on

CONCURRENT POWERS OF LEGISLATION UNDER LIST III OF THE CONSTITUTION

*This Paper was prepared for the Commission by Shri P.M. Bakshi.

CONCURRENT POWERS OF LEGISLATION UNDER LIST III OF THE INDIAN CONSTITUTION

CONTENTS

		PAGE NO.
1	Introduction	1249
2	Distribution of legislative powers under the constitution	1249
3	Interpretation of the legislative entries	1252
4	Rationale of the scheme of distribution	1253
5	Post-constitution amendments (including a chart)	1255

1. INTRODUCTION :

1.1 Scope of the Study

This study deals with an important aspect of Indian federalism, namely, the concurrent powers of legislation under the Constitution. The subject of federalism in any country covers a vast area, embracing legislative, executive and judicial powers, as distributed between the federal union and its units. Distribution of legislative power is only one branch of the subject; and in that branch, the topic of concurrent legislative power is only a sub-branch (so to say).

1.2 Importance of the subject

(a) Nevertheless, the subject has its own theoretical and practical importance. Theoretically, the subject carries an appeal, because (i) it represents the vesting of power in two parallel legislatures, operating at the same time and (ii) also because such a scheme is to be found in most federations of the world, though the details vary.

(b) The practical importance of the Concurrent list, (when adopted in any federation) lies in the fact, that the vesting of the same type of power in two parallel agencies carries, within it, the seeds of a possible conflict. This implies, that the Constitution (of the country concerned) should provide, in advance, a mechanism for resolving such conflict. In India, article 254 of the Constitution primarily seeks to incorporate such a mechanism.

1.3 Scheme of discussion

In this short paper, it is proposed; to deal, first, with the general scheme of distribution of legislative powers under the Indian Constitution; next, to state, in brief, the main principles for the interpretation of legislative entries; and thereafter, to focus on the various entries in the Concurrent list itself, concentrating on their rationale. It will then be possible to formulate the questions that can possibly arise on the present scheme.

2. DISTRIBUTION OF LEGISLATIVE POWERS UNDER THE INDIAN CONSTITUTION :

2.1 Legislative powers in the federation

The essence of federalism lies in the sharing of legal sovereignty by the Union and the federating units. And, in general, the most precise way of demarcating the respective areas of the federation and federating units is to demarcate their respective areas in regard to legislation. There are many reasons for this; but the two most important, are the following:

(a) Demarcation of legislative power helps in defining boundaries the of the executive power also, as usually the former controls the latter.

(b) It is easier to verbally formulate, with reasonable precision, the various topics on which the legislative power can be exercised, as the legal system of a country would usually have had occasion to deal with the topic in some form or other – say, by or through proposals for legislation, actual legislation, academic or (occasionally), in political debates or academic discussions. In other words, the topics would (in many cases) have a ring of familiarity for the practising or academic lawyer.

2.2 The scheme of distribution in India (articles 245-246)

(a) The constitutional provisions in India on the subject of distribution of legislative powers between the Union and the States are spread out over several articles (articles 245-254). However, the most important of those provisions – i.e, the basic one – is that contained in articles 245-246.

Article 245 provides, *inter alia*, that (subject to the provisions of the Constitution).

(i) Parliament may make laws for the whole or any part of the territory of India and

(ii) the legislature of a State may make laws for the whole or any part of the State.

(b) Thus, article 245 sets out the limits of the legislative powers of the Union and the States from the geographical (or territorial) angle. From the point of view of the subject matter of legislation, it is article 246 which is important. Article 246 reads as under:

"246(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List 1 of the Seventh Schedule (in this Constitution, referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament, and subject to clause (1), the Legislature of any State also, shall have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution, referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution, referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State, notwithstanding that such matter is a matter enumerated in the State List".

2.3 Article 254 – repugnancy

Since the Concurrent List[1] – article 246 (2) – gives power to two legislatures, a conflict can arise between laws passed on the same subject by the two legislatures. To deal with this situation, article 254 of the Constitution makes the following provision:

"254(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

[1] Paragraph 2.2, *supra*.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision is repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in the State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter, including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

2.4 Judicial decisions (repugnancy)

Repugnancy has been explained in many judicial decisions. Important amongst these, are the following:

(i) *Zaverbhai Vs. State of Bombay*, AIR 1954 SC 752 (Implied repeal – Essential Supplies Act)
(ii) *Tika Ramji Vs. State of UP*, (1956) SCR 393; AIR 1956 SC 676. (U.P. Sugar Cane Act, etc.).
(iii) *Ahmedabad Mill Owners' Association Vs. I.G.*, AIR 1967 SC 1091.
(iv) *Karunanidhi Vs. Union of India*, AIR 1979 SC 898; (1979) Cri LJ 773: *Karunanidhi Vs. Union of India, (1979)* Cri LJ 1876 (Mad) (FB).
(v) *Raghubir Vs. State of Haryana*, AIR 1981 SC 2037.
(vi) *Western Coalfields Vs. Special Area Development*, AIR 1982 SC 697.

2.5 Union and State legislation

(a) The co-existence of Central and State laws in a particular area can give rise to litigation. Such problems arise, either because the Union or a State may illegally encroach upon the province of the other (parallel) legislature, or they may arise because (though there is no encroachment, as such, on each other's sphere), the two laws clash with each other.

(b) The two situations are, strictly speaking, different from each other; and they must be judged by two different tests. Where the subject-matter of the legislation in question falls within either the Union List or the State list only, then the question is to be decided with reference to legislative competence. One of the two laws must necessarily be void, because (leaving aside matters in the Concurrent List), the Indian Constitution confers exclusive jurisdiction upon Parliament for matters in the Union List and upon a State Legislature for matters in the State List.[2] The correct doctrine applicable in such cases is that of *ultra vires*. Since one of the two laws must be void, the question of inconsistency between the two has no relevance. Only one law will survive; and the other law will not survive, because *ex hypothesi*, it has no life.

(c) In contrast, where the legislation passed by the Union and the State is on a subject matter included in the Concurrent List, then the matter cannot be determined by applying the test of *ultra vires* because the hypothesis is, that both the laws are (apart from repugnancy), constitutionally valid. In such a case, the test to be adopted will be that of repugnancy, under article 254(2), of the Constitution.[3]

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[2] Paragraph 2.2, supra.
[3] Paragraph 2.3, supra.

(d) It follows, that it is only where the legislation is on a matter in the Concurrent List, that it would be relevant to apply the test of repugnancy. Notwithstanding the contrary view expressed in some quarters, this appears to be the correct position. Such a view was expressed by Dr. D. Basu in his Commentary on the Constitution of India (1950) 1st edition, page 564, and it is this view, that seems to have been upheld (impliedly) by the Supreme Court in the under - mentioned decisions: -

(i) *Deep Chand Vs. State of U. P.*, AIR 1959 SC 648; (1959) Suppl. 2 SCR 8.
(ii) *Premnath Vs. State of J&K*, AIR 1959 SC 749 (1959) Suppl 2 SCR 270.
(iii) *Ukha Vs. State of Maharashtra*, AIR 1963 SC 1531, paragraph 20.
(iv) *Bar Council, U.P. Vs. State of U.P.*, AIR 1973 SC 231, 238; (1973) 1 SCC 261.
(v) *Barani Vs. Henry*, AIR 1983 SC 150, paragraph 15.
(vi) *Hoechst Pharmaceuticals Vs. State of Bihar*, AIR 1983 SC 1020, paragraphs 68, 69 and 76 (Full decisoon of the position).
(vii) *Pochanna Lingappa Vs. State of Maharashtra*, AIR 1985 SC 389, paragraph 26; (1985) 1 SCC 425.
(viii). *Vijay Kumar Sharma Vs. State of Karnataka*, AIR 1990 SC 2072 [For decisions in section 107, Government of India Act, 1935 see *Lakhi Narayan Das vs. Province of Bihar*, AIR 1950 FC 59.

2.6 Article 255

Notice should also be taken of article 255 of the Constitution, quoted below:

"255. Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only.-

No Act of Parliament or of the Legislature of a State, and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given -

(a) where the recommendation was that of the Governor, either by the Governor or by the President;
(b) where the recommendation required was that of the Rajpramukh, either by the Rajpramukh or by the President;
(c) where the recommendation or previous sanction required was that of the President, by the President. "

[See *Jawaharmal Vs. State of Rajasthan*, AIR 1966 SC 764, 769, 790: (1966) 1 SCR 890].

3. INTERPRETATION OF LEGISLATIVE ENTRIES :

3.1 Determination of nature of legislation

It is obvious, that where either the Union or the State legislature proposes to enact a law, it must, in the first place, decide whether it has legislative competence with reference to the subject matter of the law. For this purpose, the draftsman will necessarily have to examine whether the subject matter falls within the relevant list, that is to say:

(a) the Union List or the Concurrent list (for the draftsman in the Union) or
(b) the State List (for the draftsman in the State).

3.2 Doctrine of pith and substance

For this purpose, the test of "pith and substance" is usually applied. In no field of constitutional law is the comparative approach more useful, than in regard to the doctrine of "pith and substance". This is a doctrine which has come to be accepted in India and derives its genesis from the approach adopted by the courts (including the Privy Council), in dealing with controversies arising in other federations. Briefly stated, what the doctrine means, is this. Where the question arises of determining whether a particular law relates to a particular subject (mentioned in one List or another), the court looks to the substance of the matter. Thus, if the substance falls within Union List, then the incidental encroachment by the law on the State List does not make it invalid.

3.3 Decisions

The principle of "pith and substance" had come to be established by the Privy Council, when it determined appeals from Canada or Australia involving the question of legislative competence of the federation or the States in those countries. In India, the doctrine of pith and substance came to be adopted in the pre-independence period, under the Government of India Act, 1935. The classical example is the *Privy Council decision in Prafulla Vs. Bank of Commerce,* AIR 1946 PC 60, holding that a State law, dealing with money lending (a State subject), is not invalid, merely because it incidentally affects promissory notes (See now Union List, entry 46). The doctrine is sometimes expressed in terms of ascertaining the "nature and true character of legislation"; and it is also emphasized, that the name given by the Legislature (to the legislation) in the short title, is immaterial. Again, for applying the "pith and substance" doctrine, regard is to be had (i) to the enactment as a whole, (ii) to its main objects, and (iii) to the scope and effect of its provisions.

The under mentioned decisions illustrate the above proposition:-

(i) *State of Rajasthan Vs. G. Chawla*, AIR 1959 SC 544, 547 (Ancillary matters).
(ii) *Southern Pharmaceuticals Vs. State of Kerala*, AIR 1981 1865, paragraph 15 (incidental encroachment, to be disregarded).
(iii) *Prem Vs. Chhabra*, (1984) 2 SCC 302, paragraph 8.

4. RATIONALE OF THE SCHEME OF DISTRIBUTION OF POWERS :

4.1 Four salient features

Four salient features mark the scheme of distribution of legislative powers under the Indian Constitution.

(1) There is a three-fold distribution of legislative power-represented by three lists – Union, State and Concurrent.

(2) The supremacy of federal laws is maintained in two situations (which are the principal situations of practical importance):

(a) in determining the extent of legislative power of the federation and the units, (if a doubt arises as to the list in which a particular subject of legislation falls, the *non obstante* clause in article 246 achieves federal supremacy);

(b) in determining the question whether a federal law will prevail or a State law will prevail; (if both have an impact on a particular human activity, and are in conflict with each other, then the federal law prevails).

(3) If a particular topic does not find an express mention in the three legislative lists, then the power to legislate thereon (i.e., the residuary law-making power) is vested in the federation.

(4) In certain situations (even apart from emergencies), the federation may come to be vested with legislative power, even on state subjects.

[Mr. Justice, E. S. Venkataramiah and P. M. Bakshi, Indian Federalism (1992), pages 72-73, para 7.1].

4.2 Genesis in the 1935 Act: Joint Select Committee Report

(a) At this stage, it seems necessary to mention, that the entire scheme of distribution of legislative powers under the present Indian Constitution is based on the Government of India Act 1935.

(b) Further, so far as the Concurrent List is concerned, it is desirable to quote what the Joint Committee on Indian Constitutional Reforms said, with reference to the corresponding list, as contemplated in the proposals that led to the Act of 1935 :-

[Joint Committee on Indian Constitutional Reforms (1934) pages 30-31, para 51, quoted in Mr. Justice E. S. Venkataramiah and P. M. Bakshi, Indian Federalism(1992) page 85 para 7.13].

"Experience has shown, both in India and elsewhere, that there are certain matters which cannot be allocated exclusively either to a central or to a Provincial legislature and for which, though it is often desirable that provincial legislation should make provision, it is equally necessary that the central legislature should also have a legislative jurisdiction enable it, in somes cases to secure uniformity in the main principles of law throughout the country, in others, to guide and encourage provincial effort and in others, again, to provide remedies for mischief arising in the provincial sphere, but extending, or liable to extend beyond the boundaries of a single province".

4.3 Uniformity

The above enunciation by the Joint Select Committee[4] was not intended to be exhaustive. Nevertheless, it would be convenient to give sere some concrete examples of the three main objectives of a Concurrent List as envisaged by the Joint Select Committee.

Take, first, the aspect of uniformity in the main principles of law. This consideration accounts for the following entries in the Concurrent List in the present Indian Constitution.

Entry 1. Criminal law.....
Entry 2. Criminal Procedure .....
Entry 5. Marriage and divorce etc.
Entry 7. Transfer of property other than agricultural land
Entry 8. Registration of deeds and documents
Entry 9 Actionable wrongs
Entry 10. Bankruptcy and insolvency
Entry 11. Trusts and trustees
Entry 12. Administrator's general and official trustees
Entry 12A. Administration of justice etc. (inserted in 1976)
Entry 13. Evidence etc.

[4] Paragraph 4.2 supra.

Entry 14. Civil procedure etc.
Entry 15. Contempt of court etc.
Entry 16. Lunacy etc.
Entry 28 Charities etc.

4.4 Encouraging local effort

The Joint Select Committee also stressed the need to "guide and encourage provincial effort". This consideration forms the background and rationale for several legislative measures enacted in India, wherein the Union has laid down the policy and guidelines, – thereby promoting further efforts by the States. The following can be regarded as examples of such approach.

(a) The Probation of Offenders Act, 1958.
(b) The Family Courts Act, 1984.
(c) The Consumer Protection Act, 1986.
(d) The Environment (Protection) Act, 1986.

4.5 Problems extending beyond the State

Finally, as envisaged by the Joint Select Committee[5] on Indian Constitutional reforms, some entries in the Concurrent List take into account the fact, that (in future), a need may arise to enact legislation providing for mischief's arising in the provincial sphere, which extend, (or are likely) to extend, beyond the boundaries of a single province. Examples of entries in the Concurrent List, which illustrate this consideration, are the following:

Entry 3. Preventive detention
Entry 5. Marriage etc.
Entry 15. Vagrancy; nomadic and migratory tribes
Entry 21. Commercial and industrial monopolies, etc.
Entry 25. Education, including Universities, etc.
(This entry was revised in 1977).
Entry 33. Trade and commerce etc. in certain products and goods.
Entry 35. Mechanically propelled vehicles etc.
Entry 38. Electricity

Incidentally, the wisdom of including "Electricity" in the Concurrent List (entry 38) is amply demonstrated by the successive statutory measures enacted on the subject in India after independence beginning with the Electricity (Supply) Act, 1948, supplemented or modified by a mass of recent legislation in the subject.

5. POST CONSTITUTION AMENDMENTS :

5.1 Significance of the amendments

After the commencement of the Constitution, several amendments of the Constitution, relevant to the Concurrent List, have been passed. In this short Chapter, it is proposed to discuss a few of them, in order to explore how far these amendments bring out the function and importance of the Concurrent List.

[5] Paragraph 4.2, supra.

1209 LJ&CA/2002—4A

5.2 Chart of amendments

In order to make the discussion concrete, a chart of post 1950 amendments which are relevant to the entries in the Concurrent List has been prepared and is presented below :-

CHART OF CONSTITUTIONAL AMENDMENTS RELEVANT TO THE CONCURRENT LIST

(The entries numerically referred to below, are entries so numbered in the Concurrent List)

Entry	Amending Act	Source of the amended portion
Entry 11A, Administration of justice etc.	42nd Amendment (1976)	Portion transferred from State List entry 3 (on the same subject)

[See (i) *Indu Vs. State of W.B.* AIR 1986 SC 1783
(ii) In re Special Courts Bill, 1978, AIR 1979 SC 478, para 44]

Entry 17A - Forests, Entry 17B – Protection of wild animals and birds	42nd Amendment (1976)	Transferred from State List, entries 19 and 20
Entry 20A – Population etc.	42nd Amendment (1976)	Newly inserted
Entry 25 – Education etc.	42nd Amendment (1976)	Portion transferred from State List, entry 3 (on the same subject)
Entry 33 – Trade, Commerce etc.	3rd Amendment (1954)	Scope expanded, by adding certain items
Entry 33A – Weights and measures etc.	42nd Amendment (1976)	Transferred from State List, entry 29
Entry 40 – Archaeological sites etc.	7th Amendment (1956)	Verbal changes made
Entry 42 – Acquisition and requisitioning of property	7th Amendment (1956)	Wording revised, and scope enlarged.

5.2 Transfer from State List

It will be seen from the above Chart, [6] that on a fairly large number of occasions in the past, it became necessary to amend the Constitution, by transferring, to the Concurrent List, certain matters from the State List. Obviously, it was thought that the matters in question were not being adequately dealt with (or could not be adequately dealt with) by the Sates [Entries 11A, 13A, 17B, 25 and 33A].

5.3 New Entries

(a) Changed conditions – political social or economic – may necessitate the insertion of new entries in a legislative list. When such a situation arises, the concrete question that may fall to be considered is, whether the addition should be made in the Union List or in the State List or in the Concurrent List.

(b) Precisely such a question seems to have arisen, after it became apparent, that the problem of population explosion might need specific legislative sanction, for enacting into law the policy to be adopted on the subject. The relevant amendment was made in 1976, by introducing, in the Concurrent List, a new entry 20A – relating to "population" and family planning. Presumably, it was considered that instead of the

[6] Para 5.2, supra.

Union undertaking the exclusive responsibility of promoting legislation on the subject, it would be better to give the power to the Centre as well as to the States. As a result, entry 20A was inserted in the Concurrent list. There seems also to have been a thinking, that though the subject was of national importance, yet there might be occasions for State-wise variations in legislative policy.

(c) In any case, the insertion of any new entry in a legislative list -whether Concurrent List or any other list – illustrates the validity of the proposition, that no draftsman can visualise all possible future contingencies and fully encapsulate them in a supposedly exhaustive linguistic formula.

(d) Incidentally, reverting to the specific topic of "population and family planning", long before entry 20A was inserted in the Concurrent List, Parliament had already enacted the Medical Termination of Pregnancy Act, 1971, apparently by recourse to Concurrent List, entry 1, "Criminal law". In effect, the Act substantially modifies the rigorous operation of sections 312 – 316 of the Indian Penal Code (relating to causing miscarriage and its aggravations and variations).

5.4 Minor amendments in there Concurrent List

The other amendments, effected in the Concurrent List, analysed in the Chart given above, are of a minor or verbal character.

[See Concurrent List, entries 33, 40 and 42].

Background Paper*

on

FISCAL AND MONETARY POLICIES

*This Paper was prepared by the Advisory Panel on 'Legal Control of Fiscal and Monetary Policies; Public Audit Mechanism; Standards in Public Life.

FISCAL AND MONETARY POLICIES

CONTENTS

		Page No.
1.	Overview: Issue	1263
2.	Review of Financial Provisions	1264
3.	Review of Provisions Related to Financial Matters	1267
4.	Relevant Provisions with Fiscal Implications	1269
5.	Monetary Policy Issues	1271

1. OVERVIEW: ISSUES

1.1 Are any basic features of the Constitution inconsistent with sound fiscal and monetary policies?

None of the basic features of the Constitution are inconsistent with sound fiscal and monetary policies.

Nevertheless, there appear to be some features where strengthening of the Constitution would be conducive to improved fiscal and monetary policies.

1.2 Whether the experience with working of the Constitution so far and the changing needs of global development and technological progress warrant fundamental or drastic changes in any of the provisions in the Constitution?

There appear to be no provisions, which can be construed as reflective of inherent weaknesses in the Constitution. There have been several instances where Parliamentary or legislative actions as contemplated were not taken such as enactment of law relating to ceilings on borrowings by Government. The procedures for amendment of the Constitution are reasonable and several amendments have already been made to meet evolving situations. Furthermore where judicial pronouncements warranted constitutional amendments in public interest, such amendments did take place.

Thus there is no evidence warranting fundamental changes in the provisions relating to fiscal and monetary policies, though improvements are possible by refinements of some provisions or inclusion of some other enabling or clarificatory provisions.

1.3 What should be extent of changes in the Constitution, minimal or comprehensive or intermediate?

As already mentioned, there are no inherent weaknesses in the Constitution and hence no case for comprehensive changes. Wherever Constitution has worked reasonably well, there should be no changes. In any case, constitutional provisions cannot be a substitute for Parliamentary actions or inactions. Similarly, judicial interpretations are based on legal provisions, inaccuracies, infirmities. Constitutional provisions cannot be invoked to correct what may be perceived as Parliamentary inaction or judicial activism. Constitutional provisions cannot be a substitute for good public-policy or for sound legal framework or effective judiciary? Merely because some institutions are not as effective as was expected one should not lead to suggest a review of constitutional provisions though a reform of such bodies may be in order. Finally, the Constitution is expected to provide basic framework and should not reflect ideological biases of the day.

Hence, changes in the Constitution at this stage should be confined to those which are essential.

1.4 Whether Parliamentary procedures enshrined in the Constitution need a review to enable appropriate fiscal and monetary policy frame?

First, it has been argued that several legislative measures concerning economic reform involving repeal of laws, amendments to existing laws or bringing about new legislation are not being attended to leading to fiscal and economic costs.

The question that arises is whether the Constitution should make it incumbent on Parliament/ Legislative to ensure prompt legislative actions that assure prudent fiscal and monetary situation.

While addressing these issues, it would need to be recognized that Parliament/ Legislature is supreme and any safeguards should be such that the sovereignty of Parliament/ Legislature is not eroded.

1.5 Expenditure liabilities have increased while at the same time there are inherent delays in judicial processes inhibiting rapid economic development and social change and as such is it desirable to review the functioning of judiciary?

It has been observed that in major party of litigation, Government or public enterprise is a party and often litigation is within public sector. Further, it was noticed that in a major part of litigation involving public sector, employees are a party. Thus, a major benefit of public sector, namely, coordination appears to have been lost in the Indian situation. The question that would arise is whether solution lies in reforming judiciary or in scope and functioning of public sector itself.

Secondly, it has been held that judicial activism is often warranted by Parliamentary inertia, and as such ensuring Parliamentary activity in law-making and holding executive wing accountable are appropriate solutions.

Thirdly, some jurists have indicated that judiciary has generally been responsive to policy changes as reflected in the constitutional amendments or spirit behind the laws passed from time to time. If there is an impression that judicial pronouncements appear to be outdated it is a reflection of inadequate reflection of changing economic policy frame in the laws of the land.

Hence, there seems to be no ground for any review of judicial frame work.

1.6 Keeping in view the prevailing situation, whether Constitution should lay down in greater detail the framework for dynamic fiscal and monetary area ?

First, there is a danger that detailing of economic framework in the Constitution would invite judicial interpretation leading to avoidable rigidities.

Second, detailed prescriptions will be difficult to practice without being too contextual and this could render it ineffective and sometimes even a hindrance to evolving appropriate policies suited to the evolving milieu.

Third, the Constitution cannot and should not take the place of Laws and Regulations. In fact, there is a view that present Constitution may have elements of over prescription in regard to financial provisions.

Hence, there seems to be no case for greater detailing of the framework, but focus may be to fill in the gaps and rationalize the existing prescriptions relating to fiscal and monetary areas.

2. REIVEW OF FINANCIAL PROVISIONS

Articles 109 and 110 relate to Money Bills and Legislative Procedure governing such Bills, Articles 112 to 117 relate to procedures in regard to financial matters in so far as Parliament is concerned.

2.1 Whether the coverage of Annual Financial Statement should be broadened and formal approval of Parliament prescribed to improve transparency and accountability of budgetary process?

First, as per Article 112, the Annual Financial Statement (AFS) which corresponds to the popular conception of a budget refers to estimated receipts with no distinction between current or capital; and estimated expenditure divided into charged and otherwise. In regard to the latter, however, a distinction is made between revenue expenditure and others. The AFS is not meant for approval and as such the deviations also do not require parliamentary approval on expenditure or ratification. Since taxes require approval of Parliament and expenditure needs Parliamentary authorization, it can be argued that AFS for information is adequate. The proposed Fiscal Responsibility Bill by seeking placement of medium-term fiscal framework etc., before Parliament party addresses the issues.

Second, it can be argued that what goes into AFS should be decided by Parliament from time to time as long as it broadly relates to Public Finance. Thus, even existing stipulations in the Constitution could be reviewed to provide flexibility to Parliament.

Third, it is possible, on the other hand, to suggest amendments to reflect changing scope of pubic sector.

Hence, there are several options for rationalizing the AFS keeping in view the above considerations (see item 1 of Annexure-I for a technical option).

2.2 Is Parliamentary control over incurring of Government-debt both domestic and eternal, adequate as per present budgetary procedures enshired in the Constitution or should it be reviewed?

To the extent that only demands for grants as per Article 113 and Appropriation Bill as per Article 114, as also supplementary grants as per Article 115 are approved by Parliament, all expenditures need to be authorized by Parliament. In incurring of debt, both domestic and external, however, Parliament has no direct role. In fact, the entire debt servicing is charged as per Article 112 (3) (c) and is thus not a subject matter of Parliamentary approval. In brief, Parliament has no role in approving the incurring of public debt or its servicing as per budgetary procedure in the Constitution.

There are separate provisions in the constitution on the question of limits to borrowing and is dealt with separately in paragraphs below.

The Fiscal Responsibility Bill which is under consideration broadly addresses the issue of limits to fiscal deficit, the revenue deficit and overall debt and thus meets the issue to some extent.

2.3 Since there may be occasions when a Government may not have a cash-balance in its account, the purpose of charged expenditure may not be served, and hence whether the arrangements need to be reviewed?

The budgetary procedures refer to charged items under Article 112(3), which may be discussed but do not, require Parliamentary approval and these refer to debut servicing, payment to judiciary, etc. The budgetary procedures do not, however, contemplate a situation where Government does not have cash balance in its account. Thus, the purpose of 'charged' expenditure in terms of prompt payment may be served only when there are cash balances in the account of the government concerned.

To the extent charged expenditure needs no Parliament approval, the present arrangements do serve the purpose in normal times.

2.4 Whether constitutional provisions on pubic debt and guarantees are adequate or should provide for enabling or compelling limits on public debt and if so, whether public debt should relate only to borrowings or to total liabilities including or excluding contingent liabilities and further whether sinking fund arrangements be made mandatory?

First, debt is defined in Article 366 to include all liabilities to repay capital sums or liability under guarantee.

Secondly, Article 112(3)(c) includes a reference to Sinking Fund charges also but establishment of such a fund is not mandatory. It is interesting to note that Sinking Fund is not being operated now except by a few States, since it is not obligatory under the Constitution. In fact the practice which was in vogue earlier was given up.

Thirdly, Article 292 provides for an enabling legislation by Parliament fixing limits on borrowing and issue of guarantees. In this connection, the following factors are worth noting. (a) First, Parliament has not passed any such legislation so far. (b) The Article does not cover "other liabilities" which constitute debt but are not borrowings upon the security of the Consolidated Fund of India. (c) Borrowing from the Reserve Bank of India was apparently not envisaged other than for very transient periods. (d) The Constituent Assembly debates show that borrowing for revenue expenditures was never considered to be a possibility. (e) The Fiscal Responsibility Bill (FRB) envisages a ceiling on debt which includes total liabilities, though not contingent liabilities. Thus the FRB (see Annexure-I) covers some ground and in some ways goes beyond what Article 292 envisaged. The report of the committee on Fiscal Responsibility Legislation (appendix-A) recognizes the need to have the report as an input for the National Commission to Review the Working of the Constitution.

There is merit in reviewing the above and making an explicit provision in the Constitution enabling the fixing of a ceiling on total liabilities of the government, and making the setting up of sinking funds mandatory.

2.5 In view of importance of cost-recovery, whether there is a case for constitutional obligation to legally define parameters for charging fees for services rendered by Government, ensuring subsidized changes only in clearly identified deserving cases?

There is no clear cut provision to define parameters for charging a 'fee' for rendering services, though a reference to fee is found in the Seventh Schedule, List III, Item 47. Such provision should have found place in delegated legislation. It is a moot point whether constitutionally obligated parameters will serve the purpose.

Hence, a view may be taken on whether Constitution could prescribe transparency in regard to cost recovery and subsidization in regard to fee.

2.6 Since cess levied for specific purpose are not being utilized whether it should be mandated in the Constitution.

Extensive recourse is taken to 'cess' in both Union and state budgets, but receipts under cesses may be appropriated under general revenues without necessarily ensuring that expenditures are incurred from the cesses as per the original intentions of levying of a cess as approved by Parliament or legislature. Budgetary procedures prescribed under delegated legislation do not explicitly provide for accountability in regard to cesses. In fact, in regard to oil cess barely 3 per cent of the cess is utilized for development.

Though mandating in the Constitution may not necessarily be superior to use of budget regulations, in view of the experience of using cess as a tax, mandating the use of proceeds of cess may be considered.

2.7 Whether articles governing financial provisions for states should be different from those governing union?

Articles 199 to 207 of the Constitution relate to legislative procedures in financial matters insofar as they relate to States legislatures and are broadly similar to those governing Parliament.

Thus, the changes contemplated for Union should continue to be equally applicable to states.

2.8 Whether current arrangements in respect of Comptroller and Auditor General (CAG) are adequate?

Articles 148 to 151 relate to Comptroller and Auditor General of India. A view needs to be taken, keeping in view experience so far on the composition, manner of appointment, functioning etc. including in particular the jurisdiction over public sector entities other than Government itself. Public enterprises, to the extent they carry out purely commercial activities, may not warrant anything more than commercial audit; this is particularly so with diversified ownership.

The coverage of Article 12 is linked with jurisdiction of the CAG.

Hence, there is a case for review of current arrangements.

2.9 Whether existing provisions relating to public-debt of states and borrowing by states are adequate?

First, Article 293 relates to borrowing by States. Article 293(1) provides an enabling framework for legislature of States to pass a Law similar to that of Union. While a few States have passed laws on guarantees none has passed a law on borrowings. There seems to be a case to review provisions relating to borrowings by states on par with the Union and make it similar. Second, Article 293(2) incorporates the enabling provision for the Government of India to make loans or give guarantees in respect of loans raised by the State, subject to such conditions as may be laid down by or under any law made by the Parliament. In fact, a major part of Central assistance for plans which is distributed as loan is under this article. Thirdly, Article 293(3) stipulates that no State can borrow as long as it has an outstanding loan or guarantee with the Government of India without the latter's consent. This is a standard requirement of a lender, though a transparent framework is, not available as to the factors governing such consent.

Thus, constitutional provisions relating to ceilings on debt, guarantees, etc. may continue to be on par with those of Union, even after the proposed changes and the provisions relating to consent, etc. may also continue.

3. REVIEW OF PROVISIONS RELATED TO FINANCIAL MATTERS

3.1 Whether the provisions relating to divisions of Legislative powers between Union and States need a review?

Articles 245 to 255 govern the distribution of legislative powers, and the distribution has a bearing on the financial relations also. Substantive part of the legislative relations is listed in the Seventh Schedule. There have been several suggestions for a review of Seventh Schedule and illustratively the following issues could be explored.

First, there may be a case for explicit recognition of tax on services and appropriate jurisdiction.

Secondly, differentiation between agricultural and non-agricultural incomes becomes difficult with commercialization of agriculture. Hence, the distinction could be reviewed.

Third, there are several Entries in List II, that is State List which have significant implications for integrating the national economy such as stamp duty, taxes on entry of goods and services.

Fourth, there are some Entries in List III i.e. concurrent list such as contracts, bankruptcy, which again may need to be squarely in List i.e. Union List.

Firth, several Entries in List III that ought to be in List II have in effect resulted in significant centralization, as for example in Agriculture, Education, Health etc. Incidentally, there are some Entries, which may need review in the light of experience gained. For example, incorporation and regulation and winding-up of cooperatives that undertake banking or financial business are in List-II and has resulted in problems of dual authority as banking is in List-I. Suggestions have been made that they should be brought under List-I and III.

Sixth, the expenditure responsibilities of States are increasing while revenue potential appears to be diminishing.

Hence, there is a case for review on the lines indicated.

3.2 Whether there is need to review provisions relating to distribution of revenues?

Articles 264 to 267 in chapter on Finance, relate to general issues, while Articles 268 to 274 govern distribution of revenues between the Union and the States. The possibility of rationalization of these could be explored and Annexure I makes some illustrative suggestions.

3.3 Whether the present arrangements relating to Finance Commission are adequate?

Article 280, relates to the Finance Commission which incidentally indicates that Parliament may by law, prescribe the qualifications for appointment of the Chairman and also prescribe powers and functions to perform their functions. Issues have been raised in regard to the working of the Commission, but an important area relates to the role of States (as affected parties) in the presentation of terms of reference, composition and appointment of the Commission. A second issue relates to the desirability of a permanent Finance Commission as against a periodic one as presently prescribed. The third related issue is whether the work of the Planning Commission be integrated with Finance Commission. Fourthly, grants-in-aid under Article 275 are given on the recommendations of the Commission, which are more or less gratis grants even though charged on the Consolidated Fund of India. Finally, and related to this issue is the desirability or otherwise of conditionality in statutory transfer of finances from Union to states.

There is a case for considered view on all the above these issues.

3.4 Whether Planning Commission should be made a statutory body since it plays a critical role in financial analysis between Union and States?

First, discretionary growth for public purpose by Union to States under Article 282 are generally made as per recommendations of the Planning Commission, a non-statutory body. The first issue is whether there ought to be a more formal mechanism, especially if they were meant to be as per recommendation of Planning Commission?

Second, in the past, most allocation was based on a formula approved by National Development Council, though of late, there have been significant deviations.

Third, planning is meant to be rationalist in approach. But, operationalisation has to be, in a democratic set up, within parliamentary accountability. Currently, recommendations of Planning Commission on financial allocations are operationalised through budget, though State-wise allocations are not spelt out in the budget document.

Fourth, several centrally sponsored schemes relating to List II or III are also funded by the Union, often bypassing the States, and directly to local bodies or district agencies.

Firth, whether the Article needs to be reviewed to impart great transparency, involving parliamentary approval of State-wise allocations and ensuring that States are not bypassd in the process. The emerging realities of relevance of nature of planning need to be assessed in considering statutory backing for Planning Commission.

Sixth, if a statutory backing for planning function is considered, should there be a state-level commission, a central-level commission and / or national level commission?

On balance, there seems to be no need to consider statutory backing for a commission meant for planning when economic role of Government is being redefined to make it more flexible and present arrangements appear to serve the flexibility objectives satisfactorily.

3.5 Whether any review needs to be made in regard to provisions governing local bodies?

Articles 243G to 243J relate to powers of Panchayats, including powers to impose taxes, constitution of finance commissions and audit of accounts. The Eleventh Schedule lists the matters in respect of which the responsibility for implementation of schemes may be entrusted to Panchayats by the State concerned. Articles 243W to 243Z and Twelfth Schedule contain corresponding provisions in regard to Municipalities. In addition, Articles 243ZD and 243ZE provides for committees for District and Metropolitan Planning, respectively.

Experience so far has been somewhat limited in this regard. However, the major issues relate to the adequacy of resources, including control over institutions and personnel apart from financial, to be able to effectively discharge the functions at Panchayat and Municipal levels.

Most issues appear to be beyond the immediate scope for constitutional changes.

4. RELEVANT PROVISIONS WITH FISCAL IMPLICATIONS

The Preamble and Articles 12 to 51A are of significance to the fiscal management of the Union and State governments, though they do not directly relate to fiscal policy or financial sector.

4.1 Since Article 12 has been interpreted widely especially in the context of public enterprises, whether a review is warranted ?

The interpretation of Article 12, (definition of State) though varying has led to overall erosion of flexibility for government needed in commercial operations undertaken by public enterprises and uneven treatment between public or private, merely on the basis of extent of public ownership. The concept of 'State' could exclude "other authorities "or" instrumentality of State" specially while determining the liability when it performs commercial or semi-commercial functions. Since government itself wants the public enterprises to be autonomous and run on commercial lines, extension of Article 12 to include public enterprises is inhibiting the process. Should it be formulated to clarify the intent viz. that it applies only in the conduct of sovereign and demonstrably non-commercial functions ?

In view of the above, a review seems necessary.

4.2 Since equality before Law is a basic feature of the constitution could it be reviewed ?

While Article 14 (equality before Law) is critical, its application in an unfettered way has tended to extend benefits to specific classes at the expense of totality of public interest. Thus, if extending a benefit, at public expense, on grounds of equality, involves disproportionate benefit, could there be a provision to deprive those who are already enjoying a benefit in an unequal manner ? If so, what should be the nature of compensation for such deprivation ?

Perhaps a legal approach is superior to constitutional change.

4.3 Similarly, equality of opportunities is a basic feature and should that be revisited?

While Article 16 (Equality of opportunities in public employment) has been interpreted to extend equality of opportunity to cover deployment (posting, transfer, allocation of work, etc.) thus making the government give greater weight to the rights of its employees rather than to the obligations to the poor or the society. Should it be restricted to recruitment and promotion avenues only ? Further, a significant part of the time of the judiciary is taken on matters relating to services under this Article and whether some other form of relief could be found.

These may ideally be approached through legislative route only.

4.4 Should there be greater emphasis on freedom of trade and profession in view of growing importance of services ?

Even though Article 19.1 (g) dealing with freedom to practice profession or trade etc. is subject to Article 19(6) enabling imposition of reasonable restrictions, clause (ii) thereof gives unfettered powers to government to give a monopoly to a corporation owned or controlled by the State. Such monopoly, for instance even in printing textbooks which are made available after half the year, may not necessarily be in public interest. Should 'public interest' be established for any restriction on trade ? Similarly, should prescription of professional or technical qualification be considered as a duty to be encouraged or enabled by the government and not necessarily performed by it ?

There is an increasing recognition of the need for promoting trade while ensuring appropriate regulation. In the past, three has been a significant role for Government and Government-owned enterprises, including monopoly power in addition to severe restrictions on domestic trade. Thus, provisions in Article 298, 302, 303 and 304 have diluted Article 301 on freedom of trade, commerce and intercourse. Further, Parliamentary legislation for creating authority to give effect to Article 301 to 304, as provided in Article 307, perhaps conspicuous by its absence. There are two important considerations in the role of Government in regard to trade, viz., possibly promoting competition (including removal of obstructions to competitions) and essentially protecting interests of consumer. Ownership or regulation by a Government ought to address these two considerations. However, many state monopolies incur heavy losses with large fiscal burden and often with hidden subsidies. A revisit to all the constitutional provisions relating to trade and commerce may be, therefore, useful.

Article 366 gives definitions of various terms and these are also worth reviewing to capture emerging realities, as for example, current need for recognition of "services" as a significant part of trade and "guarantee" to include implicit guarantees. For example, a letter of comfort by a sovereign is treated, by international credit rating agencies, as tantamount to a sovereign guarantee.

A revisit to the matters mentioned above appears necessary to remove possible frictions to freer trade and services.

4.5 Whether there are constitutional provisions whose interpretations require a review of clarification?

Article 21 relating to protection of life and personal liberty has been interpreted in several ways. For example, it has been held that right to life includes the right to health, and that right to work can be claimed after employment. There are several issues arising out of the interpretations conferring benefits to individuals at the cost of society at large. Article 32 (enforcement of rights) has resulted in cases where revival of a private company was ordered to ensure living for workers; and court ruled even in matters related to service of public sector employees. However, it can be argued that there is need for consideration by the Courts of fiscal costs involved in the case while ordering enforceable individual rights.

Article 51A relates to fundamental duties, which are laudatory. However, one issue that needs to be explored is whether exercise of fundamental rights in a court of law should be subject to there being no blatant violation of a fundamental duty. Else, there could be asymmetries between rights, which are enforced through writs and, duties which are not.

The desirability of clarifications through constitutional changes or legal enactments may be considered.

4.6 Whether constitutional protection of service conditions etc. to Government servants has been detrimental to public interest warranting review ?

In view of experience gained so far, the impact of Article 308 to 312 relating to public services and the need for changes could be examined, inasmuch as the provisions appear to limit freedom to manage finances of the Union and the States.

This review may have to be considered along with a view on scope of Article 12.

5. MONETARY POLICY ISSUES

5.1 Whether there is need for reviewing the extant Constitutional Provisions regarding monetary policy issues ?

The Reserve Bank of India (RBI) Act predates the Constitution. In the Constitution, there is only one reference to the RBI, viz. to place it in the Union List (Entry 38).

In the light of the developments during the last fifty years as also the evolving role of central banks the world over there could be some merit in a review of certain aspects in relation to the Constitution.

5.2 Does a review of the constitutional provisions relating to central banks in various countries offer some lessons for India ?

The international position regarding the need for Constitutional provisions is not unambiguous. A comprehensive survey by the International Monetary Fund of the Constitution of 88 countries reveals that there are provisions in 30 countries. These provisions relate to central bank objectives, political and economic autonomy, safeguards relating to the appointment and termination of appointment of top management and central bank accountability. In countries where the institutional framework is weak there is merit in bolstering the position of the central bank by having certain constitutional safeguards. The underlying rationale for providing a special status for the central bank in the Constitution is that the power to spend should be separated from the power to create money.

The main issue is whether operational autonomy for monetary policy should be ensured through Law or through constitutional safeguard also.

1209 LJ&CA/2002—5A

5.3 Should there be any safeguards for the tenure of the top management of the RBI?

Some countries do have constitutional safeguards for the top management of central banks. Under the extent legislative stipulations, the RBI Governor and Deputy Governors are appointed by government and their continuing in position is entirely at the pleasure of government.

The feasibility of providing a special status under the Constitution for the RBI Governor and Deputy Governor akin to the Election Commission needs to be considered.

1209 LJ&CA/2002—5B

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Background Paper*

on

BARRIERS TO INTER-STATE TRADE AND COMMERCE – THE CASE OF ROAD TRANSPORT

*This Paper was prepared for the Commission by Dr. Bibek Debroy and Dr. P.D. Kaushik of Rajiv Gandhi Institute for Contemporary Studies. The authors express their gratitude to CII, FICCI, the Asian Institute of Transport Development, National Institute of Public Finance and Policy, and All India Motor Transport Congress for help with date and information.

Barriers to Inter-State Trade & Commerce -
The Case of Road Transport

CONTENTS

		Page No.
1	Introduction	1277
2	Road Infrastructure	1277
3	The Angle of the Constitution	1278
4	The Indian Trucking Industry	1280
5	Travails of Trucking	1286
6	The Regulatory Regime	1289
7	The Tax Regime	1297
8	Other Barriers	1310
9	Costs and Rewards	1313
10	Bibliography	1321

"Roads really should be thought of in terms of the romance connected with them, that makes them more interesting; the "Silk Routes" right across Asia, through which Marco Polo travelled and so many others".

Jawaharlal Nehru, 1961

Chapter 1: Introduction

1.1 The free flow of trade, without geographical barriers, is a *sine qua non* for economic prosperity, nationally as well as internationally. The European Union has accordingly removed barriers among countries. It is time that India removed barriers within the country.

1.2 The Indian polity has a federal structure. But an arrangement is necessary to ensure harmonization and facilitate inter-State trade and commerce without hindrances. Hence, inter-State trade and commerce and some elements of intra-State trade and commerce are a Central responsibility. For example, Part XIII (Articles 301 through 307) is devoted exclusively to trade and commerce. Several other matters, incidental or necessary to trade and commerce, are also a Central responsibility, through exclusive or concurrent jurisdiction. Articles 14 through 19 also have a link with trade and commerce. The regulation of inter-State trade and commerce is assigned to the Centre primarily to ensure that inter-State rivalries and competition do not lead to tensions and constraints. While there is a general declaration in the Indian Constitution that trade and commerce should be free, the Centre and the States (especially the former) have the power to regulate. This is unlike countries like Australia where inter-State trade and commerce is free and the government has no regulatory powers.

1.3 The Indian business environment should reflect a seamless flow of inter-State trade and commerce. This doesn't happen. Complaints from Indian industry, especially the transport sector, relate to issues of taxation (both Centre and State), regulation by States on the movement of goods, frequent stoppages and delays under administrative rules and inspection agencies. As a result of excessive taxation and delays, transportation and transaction costs increase, which further increase the final cost of the product, distorting competition in the domestic market. Most complaints concern the road sector, which is primarily in the private domain. Railways are a different proposition and are not the concern of this paper. But incidentally, similar complaints also emanate from inland waterway operators, although these account for a negligible share of surface transport.

Chapter 2: Road Infrastructure

2.1 India has one of the largest road networks in the world, although this should be normalized for geographical area, size of the economy or population. This sufficed, although till the middle of the 19th century, most transport of goods and passengers was through rivers and roads. After the introduction and development of the railway network, roads lost their importance, till the first quarter of the 20th century. But the First and Second World Wars emphasized the need for better connectivity, networks and well-maintained roads because of the presence of automobiles. After Independence, inadequate development of railways and warped railway tariffs increased the importance of the road sector even more.

2.2 The country's total road length is over 2.1 million km, with three components.

(i) Primary road system with National Highways;
(ii) Secondary and feeder road system with State Highways and major District Roads; and
(iii) Rural roads, including village roads and other District Roads.

2.3 There is an urgent need to upgrade the road system in the country by widening and strengthening existing highways, reconstructing/widening bridges and constructing expressways. While the government has provided increased budgetary allocations for projects in the highway sector and has undertaken major upgradation initiatives in high-density corridors, it has not been possible to allocate sufficient funds because of competing demands. Inflow of private sector funds is possible in limited areas, where user charges can be recovered.

2.4 The existing high-density roads are gradually getting over crowded with the local traffic of towns, thereby requiring frequent bypasses. The NH (National Highway) networks are now designed to carry only long distance traffic. For local traffic, the focus is shifting to the use of side-road facilities. Besides, there is a very serious problem of overloading of vehicles. Two axle commercial vehicles carry double the permissible load with the connivance of road transport authorities. This leads to huge corruption of about Rs. 20,000 crores every year and also results in reduction of design life of pavements by 30 to 60 per cent. The government ends up spending much more on maintenance. Bad roads cause reduction in average speed of vehicles by 20 to 30 km per hour, leading to an estimated loss of Rs. 20,000 to 30,000 crore every year[1].

Chapter 3: The Angle of the Constitution[2]

3.1 Constitutional provisions need to avoid inter-State rivalries and tensions. The European Community came into existence with a focus on allowing free movement of goods[3]. Initially, the coverage of goods was limited. But the benefits of free movement motivated broadening of the coverage until we now have not only a common market, but an economic union.

3.2 While the need to avoid inter-State barriers was anticipated in the Indian Constitution and judicial pronouncements have protected free movement rights, a Constitution drafted many years ago couldn't have anticipated all the issues that could arise fifty years later. Article 301 uses expressions like trade, commerce and intercourse, and throughout the territory of India, but there remains scope for interpretation.

3.3 The Indian Constitution borrowed the expression "intercourse" from the Australian Constitution. Section 92 of the Australian Constitution says, "the imposition of uniform duties of customs, trade, commerce and intercourse among the States, whether by means of internal carriage or navigation, shall be absolutely free". The wording used in Article 301– "throughout the territory of India" allows a State legislature by law to "impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest"[4]. This wording is wider than the expression "among the States", used in section 92 of the Australian Constitution or "among the several States" used in Article 1, section 8, clause (3) of the Constitution of the United States.

3.4 Constitutionally, legislative power relating to trade and commerce is restricted, in the first place, by Article 14 of the Constitution, which guarantees equality before the law and equal protection of the laws. Secondly, Article 19, *inter alia*, guarantees to every citizen the right to carry on any trade, business or profession, subject to reasonable restrictions, which may be imposed in the interest of the general public. It is not merely an element of discrimination (between one group and another) that is material. The restriction must also be reasonable and in the interest of the general public. Articles 301-304 are further indications of restrictions on the legislature or executive.

3.5 Restrictions on Parliament's power (Article 301) begins this group of articles by stating that subject to the other provisions of this Part of the Constitution, trade, commerce and intercourse throughout the territory of India shall be free. The very next article – Article 302, authorizes Parliament to impose, by law, restrictions on the above freedom in the public interest. Although Article 302 does not require that the restriction must be reasonable, that requirement follows (by judicial interpretation) from Article 14 and (by express provision) from Article 19(1)(g)[5], read with Article 19(6). Parliamentary power under Article 302 is also subject to the restriction imposed by Article 303(1). This prohibits the enactment of any law (by

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[1] FICCI (2001)

[2] This section draws on *Draft Consultation Paper No. 17B* by P.M. Bakshi, submission made to the National Commission for Review of Working of the Constitution, *Freedom of Trade, Commerce & Intercourse throughout India* (2001).

[3] Treaty of Rome (1957)

[4] As provided by Article 304(b).

[5] *Prag Ice & Oil Mills Vs. Union of India*, AIR 1978 SC 1296.

Parliament or State legislature) which gives preference to one State over another or a law discriminating between one State and another by virtue of anything relating to trade and commerce in the legislative lists. This can be compared to section 99 of the Australian Constitution, which provides "The Commonwealth shall not, by any law or regulation of trade, commerce or revenue, give preference to one State or any part thereof over another State or any part thereof."[6].

3.6 Under Article 303(2), of the Indian Constitution, however, the restriction referred to in the above sub-paragraph can be relaxed by Parliament through law, for dealing with a situation arising from the scarcity of goods in any part of India.

3.7 Indian States are empowered to legislate on trade and commerce for subjects under the State list, entry 26 (subject to the Concurrent list, entry 33). However, the words of Article 301 cover trade and commerce, within the State also[7]. Article 302 is not relevant for States. But Article 303(1) declares that neither the State legislature nor Parliament shall have power to make any law, giving or authorizing the giving of any preference to one State over another or making, authorizing or the making of any discrimination between one State and another by virtue of any entry relating to trade and commerce in any of the lists in the Seventh Schedule. Article 303(2) is not relevant to the power of States.

3.8 Article 304, clause (a), provides that a State legislature may, by law, impose on goods imported from other States or the Union Territories any tax to which similar goods manufactured or produced in that State are subject. However, this must not discriminate between goods so imported and goods so manufactured or produced. This article permits State legislatures, by law, to impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State, as may be required in the public interest. At the same time, under the proviso to Article 304(b), no Bill or amendment for the purpose of Article 304(b) shall be introduced or moved in a State legislature, without the prior sanction of the President.

3.9 Article 304(b) applies only if the restriction is reasonable. Courts have held[8] that the test of reasonableness is the same as that applied under Article 19(6). Further, it is the State that carries the burden of establishing the reasonableness of the State legislation in question[9].

3.10 Article 19(1)(g) of the Constitution confers, on all citizens, the right to practice any profession or to carry on any occupation, trade or business – though this right is subject to Article 19 (6). In fact, it is in consonance with the provisions of Article 301. There is some overlap between Article 19(1)(g) and Article 301, but some points of difference between the two are as follows –

(i) Article 19(1) (g) is confined to citizens, while Article 301 is not.

(ii) Article 19 (1) (g) refers to "profession, occupation, trade or business", while Article 301 speaks of "trade, commerce or intercourse".

(iii) Article 19(1) (g) does not contain the words "throughout the territory of India", which occur in Article 301. In this sense, Article 19(1)(g) may be relevant for international trade also. Article 301 may not be construed to apply to international trade.

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[6] Hanks Australian Constitutional Law (1985).

[7] (a) Atiabari Tea Co. Vs State of Assam, AIR 1961 SC 232 (b) Automobile Transport Ltd. Vs State of Rajasthan, AIR 1962 SC 1406, 1423 and (c) State of Madras Vs N.K. Nataraja Mudaliar, AIR 1969 SC 147, 154, 155.

[8] (a) Vrajlal Vs. State of Madhya Pradesh, AIR 1970 SC129, (b) Oudh Sugar Mills Vs Union of India, AIR 1970 SC 100.

[9] Rai Ramakrishna Vs State of Bihar, AIR 1963 SC 1662, 1675, 1676

(iv) Article 19(1) is subject to the provisions of Article 19(6) (which permits the State to impose certain types of restraints). Article 301 is not so subject, though it is very likely that it will be construed as so subject (on the principle of harmonious construction).

(v) Article 19(1) (g) confers a fundamental right (on citizens). In contrast, the right conferred by Article 301, though a constitutional right, is not a fundamental right.

(vi) Article 19(1) (g), though it is subject to Article 19(6), is not made subject to any other express qualifications. But Article 301 is made subject to Articles 302 to 307.

(vii) Article 19 is primarily intended to restrict legislative or executive action, but has no direct relevance to the concept of federalism. In contrast, Articles 301-307 have a direct relevance to the concept of federalism. Of course, this does not imply that Article 301 is confined to federal controversies. Its possible scope can be much wider.

(viii) For the reason mentioned earlier, in many proceedings invoking Articles 301-307, disputes can arise between the Union and a State, or between States, - thus attracting Article 131 of the Constitution. In contrast, in cases under Article 19(1)(g), the controversy will be normally litigated between the Government and a citizen.

Chapter 4: The Indian Trucking Industry

4.1 In the post-Independence period, the rail dominated economy has become a road dominated one. In 1950-51, railways carried 89 per cent of total goods traffic and roads carried only 11 per cent. Recommendations of various Committees to determine model shares of rail and road in respect of both passenger and freight traffic have gone awry. For example, the National Transport Policy Committee (NTPC) in its report submitted in 1980 had recommended that at least 67 per cent of freight traffic should move by rail by the turn of the century.

4.2 The growth of road traffic is evident from the growing number of trucks over the years. The number of goods vehicles was 82 thousand in 1951 and 3.43 lakh in 1971. But it increased to 13.56 lakh in 1991 and 22.60 lakh in 1996-97. Estimates made by the Asian Institute of Transport Development (AITD) project a doubling in the number of trucks in another ten years[10].

4.3 However, data on vehicles actually plying on roads are not available. As per the RITES study on Road Traffic Flows (1998), the number of trucks was expected to rise to 26.90 lakh by the turn of the century and to 28.70 lakh by 2005. The Working Group on Road Transport for the Ninth Five-Year Plan has also made similar projections. Their projections are based on the trend data for 1966-96 and the assumption of differential growth rates (6 per cent, 6.5 per cent and 7 per cent). While light commercial vehicles (LCVs) are projected to increase to between 1 and 1.4 million by 2002 and between 1.7 and 3.1 million by 2007, heavy commercial vehicles (HCVs) are estimated at between 2 and 2.5 million and between 2.8 and 4.2 million, respectively. At present, a figure of 1 million for LCVs and 2 million for HCVs is a safe bet.

4.4 The Working Group on Road Transport for the Ninth Five-Year Plan (1997-2002) estimated that the freight traffic will be in the range of 1276-1700 billion tonnes-km by the terminal year of the plan and it was likely to be in the range of 2054-3480 billion tonnes-km by 2007. The shift in freight movement from railways to roads has taken place despite rail's advantages in terms of bulk freight movement, carrying potential, and economical land.

[10] AITD (1999)

Reasons Favouring Road Transport vs Railways

- The rating policy of railways is commodity-based and, for certain commodities, like iron and steel, cement, freight rates by rail are more than that by road. Cross-subsidization of passenger traffic distorts railway tariffs.
- Change in the nature of goods moved. It is not raw material alone, but semi-finished goods that are also placed on longer hauls.
- Centres for production of major bulk commodities like fertilizers, POL, steel are now spread throughout the country. This has resulted in reduction in lead for movement of these commodities.
- Railways discourage less than trainload. Moreover, only end-to-end through running of freight trains meeting rake-load movement of bulk commodities are given preference.
- Trucks are more easily available than railway wagons.
- Railways lack flexibility in movement and do not provide door-to-door service.

4.5 It would be in the national interest that the share of traffic by rail should increase. This should be possible through a combination of appropriate measures such as transport pricing, taxation and other instruments and comprehensive reform in the functioning of the railways. But this does not mean that roads will become unimportant. With the diversification of the economy, the share of high value low volume traffic is bound to increase. This traffic's needs have to be met by roads of high quality and efficient inter-modal container services (rail for line-haul and road for feeder services). Thus, there is immediate need to promote multi-modal transport so as to optimize investments and improve overall distributive and transport efficiency[11].

The Structure of the Trucking Industry[12]

4.6 At present, there is no regular arrangement for the collection of data relating to trucking operations. The structure of the trucking industry can be studied as a system consisting of truck operators, intermediaries and users. The structure is adversely affected by factors like nature and cost financing, vehicle technology, absence of wayside amenities, road condition, detention of vehicles involving additional fuel cost, increase in turnaround time leading to under-utilization of vehicles, and the legal framework (provisions of the Motor Vehicles Act, the Motor Transport Workers Act, the Carriage of Goods Act, etc[13]). There is ease of entry and exit from the trucking industry as compared to other sectors. There is no scheme for registration of transport operators. Large transport companies are registered under the Partnership Act or the Companies Act. The Motor Vehicles Act only mandates registration of vehicles by owners and obtaining a permit for operation. There are no provisions for qualitative aspects, such as professional competence, financial standing, good reputation, etc., essential requirements in countries like UK and USA.

Ownership Pattern

4.7 The majority of goods transporters are small operators owning one or two trucks. In a few cases, these operators own between 5 to 10 trucks. The trucks are not registered in one name, presumably to avoid income tax obligations and labour legislation. Another aspect of the industry is the dependence of transporters on booking agents and intermediaries. Small operators are involved only in the physical movement of goods and depend on booking agents and other fleet operators/transporters for obtaining business. Some of them are attached to major transport companies, brokers and vehicle suppliers. As a general practice, small operators do not come into direct business contact with users.

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[11] Malik Shazia (2000)

[12] Various organizations have conducted field surveys on road transport in the last five years, the latest comprehensive survey on motor transport was conducted by the Asian Institute of Transport Development in 1998. This paper uses the AITD survey as a benchmark.

[13] Puri, B.N (2000)

4.8 The AITD survey in 1998 reveals that the structure of the trucking industry is skewed. This ownership pattern clearly confirms that small operators continue to dominate this industry. However, an interesting feature observed during the survey is that very few operators admit of owning even up to six trucks. While the same person may expand his fleet by acquiring additional trucks, he prefers buying these additional vehicles and applying for loans in the name of another person. This is mainly done to avoid the application of the Motor Transport Workers Act. Another reason for the dominance of small operators is the type of experience in business: Most operators in this industry are in their family business - 56 per cent of truck owners surveyed have been in the business from 1 to 10 years, 30 per cent from 11 to 20 years and 15 per cent for over 20 years.

4.9 Classification of truck operators is possible on the basis of spread and extent of operations into local, regional and national carriers. Another classification can be on the basis of fleet sizes owned by them, for example, small truck operators (< 5 trucks), medium-sized operators (6-50 trucks), and large operators (> 50 trucks). The survey also revealed that medium and large sized operators charter trucks to the extent of 10 to 12 times their own fleets. They get these either through lorry suppliers or directly from single truck owners. Some fleet operators encourage their own employees to become owners of trucks by providing financial assistance, subject to the condition that vehicles should be permanently attached to companies. In terms of goods assignment notes (GCN), these currently account for as much as 87 per cent of the business. Large fleet operators have a network of branches in various cities, resulting in a major market share. The survey revealed that big fleet operators handle about 12-15 per cent business in their own trucks and the balance is handled through hiring trucks from small operators. The dominance of small operators in the trucking industry is a negative aspect, because of low economies of scale.

4.10 Given the fragmented nature of the industry, achieving economies of scale is difficult. With the objective of improving productivity, the government set up various committees from time to time. These committees included the Study Group on Transport Planning (1955), the Committee on Transport Policy and Coordination (1966) and the Study Group on Viable Units (1967) among others. A specific commonality is the adverse impact of ownership pattern on productivity in the recommendations of most committees. Most committees considered a single truck firm as a non-viable firm, suggesting horizontal and vertical integration of operators into registered associations and cooperative societies for availing common facilities of servicing, repair and maintenance.

Driver Pattern

4.11 There are about 4.4 million truck drivers in the country, the majority of them operating as an unorganized lot. Very few transport operators admit of owning even up to six trucks to avoid the application of the Motor Transport Workers (MTW) Act. The root cause for violation of the law is that 77 per cent of truck owners are small operators. These small operators do not come under the purview of the MTW Act because Section 3 of the Act explains that the provisions of the Act are applicable to employees of only those motor transport undertakings that employ five or more motor transport workers. Since most are small operators, these operators are registered under the Shops and Establishment Act. Around 13 per cent of owners either drive the vehicle themselves or engage drivers. But a majority of owners hire a driver to drive the vehicle.

4.12 Contrary to common belief, a recent survey has revealed that 80 per cent of drivers are literate[14]. Most of them were aware of road safety, fuel efficiency and health considerations. Despite clear rules and regulations laid down in the MTW Act, legislative provisions have been consistently violated.

- 66 per cent of drivers drive continuously for more than 9 hours a day; 20 per cent of drivers drive for more than 12 hours a day. Only 30 per cent of drivers drive for 5-8 hours continuously a day.

[14] Literacy in a strict sense means reading and writing and there can be a dispute about whether the literacy definition is adequate.

- Between two driving spells, only 6 per cent of drivers take rest for more than 8 hours. In all cases, one driving spell is equivalent to 72 hours or more.

4.13 Given the rising population of trucks on the roads, it is evident that the total number of truck drivers will double in the next ten years. In spite of this, there is no perceptible change in the working environment of a truck driver. The frequency of a driver returning to base is quite low for most drivers. A survey conducted in 1998 showed that more than 21 per cent of drivers returned to their base only after eight days of duty. About 47 per cent of drivers returned to their base after 5-8 days of duty, 19 per cent after 3-4 days. Only 12 per cent returned to their base in less than two days.

4.14 Truck owners and transport companies have shown little regard for the usual norms of working hours prevalent in most industries. In developed economies, there are clearly laid down laws that prohibit any heavy vehicle driver to remain at the wheels for more than 4-6 hours. These norms have been framed not just to ensure that the driver gets a decent break and rest from his work, but also to make sure that road safety norms are honoured. A driver also performs a multiple role for operators. He often acts as the supervisor of loading and unloading operations. Under pressure from the owners, overloading becomes a common phenomenon, along with other violations. The driver's other job (besides driving) is to act as wheeler and dealer on behalf of the operator with various official agencies on the way, for example RTO, DSO, forest officials, tax checkpost, etc. Often, the driver also attempts to locate a load on the return journey. Around 44 per cent locate the load by themselves, probably because they do not want to pay the commission to brokers for getting the load[15].

Intermediaries Pattern

4.15 The trucking industry has a number of intermediaries who play a useful role in the provision of efficient transport services. These include booking agents (also called transport suppliers or transport contractors) and brokers. These players basically perform the function of middlemen for truck owners. While the broker is a person (or a group of persons) who takes commission from truck owners and ensures the supply of trucks to the transport contractor, the booking agent engages in the business of collecting, forwarding or distributing goods carried. In addition, some of these agencies also provide finance and godown facilities. They usually operate from port project sites and mega-production centers. To cater to this type of road transport, many of the conventional transport companies have created a separate division, namely 'contractor division'. Transport contractors and contractor divisions compete among themselves to acquire contracts for transportation of cargo of major consignors. The survey conducted by CIRT in 1998 revealed that around 44 per cent of small operators themselves take up the multiple role of a transporter, broker and booking agent. This is done to save on commission due to these agencies and reduce the cost of operations. Booking agents/transport contractors and brokers are at present an unregulated lot. These players determine freight rates to a large extent and act as powerful agents of the trucking industry. There exists no code of conduct for their modus operandi.

4.16 Economists will consider the prevailing situation as one that comes close to perfect competition, since there is a large number of producers of trucking services and none of them is big enough to influence the price line. But as a matter of fact, freight aggregators and their agents influence prices the most, because they alone have the financial resources and market information necessary to influence the price line. The transport contractors quote and settle freight rates with consignors. These are negotiated rates and are valid for a given period of time. Truck owners depend on brokers, who have day-to-day arrangements with them, for obtaining goods for transportation. Brokers arrange the goods for truck owners from booking agents at the prevailing market rates, for which they charge their brokerage, which ranges from Rs. 200 to Rs. 400 per vehicle per trip. It has been observed that freight charges paid to truck owners have no relationship with the type and load of freight arranged through brokers. Brokers and booking agents settle the freight rate at which the truck owners operate.

[15] Bhattacharya, A.K (2000)

4.17 It has also been observed that in certain cases, there is an agreement between a broker and a truck owner for a stipulated period, during which the former arranges guaranteed freight at rates fixed in advance. The payment of freight charges to the truck owner is done in two parts, namely, 20-30 per cent for gross freight charges if paid before commencement of journey and 70-80 per cent after delivery of cargo, called *'pahunch'* in common transport parlance. This is an acknowledgement of receipt of goods by the consignee recorded on the document (bill/invoice) issued by the transport contractor at the point of origin. The *'pahunch'* may be paid either at the destination or, in certain cases, at the originating point, on return[16]. A study undertaken by Indian Foundation of Transport Research & Training (IFTRT) on truckers revealed that while in 10 per cent of cases, payment of balance freight charges is made promptly to the owner on submission of *'pahunch'*, 70 per cent of cases suffer delays. It is also reported that at the destination points or nearby, some of the transport contractors have set up their own separate windows, where they provide instant cash to truck owners on payment of certain amount as discount. The persons engaged in discounting *'pahunch'* are called Angarias. It is reported that Angarias collect around Rs. 200 to Rs. 600 on a freight amount of Rs. 10,000 for 15 days to 60 days, depending upon the credit rating enjoyed by the transport contractor.

4.18 The majority of brokers have been in the business for more than eight years and are sole proprietors, indicating that new entrants are few in number. This business has developed as a family business rather than as organized industry. As regards the level of education of brokers, the survey indicates that 64 per cent of brokers are educated up to matriculation level and only 36 per cent are graduates. This low level of education is responsible for lack of professionalism in the business. Around 45 per cent of brokers ensure the transport of goods on faith only. But nearly 35 per cent will give the loads only to known truck operators, which clearly underlines informal relationships in the trucking industry. On the other hand, truck owners also approach brokers for truckloads without any written agreement. Brokers claim that their role in providing rest rooms, vehicle parking facilities and liaison with enforcement authorities is valuable. But the survey result contradicts such claims, as drivers do not actually get these facilities. The role of brokers is limited to locating loads, fixing freight rates and ensuring cash advance against freight charges.

4.19 In the perception of brokers, there should be legislation for timely payment and penalties for delay in payment. While 46 per cent of brokers said that they did not face any problems from truck owners, 42 per cent complained that there were problems of delays in delivery. The commission to brokers is paid either as a fixed sum or a fixed percentage of freight charges, depending upon the agreement with the truck operator.

Other Issues Influencing Industry Structure

Other Factors Influencing Industry Structure

- The Carriers Act
- Outmoded laws on trucking
- High cost of financing
- Wayside amenities
- Technological changes
- Vehicle detention - Monitoring & check
- Vehicle detention - Taxation obligations

4.20 The Carriers Act lays down the liability for loss of or damage to goods caused by negligence of the carrier or fraud of his servants/agents. It is well known grievance of the truck industry that highway safety and security have deteriorated due to the poor law and order situation in the country. Besides, mafia networks operate in connivance with local authorities for safe passage in their territory. 'Chakka Jaam', bandhs and civil disturbances have become too frequent. Instances of vehicles being waylaid and robbed have increased

[16] Gupta, D.P (2000)

over the years. The ambiguous definition for 'loss of or damage to the goods caused by negligence of the carrier' in the Act further adds to the woes of truck operators.

4.21 Laws related specifically to the trucking industry, including provisions of the Motor Vehicles Act, are outmoded and do not meet the demands of a modern economy. The provisions of MTW Act regulate hours of work of any person engaged in operating a transport vehicle. For example, Section 91 of the Act provides for 8 hours of work for drivers, which according to many studies and safety practices in developed countries, should be 4-6 hours. Moreover, poor enforcement of such rules and long working hours without rest in the trucking industry is a common phenomenon, endangering road safety. Lack of coordination between the Labour Department, responsible for implementing the MTW Act and State Transport Departments is responsible for poor implementation. Further, the MTW Act is applicable only when the undertaking employs 5 persons or more. Under the present ownership pattern, a major section of truck operators are outside its jurisdiction.

4.22 High cost of financing is a major problem. Funds are available to Small Road Transport Operators (SRTOs) under the priority sector lending scheme of commercial banks and public financial institutions. Under this scheme, truck operators owning less than 10 trucks can obtain finance, generally for purchase of chassis, at reasonable rate of interest. But truck operators face a variety of problems in bank financing. Banks are hesitant to lend because of the fear of default in repayment of loan; no loans are given for meeting working capital requirements or financing used vehicles or even for body-building. The repayment period is short, ranging from three to four years. Margin money requirement ranges between 25 and 40 per cent. Such policies in bank financing benefit the relatively richer transport operators, who are in a position to contribute margin money from their own resources and are capable of meeting working capital requirements. On the other hand, small operators depend on private financing with high rates of interest, which in the long run, increases operational costs of trucks[17].

4.23 There are no organized wayside amenities, maintenance and repair facilities and parking spaces along highways. Indiscriminate parking of trucks on highways and on carriageways of towns and cities, encroaches upon space reserved for pedestrians, as well as for moving vehicles. To address this issue, the government sponsored the Truck Operators Highway Amenities Society (TOHAS) and introduced the Passenger Wayside Amenities Scheme. But these initiatives had to be shelved due to the lack of necessary support from state administrations and lack of response from truck operators. Besides resting facilities, trucks also need a terminal where the journey may commence or end and prepare for the next assignment. Saxena (1999, 2000), among many others, has mentioned that absence of truck terminals has resulted in on-street handling of goods and parking, creating further congestion in urban centres.

4.24 Vehicle detention is the greatest malaise for the trucking industry. Smooth flow of goods carriage is hampered by frequent stoppage of vehicles for a variety of reasons. For example, vehicle detention can be due to trucking operations or goods carried in the truck, or both. Trucking operations cover a wide range of areas, like inter or intra-State permits, road tax, load checks, local police check post; etc. But the more serious and time-consuming detention is on account of goods carried in the truck. Vehicles are frequently detained for checking essential documents, like sales tax, octroi, entry permits, etc. Besides, there are numerous other reasons under different legal provisions that can detain a vehicle, like check on the movement of essential commodities, black marketing, weights and measures, food adulteration and hazardous chemicals. These checks are generally conducted by respective agencies at separate points, resulting in more than one detention. At the same time, there exist flying squads or surprise checking teams other than normal checkpoints, which are empowered to stop and check the vehicle at any point within their jurisdictional limits and detain the vehicle for any violation[18]. Detention of vehicles causes loss of time, high fuel consumption and idling of vehicles, leading to under-utilization of transport capacity and adversely affecting operational viability.

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[17] Srinivasa-Raghavan, T.C.A (2000)
[18] Singh M. P. (1998)

Vehicle Detention

Trucking Operations

- ***RTO Checkpost:*** Documents related to truck; Permits, Road tax, Load requirements.
- ***Police Checkpost:*** Driving offences, Maintaining traffic safety, Law and order.

Goods Related-Checkpost

- ***Sales Tax***
- ***Octroi***
- ***Entry permit***
- ***District Supply Office***
- ***Forest Produce***
- ***Tolls***

Others

- ***Checking by Flying Squads of any agency***
- ***Movement of essential commodities***
- ***Miscellaneous checks by respective authorities***

4.25 It does not help that the road network suffers from poor road geometry, weak and narrow bridges, frequent access from side roads to main roads, congested city sections, poorly designed road intersections and existence of level crossings.

Chapter 5: Travails of Trucking

5.1 The story of an Indian truck driver is one of neglect. The truck driver is neglected from all quarters - his immediate employer, various government agencies he has to deal with on the road, even automobile manufacturers who produce the truck he drives. Compare his role with his counterparts like the engine driver or pilot. Yet he is regarded as an incarnation of Lord Yama on the road by many fellow travelers, because of his past record of fatalities.

Chilling Statistics

- Trucks are responsible for 30 per cent of total accident fatalities, though they form only 5.2 per cent of the vehicle population.
- Around 36 per cent of truck accidents occur during normal sleeping hours.
- May and June are the most accident-prone months and more truck accidents occur during the summer season as compared to the winter season.
- Head-on accidents, followed by rear-end collisions, form the largest percentage (70 per cent) of truck accidents.
- Nearly 50 per cent of accidents involving trucks occur near road junctions and inhabited areas.
- About 48 per cent of accidents are hit-and-run cases. This percentage increases in the case of State highways and lower category roads.
- Rash and negligent driving is the biggest cause (65 per cent) of truck accidents.
- 70 per cent of persons succumbing to injuries die on the spot, while another 7 per cent die on the way to hospital.
- Deficiency in highway design features is the cause of many fatal truck accidents.
- Overloading of vehicles, long hours of crew duty, intoxication and low levels of training are the major contributory factors in accidents.

- Based on Studies by CRRI, IIT & AITD

5.2 AITD figures are that there are around 5 million truck drivers in the country. This estimate is based on the assumption that there are about 2.5 million trucks in the country and each truck has two drivers. Given the rise in number of trucks operated for goods transportation, the total number of truck drivers in the country will double in the next ten years. In spite of this, there is no perceptible change in the way the road transportation sector values the contribution made by truck drivers. This has led to poor quality of life for most drivers, undue harassment by official agencies, etc. The frequency of a driver returning to base is also quite low for most drivers. Is it possible that such conditions have led to a higher number of casualties?

5.3 For instance, what facilities do truck drivers have for night stay or for rest during long journeys? The AITD did a survey of drivers in 1998 and found that 75 per cent of drivers opt for a night halt at roadside 'dhabas', which can be described as small makeshift restaurants that provide cots doubling as dining tables, as well as sleeping beds. A large proportion of the sample spent night halts on the roadside in their trucks. In the US, trucking firms began taking more a sympathetic view only after a huge shortage developed in manpower resources. In fact, whether better support services will be provided depends also on the tightness of the market for truck drivers. This variable will not change in India for a long time because of the excess of supply of truck drivers. Hence the emphasis on other variables of change.

5.4 Truck owners care little about the welfare of drivers. Absence of basic work support facilities has remained unnoticed for quite some time. A night halt at a roadside dhaba is accepted by society at large. Truck owners have shown even less regard for the usual norms of working hours prevalent in most industries. Most developed countries have clear laws that prohibit any heavy vehicle driver from remaining at the wheel for more than 4-6 hours at the most. These norms have been framed not just to ensure that the driver gets a decent break and rest from his work, but also to make sure that road safety norms are honoured. A tired driver is a hazard for road safety, particularly when he is at the wheels of a heavy commercial vehicle.

5.5 But as the AITD survey showed, truck drivers in India function in a different world. About 20 per cent of drivers confessed to driving for more than 12 hours a day. More than 44 per cent of drivers drove their vehicles for 9-12 hours a day. Only 5 per cent admitted to driving for 4 hours per day on an average. There is an additional problem on the insurance front. Around 80 per cent of vehicles have a comprehensive insurance policy, while 20 per cent have third party insurance.

Woes of Trucking

5.6 The poor infrastructural support for the truck driver has given rise to a series of problems that cannot be overlooked. Driving a fully loaded truck in India's traffic conditions, including poor and badly maintained roads, can be a challenging proposition. Poor working conditions only aggravate the problem. All such weaknesses accumulate and insensitiveness to safety norms is often a result[19].

5.7 The AITD survey revealed that most truck drivers are aggressive on the road. They frequently indulge in overtaking, over-speeding and occupying the centre of the road, even in two-lane carriageways. Besides, truck drivers never follow a particular schedule. For instance, even if a truck has two drivers on duty, there is no scheduled halt for rest for either of them. There is no fixed time for rest or meals. Intake of alcoholic drinks is prevalent over long distances. Worse, drivers have been caught napping at the wheel, particularly towards the end of a long driving spell (more than 10 hours). Poor road conditions, frequent stoppages and delays, congested highways and ill treatment from officials also contribute to the problem.

5.8 Consider a life of the truck driver. His work starts and ends in the driver's cabin. Technically, most Indian truck manufacturers have little regard for the truck driver. The driver's cabin is a cramped cubicle, where the driver and his associates hardly find enough space to move their legs and hands freely. The driver's cabin is an extension of the main

[19] Bhattacharya A.K. (2000)

body of the truck, and not a separate section, as is a common feature in trucks in developed countries. But more than that, the driver's cabin is right on top of the engine. The cabin and the load body are not on separate platforms, resulting in extreme heat, vibrations, noise, poor comfort and poor protection to the driver[20]. Working under such extreme conditions influences the senses of the driver. Worst of all, about 95 per cent of the trucks are two-axle rigid trucks, where overloading is a common phenomenon. Poor vehicle design and use of poor quality material is rampant in the truck body-building business. The body-building industry is completely in the unorganized sector and does not come under any regulatory control. Nor is there any uniformity in design features and standards. The way trucks are fabricated requires the driver to be adept in acrobatic skills, because he has to climb up to get into the driver's cabin.

5.9 The work of the truck driver starts even before he begins his journey. The driver often plays multiple roles. He acts as the supervisor of loading operations and takes complete charge of safe loading and unloading of goods. In extreme cases of short supply of labour, he also transforms into a labourer so that the loading/unloading work can be completed in time. On a few occasions, he also performs the job of labour scout for the consignee. In order to get the maximum advantage, owners also impose pressure on the driver to carry the entire load in a single trip, even if the truck is overloaded and violates the loading regulation.

5.10 Once he is on the road, very often, he is hauled up for violating city traffic rules. His efforts to mollify the policemen begin from there. Once on the highway, the Regional Transport Officer (RTO) takes over. Instead of facilitating highway traffic, the RTO and highway police lose no opportunity to harass the truck driver for graft. Tax authorities are next in the line of takers and treat truck drivers as source of revenue. In the event of any misinformation or mistake, detention is inevitable, for which guilt, the driver may have had no role to play. Apart from the usual checking and inspection, there are other official agencies that stop the vehicle on flimsy grounds, so as to draw their pound flesh. At each location, whether it is at the taluka, district or State level, the driver always confronts newer problems with the regulatory bodies[21]. Even if all papers are in order, the consignment is in order, all bulbs and emission norms are satisfied, then also some agency can still find means to detain and challan the vehicle. Personal interview with some drivers revealed flimsy charges like uneven air pressure in the tyres, not in uniform and driving barefoot. These may also lead to a challan and confiscation of the driving license.

5.11 Adding to this, there is the discomfort of driving on Indian highways. For example, speed breakers are frequent on the roads, without any road signs or without standard designs. Maintenance of roads on many stretches is very poor, making driving a nightmare. Add to this the free movement of cattle, village folks, plying of light slow moving vehicles like bullock carts and tractors.

5.12 The poor law and order situation is also a contributory factor. Frequent hijacking, being waylaid on highways, poor police protection and frequent bandhs and 'chakka' jams are examples. Systemic weaknesses of enforcement agencies contribute to the hit and run mindset, preferable to a lynching mob. Drivers also blame locals who frequent highways, disregarding their personal safety and ignoring basic traffic sense. One of the major problems the driver faces in such unforeseen eventualities is in application of brakes. A fully loaded truck cannot be stopped immediately, unlike a passenger car.

5.13 The driver community has developed its own systems to warn fellow drivers of existence of inspectors on the way. There is a tremendous sense of brotherhood on the highway. Using dippers and hand signals, one driver communicates with another about the looming threat of law enforcement agencies or barriers and 'chakka' jams. There are frequent occasions when one truck driver helps another truck driver in trouble.

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[20] Technology Change: Slow and Unsteady, AITD, *The Asian Journal*, June 2000, Volume 7, Number 2, (Indian Trucking).

[21] *Trucking Operations in India, Report of Steering Committee*, Asian Institute of Transport Development, 1999, Ministry of Surface Transport, Government of India.

Chapter 6: The Regulatory Regime

6.1 Distribution of goods and commodities from the manufacturer or the producer to the end user is a complex phenomenon and this is further complicated with statutory regulations. India is not a single market, each State treats goods produced in other States as equivalent to imports.

Government Regulation: Objectives

- Control day-to-day functioning of distributive trade.
- Collection of revenue for the exchequer
- Provide fair deal to consumers

6.2 Moon *et al* (2000), Bagchi (1995), Shyam Nath (1999), Purohit (1993,1992) and many others, while discussing about taxation, have listed the prime objectives of government regulations. These objectives are essentially to control day-to-day functioning of distributive trade, utilize business for collection of revenue and provide a fair deal to consumers through provisions and specifications that ensure that products are of good quality and adequate, accurate information is provided and artificial shortages are prevented.

6.3 As stated earlier, the regulatory regime is framed on the basis of mode of transport (that is, truck operations) and there are also regulations that are goods-related and designed for consumer protection. In varying degrees, all countries regulate the trucking industry. At the same time, regulations related to goods and consumer protection are also present. The Indian experience has not been any different. However, unlike Indian highways, one does not find long queues of trucks on inter-State highways nor scattered checkpoints along the highway in other places like the European Union and North America. Is the transportation sector under heavy regulation in India or has the regulatory regime become outmoded?

Regulatory Regime[22]: Truck Operation

6.4 Motor vehicles were first introduced in India during the closing years of the 19th century. In 1914, the first Indian Motor Vehicles Act was passed and was made applicable to what was then British India. Some princely States followed suit, with local modifications. The rapid growth of motor vehicles posed a threat to the British owned railway companies. Thus, the government felt the need to regulate passenger and goods motor transport vehicles to prevent them from competing with railways. With this prime objective, the second All India Motor Vehicles Act, 1939, was passed and came into force in 1940. This created Regional and Provincial Transport Authorities that were authorized to grant permits for stage carriages and for public and private carriers. With regard to co-ordination between rail and road transport, the Act empowered Provincial Governments to prohibit or restrict long distance movement of goods by road and transport of specified classes of goods by public or private carriers. Under the provisions of the Act, goods vehicles were not allowed to operate outside the region in which they were registered. This Act was in force for almost 50 years, though there were a number of amendments in between. In 1988, a major qualitative change was attempted and the Motor Vehicles Act (MVA), 1988 came into being. This is the present legislation, along with the Central Motor Vehicles Rules (CMV), 1989 framed thereunder.

6.5 While the Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1989 are Central elements of legislation, their enforcement is the responsibility of State governments. The Act prescribes conditions for regulation of all types of road transport, passenger transport in public and private sectors, tourist transport, contract carriages and goods transport. Goods transport is predominantly in the private sector.

[22] This section draws on observations from *Trucking Operations in India, Report of the Steering Committee*, Asian Institute of Transport Development, 1999, Ministry of Surface Transport, Government of India.

Quantity Regulation

6.6 At present, there is no quantity regulation for goods vehicles. As per Section 89 of the Motor Vehicles Act, 1988, any person can apply for any kind of permit at any time and the Regional Transport Authority shall not ordinarily refuse to grant the permit. With this policy of liberalization of permits, the quantity regulation that existed in earlier Acts is no longer relevant.

Quality Regulation

6.7 There are provisions in the MVA that deal with quality regulation. The existing quality regulations include roadworthiness of vehicles (fitness certificate - Section 56 of the MV Act), competence in driving (driver licensing – Section 9 of the MV Act); control of emissions (emission norms, inspection and maintenance programme of vehicles, pollution under control certificates) and observance of other regulations. As far as the fitness test is concerned, it is based on visual inspection systems, which leaves much to be desired. Similarly, competency test for drivers is lax, resulting in liberal granting of licenses. Consequently, competency test does not ensure the availability of skilled drivers. There is ample scope for rent seeking in the licensing system and competency test for drivers. For pollution control, the law was not stringent till 1996. As a result, pollution control for a large number of old vehicles does not exist. In general, quality regulations have too many loopholes, and are not strictly enforced.

Price Regulation

6.8 State governments have the powers to fix fare and freight rates as per Section 67(1)(d) and Section 79(2)(iv) of the MV Act. The State governments, however, feel that the matter should be left to the market forces so far as goods freight rates are concerned. There is no price regulation by States and freight rates are decided through the forces of demand and supply. It is common knowledge that freight rates fluctuate from season to season. Sometime, Route Associations, Brokers' Associations and Owners' Associations, decide upon mutually agreed freight rates within their respective jurisdictions.

Labour Regulation

6.9 The hours of work of any person engaged in operating a transport vehicle shall be such as stipulated in the Motor Transport Workers (MTW) Act, 1961. Based on this provision, Section 91 of the MV Act provides for 8 hours of work for drivers. However, these provisions are not enforced strictly. They are not enforced by the Motor Vehicles Department and it is presumed that this is the responsibility of the Labour Department. Lack of co-ordination between the Labour Department and Transport Departments of States is responsible for poor implementation of both Acts. Truck owners do not maintain any record of duty hours of drivers and other employees. Further, the MTW Act is applicable only when the undertaking employs 5 persons or more. Considering the present ownership pattern, this is a major limitation.

Safety Regulation

6.10 Safety depends upon the condition of vehicles in the hands of competent and skilled drivers. The other prerequisites of road safety are well-designed roads and strict enforcement of provisions of the MV Act. Most truck drivers do not receive proper training from motor driving schools. The mechanism to regulate motor driver training schools provided in the MV Act is neither implemented, nor is attention given to upgradation of such schools as are licensed by State governments. The condition of vehicles is also poor. The design of vehicles is not upgraded and preventive maintenance is neglected to save money. In fact, the maintenance of trucks is entrusted to roadside mechanics who are by and large illiterate and ill-equipped and do not appreciate the importance of fuel efficiency, pollution control or safety aspects. On road infrastructure, this is in bad shape since this sector has been starved of funds for a long time. Road deficiencies and lack of enforcement of safety regulations endanger road safety.

Environmental Regulation

6.11 CMV Rule No. 115 prescribes limits for emission of carbon monoxide (CO), oxides of nitrogen, hydrocarbons and suspended particulate matter (SPM), etc, from motor vehicles. The Central government has the power to lay down emission levels for motor vehicles. Emission norms were first prescribed in 1992. Stricter norms were prescribed for all categories of vehicles in 1996. These were made more stringent with effect from 1st April 2000. The tightening of emission norms has brought about better technology in the automobile sector. But the problem of on-road vehicles built prior to the introduction of emission norms is rather serious. No emission norms have been prescribed for these vehicles[23]. While it has also been mandated that all motor vehicles on roads shall possess a valid "Pollution Under Control Certificate" and the enforcement agencies of States are supposed to take appropriate measures, testing of pollution is not carried out effectively. There is no system in place for inspection, maintenance and certification of these vehicles. The Steering Committee was informed that the Technical Standing Committee constituted by the Ministry of Surface Transport (MOST) had suggested certain parameters for checking of vehicles. These requirements are yet to be incorporated in CMVRs. There are a number of factors affecting the management of pollution control, but enforcement machinery is neither adequate nor equipped to meet this challenge. Licenses granted to the private sector to check pollution levels and issue PUC certificates have not produced satisfactory results so far. As such, environmental regulations are followed more in the breach.

Regulation of Brokers/Agents

6.12 Section 93 of the MV Act provides for licensing *inter alia* of any agent or canvasser engaged in the business of collecting, forwarding or distributing goods by trucks. The wording of the section seems ambiguous. Any interpretation would imply that this section does not cover brokers and booking agents. There has been mushrooming of unscrupulous brokers/booking agents. There is a need to include brokers/booking agents within the scope of this section explicitly.

Regulation of Axle Loads

6.13 Sections 113 and 114 of the MV Act empower the Motor Vehicles Departments of States to ensure that vehicles carry loads within prescribed limits. Due to unhealthy competition in the trucking industry, overloading is a common occurrence. Further, weighbridges (dharam kanta) are not available in sufficient numbers to detect the offence of overloading. The provision of off-loading excess weight is not implemented for want of facilities. Lack of will on the part of authorities to enforce the provision 'offload the excess weight at owner's risk' as well as the provision of compounding the offence of overloading has resulted in the relevant regulation existing only on paper. Overloading has, in fact, become the order of the day.

Regulation by Police Authorities

6.14 Besides the Motor Vehicles Department, the police also check motor vehicles. The specific areas in which police authorities have a role to play are:

- When theft of a motor vehicle takes place
- When vehicles are involved in accidents
- In verifying personal antecedents of drivers, cleaners, helpers, etc., as and when need arises
- Regulation of traffic

6.15 Under the MV Act, the police have powers such as detaining the vehicle without registration or permit, impounding false documents (registration certificate, license, permit, certificate of insurance etc), booking persons for driving at excessive speed or driving by a

[23] *Technical Study on Energy Conservation of Motorised Road Vehicles in India*, AITD, 1994

person under influence of alcohol or drugs. These offences are not punished. There is no institutional mechanism for coordination between the Transport Department and the Police Department in States. As a result, the concern of the police authorities is only to ensure that provisions of the Indian Penal Code (IPC) are not violated. It is only through coordination between these two departments that enforcement of both the MV Act and the IPC is possible to ensure effective traffic management and road safety. The punitive clauses for various offences also need a re-look. At the moment, these regulations only provide scope for bribery and corruption.

Insurance

6.16 Third-party liability risk cover is mandatory under the MV Act. Under third-party policy, the insurer provides indemnification to the insured against all sums that the insured shall become liable to pay in respect of damages to third-party property or death/bodily injury to any person arising out of the use of motor vehicles. However, the MV Act does not make it compulsory to insure cargo carried in vehicles, for which, a separate policy is required. Another aspect of MV insurance is the tardy settlement of accident claims. Several measures have been taken both by the government and the insurance industry to expedite claim settlements, such as introduction of Section 140 (No Fault Liability), Section 163A (Structured Formula for Compensation), holding of Lok Adalats, etc. But in terms of implementation, the system has failed to deliver relief.

Focus on 'Revenue', rather than on 'Regulation'

6.17 The Motor Vehicles Department is concerned with the enforcement of the provisions of the MV Act. Speed limits and other provisional measures listed in the Rules are an integral part of motor vehicle regulation. But technologically, vehicles are gaining capabilities of acceleration to 80 kmph in a matter of a few seconds. At the same time, municipal bodies and other traffic regulators pass rules without taking due care of technological requirements. For example, Delhi Administration has lowered the speed limits of Heavy Vehicles to 40 kmph, but road signs continue to display old speed limits. In fact, the problem lies in management practices of the Motor Vehicles Department, which are age-old. The skills of officials deployed in the MV Department are not being upgraded. Technology in terms of use of sophisticated computers for information or communication is conspicuous by its absence.

Motor Vehicle Department: Activities

- Collection of taxes
- Issue of driving licenses
- Issue of conductor licenses
- Registration of vehicles and transfer of ownership
- Issue of fitness certificates for transport vehicles
- Issue of permits for transport vehicles
- Enforcement of MTV & MTW
- Checking of vehicles at border check-posts
- Attending to accident vehicles involving fatalities and serious injuries
- Other miscellaneous work

6.18 The necessary infrastructure for driver testing, fitness testing and pollution control is not available. These departments are seen as revenue earning sources and contribute nearly 10 per cent of any State's tax revenue. Thus, the focus of these departments is on collection of tax revenue from motor vehicles and not on enforcement of various provisions of the Act. The present institutional focus being on 'revenue', important functions, such as mobility, fuel conservation and environment protection, do not get adequate attention.

6.19 The MV Act provides rules for the issue of drivers licenses, registration of vehicles, permits and fitness certificates, enforcement, road safety, prevention of overloading,

insurance of vehicles, etc. The CIRT survey shows that there are problems faced by MV Departments with regard to registration of trucks - such as variation in GVW of vehicles allowed by States (for example, GVW allowed by Nagaland is much higher than in other States), re-registration of vehicles when 'No Objection Certificate' (NOC) is not forthcoming from the earlier registration authority and manual maintenance of records, which is becoming a major problem due to shortage of manpower and absence of computerization networks amongst RTO offices. The last is responsible for issue of fake registrations.

6.20 The vehicle fitness scheme is a road safety measure designed to encourage owners to maintain their vehicles and ensure that the most important safety related items are inspected periodically as provided in the Act. Inspection of vehicles includes seats, lighting equipment, steering and suspension, brakes, tyres and wheels, horns, exhaust systems and emissions, mirrors, fuel systems and registration plates[24]. The infrastructure for fitness certificate work is inadequate. It is based on visual inspections and common judgement. There are many fake fitness certificates, as there is no mechanism to check them. The survey also revealed that there is a dominant preference for national permits, around 68 per cent of truck owners had national permits, the balance 32 per cent had State permits. Monitoring of expiry dates of permits, delay in despatching 'demand drafts' deposited by national permit holders with their home state and lack of effective mechanisms to detect fake permits are other problems faced by the MV Department. The present procedure does not ensure timely receipt of composite tax for national permits by States other than the home State. There is no co-ordination between government departments like the Police, PWD, Municipal Corporation, Urban Development Authority and State Transport and this results in poor safety, poor traffic control and severe congestion on roads.

6.21 In the transport sector, in many countries of the world, independent regulators have been set up to ensure healthy development of the industry, promote competition and ensure adherence to legal provisions. A similar regulatory authority is necessary for India. This authority could be an independent statutory regulatory authority, outside the government, along the lines of the Telecom Regulatory Authority or Central Electricity Regulatory Commission.

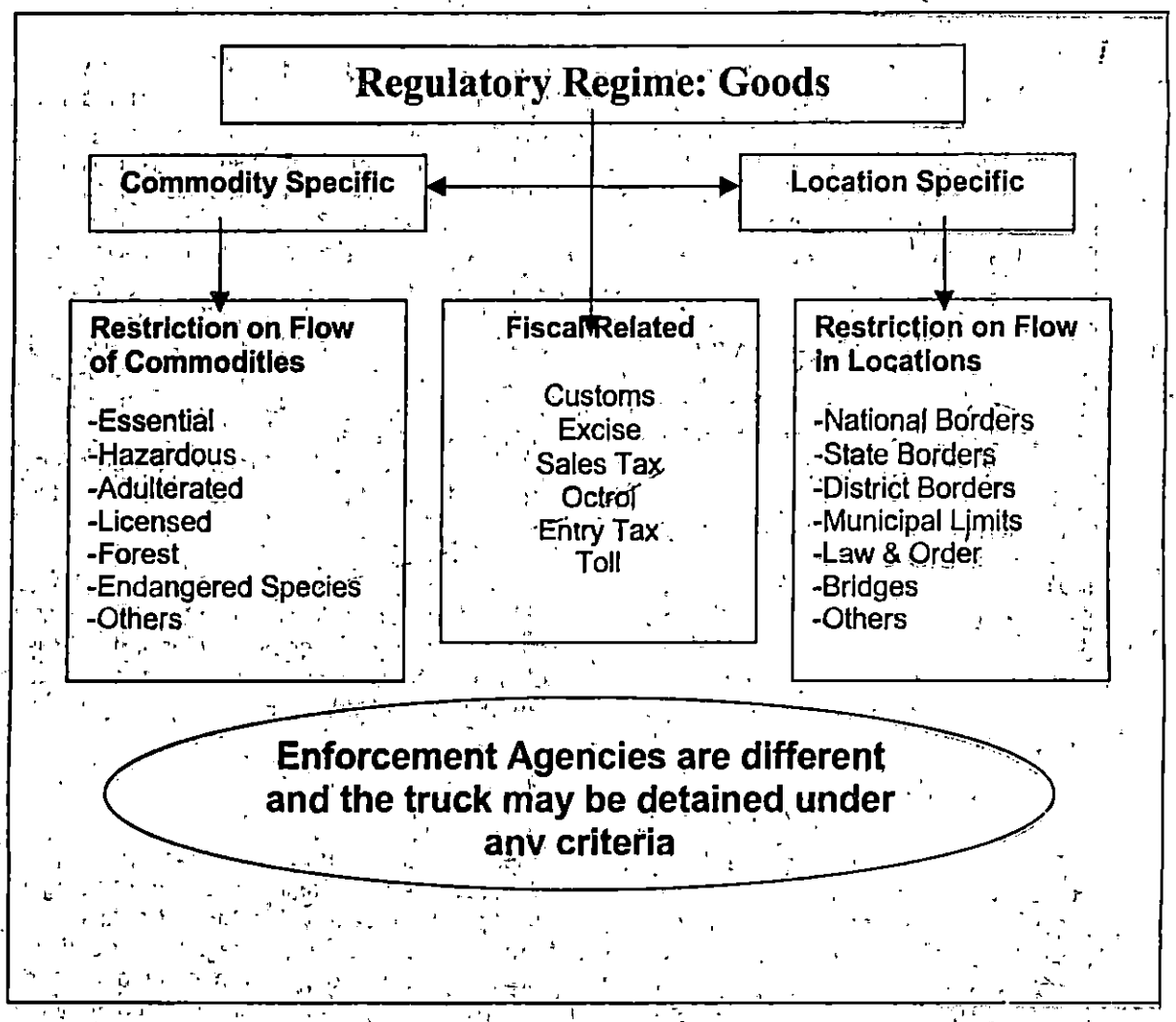
Regulatory Regime: Goods

6.22 The regulatory regime for goods is more complicated than regulating trucking operations. A truck can have a single commodity despatched by a single supplier to a single receiver. On the other hand, a truck may carry multiple commodities despatched by different suppliers to different buyers at different points for delivery. The regulatory regime for goods is commodity and location specific. The fiscal obligation is common to both commodity and location. The situation is complicated further because the regulatory regime for commodity specific statutory obligations requires a different type of administrative enforcement measures. In the event of any missing link in the multiple commodity carrier, detention of the carrier is inevitable.

6.23 This is a major irritant in the flow of trade and commerce. The Centre, along with State governments, is empowered to enact laws pertaining to goods. In doing so, duplication in work done by the government machinery leads to confusion in the minds of those who have to comply with provisions of legislation. Internal trade in goods is subjected to a multiple licensing system from a number of authorities. Besides, all licenses have to periodically checked and renewed, which entails submission of returns, display of stocks and prices. All such unproductive work involves a great deal of administrative work, leading to corruption and harassment. Unrealistic provisions make it even more difficult. Moreover, lack of uniformity in implementation is another form of distortion. While some States are very vigorous in implementing the laws scrupulously, others are not. For instance, sale of Kesari Dal in any form is banned under Rule 44 (a) of the Prevention of Food Adulteration Rules, in some

[24] Section 56 of the MV Act read with CMVR 63(3)(e) provides that an authorized testing station for vehicle fitness work is expected to maintain in good condition the equipment and apparatus for undertaking tests pertaining to exhaust gases, smoke emissions, brake systems, head lights, wheel alignments, compressors, speedometers and other like components.

States. In some States where Kesari Dal is produced in large quantities, sales are allowed. As a result, in one State, the accidental admixture of Kesari Dal with other pulses may lead to punitive action. In a neighbouring State, it may be allowed. This should not be the spirit of the law.



Essential Commodities Act (ECA)

6.24 The ECA and control orders issued under ECA have caused numerous problems to the distributive trade. The emphasis throughout this legislation has been on regulating distribution, relegating the more important objective of expanding supplies to the background. The provisions of the ECA are such that it imparts enormous discretionary powers in the hands of official agencies. The penal provisions of ECA were made more stringent through the Essential Commodities (Special Provisions) Act, introduced in 1981 for a period of five years, but extended again and again. All offences have been made non-bailable and appellate jurisdiction has been transferred from the judiciary to the executive, thus allowing the executive to adjudicate on its own decisions.

6.25 The ECA fails to define the term 'essential'. Nor do the provisions give any essentiality norms, leaving it completely at the discretion of the executive. Ambiguities in the provisions lead to considerable misinterpretation and unnecessary harassment. At the same time, all commodities cannot be equally essential. That which is essential for life cannot be equated with industrial raw materials. But the list of essential commodities has a large number of industrial intermediates.

6.26 The list of essential commodities can be changed, some commodities may be removed and some more can be added. Lack of coordination between official agencies is one of the many causes of undue harassment. The consignee, nor the consignor, accompanies the goods. The person accompanying the goods is the truck driver and cleaner. In the event of any violation of ECA, the driver and other staff in the truck are the first casualties to be booked for punitive action as accessories to the crime. Others are booked later. The District Supply Office (DSO) enforces ECA at the district level. Inspection authorities from DSO are empowered to check any warehouse, shop, establishment or carrier on the pretext of suspicion. Even though the truck may not be carrying such goods to cross borders as per declaration papers accompanying the consignment, DSO officials can stop the vehicle to verify the contents. There is a lot of discretionary power vested with the department, leaving a lot of scope for corruption and harassment.

Indian Forests Act, 1927

6.27 This empowers the Union and State Governments to make laws and regulations to regulate transit of timber and other forest produce. Chapter-VII of the Act is specifically meant for controlling and regulating movement of forest produce.

6.28 The Central Government is empowered to make rules to prescribe the route by which alone timber or other forest-produce may be imported, exported or moved into the territories to which this Act extends. The Act also explicitly mentions breach of rules under Section 42. The State Government is allowed to make rules and prescribe penalties for the contravention of the Act. The penalty against infringement can be imprisonment for a term, which may extend to six months, or fine that may extend to five hundred rupees, or both. Such rules may provide that penalties which are double of those mentioned in sub-section (1) may be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or where the offender has been previously convicted of a like offence.

6.29 But the Act is also discriminatory because it absolves accountability of officials from damage to forest produce at depot. Section 43 of the Act is titled - **"Government and Forest-officers not liable for damage to forest-produce at depot"**. The provisions clearly state that the Government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest-produce while at a depot established under a rule made under section 41, or while detained elsewhere, for the purposes of this Act; and no Forest-officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently. Chapter IX also mentions penalties and procedures dealing with provisions that may lead to detention of the carrier. For instance, Section 52 states that when there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, carts or cattle used in committing any such offence, may be seized by any Forest-officer or Police-officer. Under the Indian Forests Act, all State governments have erected checkposts at various locations in their respective territories to inspect vehicles that may carry forest produce and timber. As a result of this, trucks on the highways have one more inspector/official agency to deal with in terms of stoppage and rent-seeking. Besides, forest produce and timber, which are easily distinguishable on visual inspection, there are other environment-related laws that also have powers to detain vehicles for inspection.

6.30 Constitutional provisions on environment protection are backed by a number of acts, rules and notifications. The Environment Protection Act of 1986 (EPA) came into being soon after the Bhopal Gas Tragedy and is an umbrella legislation. There are also rules like the Handling and Management of Hazardous Waste Rules of 1989. Some of these rules are given in the box. What is important is the accountability of carriage under these laws and rules.

Environment Related Laws[25]

- The Environment (Protection) Act, 1986
- The Environment (Protection) Rules, 1986
- Hazardous Waste (Management and Handling) Rules, 1989
- The Manufacture, Storage and Import of Hazardous Chemical Rules, 1989
- The Manufacture, Use, Import,, Export and Storage of hazardous Micro-organisms/ Genetically Engineered Organisms or Cells Rules, 1989
- The Biomedical waste (Management and Handling) Rules, 1998
- The Wildlife Protection Act 1972, Rules 1973 and Amendment 1991
- The Forest (Conservation) Act, 1980 and Rules 1981
- The Air (Prevention and Control of Pollution) Act, 1981
- Air (Prevention and Control of Pollution) Rules, 1982
- The Atomic Energy Act, 1982
- Air (Prevention and Control of Pollution) Amendment Act, 1987

6.31 Other than laws on the environment, other pieces of legislation can also affect the distribution system. These are not specific to transportation, but can nonetheless be used to detain vehicles under suspicion and check the carrier[26].

Other Legislation Affecting Distribution

- Consumer Protection Act, 1986
- Bureau of Indian Standards Act, 1986
- Dangerous Drugs Act, 1930
- Prevention of Food Adulteration Act, 1955
- Drugs and Cosmetics Act, 1940
- Agricultural Produce Grading and Marking Act, 1937
- Indian Sales of Goods Act, 1930
- Standards of Weights and Measures Act, 1976
- The Standards of Weights and Measures (Enforcement) Act, 1985
- The Forward Contracts (Regulations) Act, 1952
- The Emblems and Names (Prevention of Improper Use) Act, 1950
- The Spirituous Preparations (Inter-State trade and Commerce) Control Act, 1955

6.32 There may not be specific checkpoints on roads for checking under these laws and these laws may not directly require detention of vehicles. But trucks can be stopped for inspection and verification of consignment and impounding of the truck and its consignment are also possible. Even if the Act doesn't have such provisions, administrative rules do. Some sections of the Indian Penal Code and the Prevention of Food Adulteration Act (PFA) are examples. A Food Inspector under PFA has the right to check any truck that has food-related consignments. The Essential Commodities Act (ECA) is yet another instance. Perhaps one should mention that the record of convictions under ECA is 0.3 to 0.5 per cent of those arrested.

Regulatory Regime: Consumer related

6.33 The ECA can be interpreted as legislation enacted to protect the consumer, but there are other examples of consumer-related laws also. These laws seek to regulate production and distribution and often create artificial shortages in the process. It is a moot point whether

[25] This is an illustrative list of environment-related laws that have links with truck movements. Other laws like the Water (Prevention and Control of Pollution) Act of 1974 and its rules or provisions in the Indian Penal Code are not mentioned because they have no direct links with truck movements.

[26] Background Paper for Conference on "Developing India's Capability for Organised Retailing", Federation of Indian Chambers of Commerce and Industry, 2001

they really serve the cause of the consumer. The Internal Trade Department of Federation of Indian Chambers of Commerce and Industry[27] is of the opinion that such legislation has not served consumers well because of the following reasons -

- The provisions are unrealistic and difficult to follow.
- The harsh penal provisions, the way in which they are implemented and lack of provision for appeals have instead benefited the cause of corruption.
- The cost of implementing consumer protection legislation and revenue raising instruments is quite high and is ultimately passed on to consumers in the form of high taxes and high prices.
- Stock limits interfere with the smooth functioning of trade and create bottlenecks in supplying products in time to consumers. The mismatch between demand and supply not only leaves the consumers dissatisfied, but can also push up prices.

6.34 In terms of implementation and enforcement, lack of transparency, high-handedness of officials and loopholes in rules have adversely affected distributive trade. If the transport vehicle carries multiple commodities, its movement becomes all the more difficult. Detention on account of one commodity may lead to the detention of other goods. It is not only the infringing commodity that is removed from channels of distribution, but the carrier, along with the entire consignment.

6.35 The problem becomes worse because of the dispute resolution system. If a carrier is stopped at a district border or any other point on its way, the consignor and consignee must respond to the complaint at the point of detention (or within its jurisdictional area). In other words, if a vehicle carries goods from Mumbai to Gorakhpur, but on account of infringement of ECA or any other legislation if it is stopped at Ghaziabad, the matter can only be resolved at Ghaziabad. The consignor and consignee will have to respond in Ghaziabad courts and not at Gorakhpur, though the office of the enforcement agency is at both places, under a single State government's jurisdictional area. An obviously efficient way of handling such a situation could be to allow the truck to continue its journey to Gorakhpur, while endorsing its papers for violation and issuing necessary instructions to the Gorakhpur office to take action against the consignment.

6.36 The regulatory regime is complementary to the tax regime and the tax regime is discussed in the next section.

Chapter 7: The Tax Regime

7.1 Taxes of various kinds and in varying rates are often imposed without consideration to their distorting aspects. States have often attempted to reduce taxes in a competitive spirit to attract trade and industry to the State concerned[28]. Such competition in sales tax leads to legitimate concerns and there has also been an attempt to unify and harmonize sales tax rates, so as to move towards a value added tax (VAT). However, there is also the point that in an attempt to absorb the resultant revenue loss from competitive lowering of sales tax rates, States have sought to identify new sources for levying taxes[29]. There has thus been a growing tendency to transfer tax liability to the transportation sector for quite some time.

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[27] FICCI (1998) "Discussion Paper on the First Ninety Days of the New Government Policy Agenda for Distributive Trade".
[28] Thukral, K.L.(2000)
[29] Aggarwal, K. *et al* (1984), Bagchi A. (1995, 1995a)

Costs of the Fiscal Regime

- Loss of output growth and welfare
- Inefficiency and high cost in industry and trade
- Impediments to the free flow of trade within the country and growth of the common market that the Indian Union potentially offers
- Inter-jurisdictional conflicts
- Handicap for exports
- High costs of compliance and enforcement
- Delays and harassment

7.2 The fiscal regime is both transport-specific and commodity-specific. Vehicles are detained for checking payment of commodity-specific taxes such as sales tax, octroi and other local taxes. These checks are generally done by the respective agencies at separate points, resulting in more than one detention for this purpose. At the same time, there are specific taxes levied on the transportation sector, for instance, road tax, national and state permits, etc. Taxation of motor vehicles is a widely used instrument for raising resources. Usually, the transport carrier is detained at five different locations for collection of tax or checking the papers at the State and District level.

7.3 What differentiates the existing system in India with that of taxation systems practiced outside India is the delay and harassment in the tax recovery system. Domestic trade taxes in India are in need of reform. The tax regime that is in place today is archaic, irrational and complex. It interferes with the free play of market forces and competition, causes economic distortions and entails high costs of compliance and administration. Under the Constitution, the basis of excise duties and sales tax, the two principal components of the domestic trade taxes, are distinctly defined – excise duty as tax on production of goods and sales tax on consumption (sale or purchase). In practice, the two have come to overlap because of problems in administering taxes at the retail level.

Taxation of Road Transport[30]

7.4 Taxation of road transport has two purposes: to charge users for the costs they impose on the road system and on other users (marginal costs) and to raise revenues for the government (pure taxation). In designing the tax system, these functions need to be considered separately, because different principles arise in each case. The problem to be solved in designing road user charges, corresponding to marginal costs, arises from the limitation of tax instruments available or forms of existing distortions (absence of marginal cost pricing in other sectors). Motor vehicle taxation can, however, take several forms and the structure of taxes varies from State to State.

7.5 Accordingly, the cost recovery mechanism has been based on what is popularly termed the "two part" tariff principle. First, there is part that seeks to recover fixed costs by imposition of taxes on vehicle registration, license etc. There is a second or variable cost component through use-related levies such as fuel taxes, sales taxes on spare parts, etc. Since there is substantial proportionality between road use cost caused by different vehicles and input requirements for these vehicles, taxes on inputs such as vehicle purchase, have always appeared to serve as an adequate base for charging for road use. Purchase taxes, through not varying with the activity that causes road costs, have the desirable characteristic of being able to discriminate between vehicles. Further, fuel taxes appear very attractive instruments, as fuel is a reasonably good measure of distance driven.

7.6 The pure taxation element basically attempts to realize policy objectives by supplying the government with revenue in the face of a narrow tax base. The argument from a narrow tax base viewpoint is most valid for taxing consumers on personal transport, not intermediate

[30] This section draws heavily from AITD (1998)

7.15 Most high powered Committees, like the Lakdawala Committee (1974), the Chelliah Committee (1980) and the Papola Committee (1985), have recommended abolition of octroi and its replacement by entry tax or the imposition of an additional surcharge on sales tax. An ambitious recommendation was made by the LK Jha Committee (1977), which recommended octroi's abolition without linking it with any alternative sources of revenue. Various industry associations like CII have also requested the government to substitute octroi with a suitable alternative.

Motor Vehicle Tax Structure

7.16 The existing tax structure for commercial vehicles shows wide variations among States. There are different bases for computation and different rates, leading to differing incidence of taxes per vehicle in different States. In fact, it is difficult to make comparisons of rates levied on different types of vehicles in different States. First, there are different schemes for classification of vehicles. Second, there is no uniformity in the basis of various levies. Third, there is an involved procedure for collection of taxes. Fourth, there is multiplicity of taxes. Besides MV tax, there are passenger and goods taxes, union excise duties, sales taxes on vehicles and on components, taxes on fuel, octroi and fees of different types. Finally, there is a one-time levy in some States and in others, there is an annual or quarterly tax. Taxes on motor vehicles are widely used to regulate and control vehicles. They are also used to raised resources.

7.17 In the case of passenger transport vehicles like stage or contract carriages, the seating capacity forms the basis for levying tax. The basis has extended to cover authorized standees as well. Some States, for example, Madhya Pradesh, Orissa and Rajasthan also include the distance that the vehicle is permitted to ply as an additional element for determining the quantum of tax. There is another system also. Routes are divided into 3 categories, A B & C with a different rate of tax for each. This system is prevalent in Uttar Pradesh. The period of payment also varies from State to State. Some States charge the tax quarterly, while others charge it annually.

7.18 The tax on goods transport vehicles is primarily based on weight registered laden weight (RLW) or unladen weight (ULW). Besides, differences in the tax base, there are State-wise variations in the rates of MV tax. These variations have led to wide disparities in the incidence of tax per vehicle per annum, the highest being in Haryana (Rs 48,105). In Southern States, Tamil Nadu has a high of Rs. 32,215, while in Kerala it is Rs. 29,399.

Entry Tax

7.19 In addition to motor vehicle tax and passengers and goods taxes, States also levy entry tax. This is usually levied on commodities brought into the State. In addition, some States levy tax on motor vehicles entering the State. This is levied in Andhra Pradesh, Delhi, Karnataka, Madhya Pradesh and West Bengal. At present, the entry tax on motor vehicles ranges from 3 per cent for trucks, bus chassis, jeeps and tractors to 14.5 per cent for motor-cycles, scooters and motor cars[32]. Delhi also levies entry tax, but the scope is limited to vehicles. The rate depends upon the period of use of vehicles in other States and the amount of taxes paid there.

Passenger Tax

7.20 Passenger tax is not charged by all States. While it is levied in the States of Assam, Bihar, Gujarat, Haryana, Maharashtra, Uttar Pradesh, it is not levied in Andhra Pradesh, Karnataka, Kerla, Nagaland and West Bengal. In some States like MP, Orissa, Punjab, Rajasthan, it is merged with the MV tax and is generally related to the bus fare. There are State-wise variations in rates, as well as in the manner of levy. For example, in Maharashtra and Gujarat, it is levied at the rate of 17.5 per cent on the basic fare. In Uttar Pradesh, it is 16 per cent on the basic fare, with a surcharge of 23.72 per cent. In Himachal Pradesh, it is 40 per cent on the basic fare, with a surcharge of 20 per cent.

[32] Sen, K. et al (1995)

Fiscal Importance and Buoyancy

7.21 The yield from all taxes on road transport vehicles taken together has increased considerably over the years. Passenger and goods taxes have also increased in importance.

7.22 The fiscal significance of motor vehicles tax and passenger and goods tax varies across States. In 1996-97, the lowest share (2.31 per cent) was in Tripura. In the case of Jammu & Kashmir, the contribution was 26.13 per cent, the highest among States. In most States, the contribution to tax revenue is less than 10 per cent, sometimes between 6 and 9 per cent. Andhra Pradesh (11.37 per cent), Arunachal Pradesh (12.78 per cent), Haryana (14.99 per cent), Himachal Pradesh (19.35 per cent), Madhya Pradesh (15.48 per cent), Manipur (12.11 per cent), Meghalaya (11.19 per cent) and Mizoram (18.44 per cent) are exceptions.

7.23 The buoyancy coefficient of the motor vehicles tax (computed for the last 10 years) indicates the response of motor vehicles tax with respect to State domestic product (SDP). The coefficient for all States was less than unity (0.87), except Assam (1.23), Bihar (1.23) Haryana (1.08), Madhya Pradesh (1.33), Kerala (1.13), Orissa (1.53) and Tamil Nadu (1.01). There is potential for growth and the scope and buoyancy of the tax can be improved, if it is efficiently administered.

Barriers to Inter State Movement: Commodity-related Taxes

7.24 An important feature of the prevailing tax system is the existence of a large number of barriers for passenger and goods. Documents received by check-posts help the transport department to monitor flow of goods into the State and also make an assessment of tax. These check-posts, however, interfere with the free flow of traffic within a State and cause harassment to a large body of dealers, the majority of whom are not liable to pay tax. Studies undertaken on the efficiency of check-posts in different States reveal that the existence of check-posts does not contribute significantly to checking tax evasion. On the contrary, the more the number of check-posts, the higher is the wastage resulting from stoppage of traffic.

State Sales Tax

7.25 Sales taxes are levied by States in diverse forms, through State-level legislation. They vary in structure – namely, points of levy and rates - as well as administrative procedures, although some common features are discernible. Neither the structure nor the procedures are, however, simple. With the shift in the point of levy to the first point, the problems in excise taxation associated with definition of manufacturing, under-valuation and commodity classification are revisited when one looks at sales tax systems. In sheer complexity and irrationality, sales tax systems, as they are structured and implemented at present, surpass excise at its worst.

7.26 Multiplicity of taxation is further complicated by the inclusion of additional surcharges. Driven by pressures to raise revenue, most States have resorted to levies in the form of surcharges (SC), on the one hand and additional sales tax/turnover tax (TOT), on the other. Surcharges currently exist in more than 10 States, the base being the amount of general sales tax (GST) and in some, total of both GST and TOT are payable. The TOT in most cases is a multi-point tax. It is levied on gross turnover of dealers with sales in excess of the exemption threshold, and this applies to intermediate dealers, even in States where the general sales tax is largely levied at only one point.

7.27 To minimize the problem of collecting tax from sale of farm products like paddy, sugarcane and fruits, a commonly followed practice is to levy the tax on purchase at the last point (e.g. on the rice miller for the purchase paddy, sugar manufacturers in the case of sugarcane, etc.) These changes have come about either by way of amendments in the basic law governing the levy of sales tax, or through enactment of supplementary laws. In several States, laws relating to sales tax are embodied in more than one piece of legislation. A classic

ample is West Bengal, where the tax on sale and purchase of goods is governed by as many as four pieces of legislation:

The Bengal Finance (Sales Tax) Act, 1941
The West Bengal Sales Tax Act, 1954
The West Bengal Motor Spirit Sales Tax Act, 1974
The Bengal Raw Jute Taxation Act, 1941

7.28 Apart from these, there is another form of sales tax, namely the Central Sales Tax (CST) Act, 1956, the legislation authorizing the levy of tax on inter-State sales, enacted by Parliament with powers delegated to States to administer it and retain the revenue.

7.29 The complexities of multiple levies and legislations are compounded by the multiplicity of rates. Invoking considerations ranging from social justice and equity to promotion of trade and industry within the State, the rates of sales tax are differentiated across commodities. The number of rates in most States varies between six to twelve slabs and leviable rates vary between 0 and 150 per cent. In general, non-luxury foods and certain other basic necessities are taxed at approximately 4 per cent, while other items attract tax at rates in the range of 8 to 15 per cent. The TOT is levied mostly at graduated rates. The rates of surcharge vary from 5 to 25 per cent. There are also instances of exemption, either to reduce the regressivity of the tax, or as incentive to a particular industry. Such tax rate structures and exemptions are essentially State-enforced practices of distorting market forces.

7.30 Besides the State taxation regime, an additional duty of the State is to collect the Central Sales Tax. There is a ceiling on the rate at which CST can be levied. Initially fixed at 1 per cent, the rate currently stands at 4 per cent. This rate applies to sales to a registered dealer. Sales to unregistered dealers (such as retailer or consumer of final products) attract tax at 10 per cent or the rate applicable on local sales, including additional sales tax and surcharge, whichever is higher.[33]

Problems of Commodity Taxation

- Complex Structure
- Pitfalls of first-point sales taxation
- Ill effects of excluding services[34]
- Multiplicity of rates and levies
- Economic distortions and tax cascading
- Pernicious effects of inter-State sales taxation
- Tax competition between States
- Cascading and distortions in location of industry
- Hidden tax on international exports

7.31 Since CST is applicable to sales, inter-State movement of goods as consignments has not been liable to any CST in the exporting State. Finding that this was being used on a large scale to defeat inter-State sales taxation, the constitution was amended in 1982 (46th Amendment) to authorize the levy of sales tax on consignments. The legislation to implement the levy on consignments is still awaited. It is now being realized that taxation of inter-State sales has been a major source of inefficiency and inequity in the system.

[33] The Partha Sarathy Shome Committee has recommended eventual abolition of CST, but the implementation and phase-out plan is yet uncertain.

[34] About 40 service sectors are now taxed through a turnover tax system and the Govinda Rao Committee has made recommendations on other service sectors to be taxed. Ideally, these should be taxed through a system that can be VAT-ed out.

Cascading Effect

7.32 Taxes on the road transport sector have a cascading effect. As taxes on inputs and semi-finished products are substantial, they affect the final price considerably. The cascading effect is maximum on trucks (58.9 per cent) and less on cars and scooters (51.6 per cent and 50.9 per cent respectively). The tax incidence on a 'TELCO' truck worked out for the four metropolitan cities (Mumbai, Kolkata, Delhi & Chennai) indicates that the maximum tax (about 65.8 per cent) is borne by consumers of Mumbai, followed by those of Kolkata, Delhi and Chennai, where consumers paid taxes of 62.0 per cent, 56.3 per cent and 63.6 per cent respectively.

Incidence of Taxes

7.33 The combined burden of Central and State taxes is substantial. Over the years, this burden has increased continuously. In 1996-97, the burden of Central taxes was around 1.4 times that of the States.

7.34 Among Central taxes, the maximum amount was contributed by the Union excise duty on motor vehicles and accessories (30.14 per cent), motor spirit (19.93 per cent) and HSD (19.63 per cent). Among States, the motor vehicles tax, sales tax on motor spirits and lubricants and taxes on passengers and goods contribute 53.62 per cent.

7.35 According to a World Bank Study (1989), the incidence of taxes is inefficient. Vehicle taxation is road damage related, but levied on the basis of gross vehicle weight rather than on potential axle loads, resulting in under-taxation of 2-axle trucks compared to those with more axles. Since the former is a major source of revenue to States (accounting for one-fifth of revenue from road users), there is need for its rationalization, to ensure that the tax burden is distributed fairly among different types of vehicles according to PCUs (Passenger Car Units) as well as the road damage caused by each type of vehicle, according to the equivalent standard axle (ESL). This would require a very detailed enquiry. A useful exercise would be to rationalize the tax structure in such a way as to reduce the burden of taxation on the operating cost. "If transport is regarded as a service, a more proper way of assessing the tax burden would be to determine the extent to which the tax enters into the cost of such services i.e. the fares and freight charged" (*Motor Vehicle Taxation Enquiry Committee*, GOI 1950).

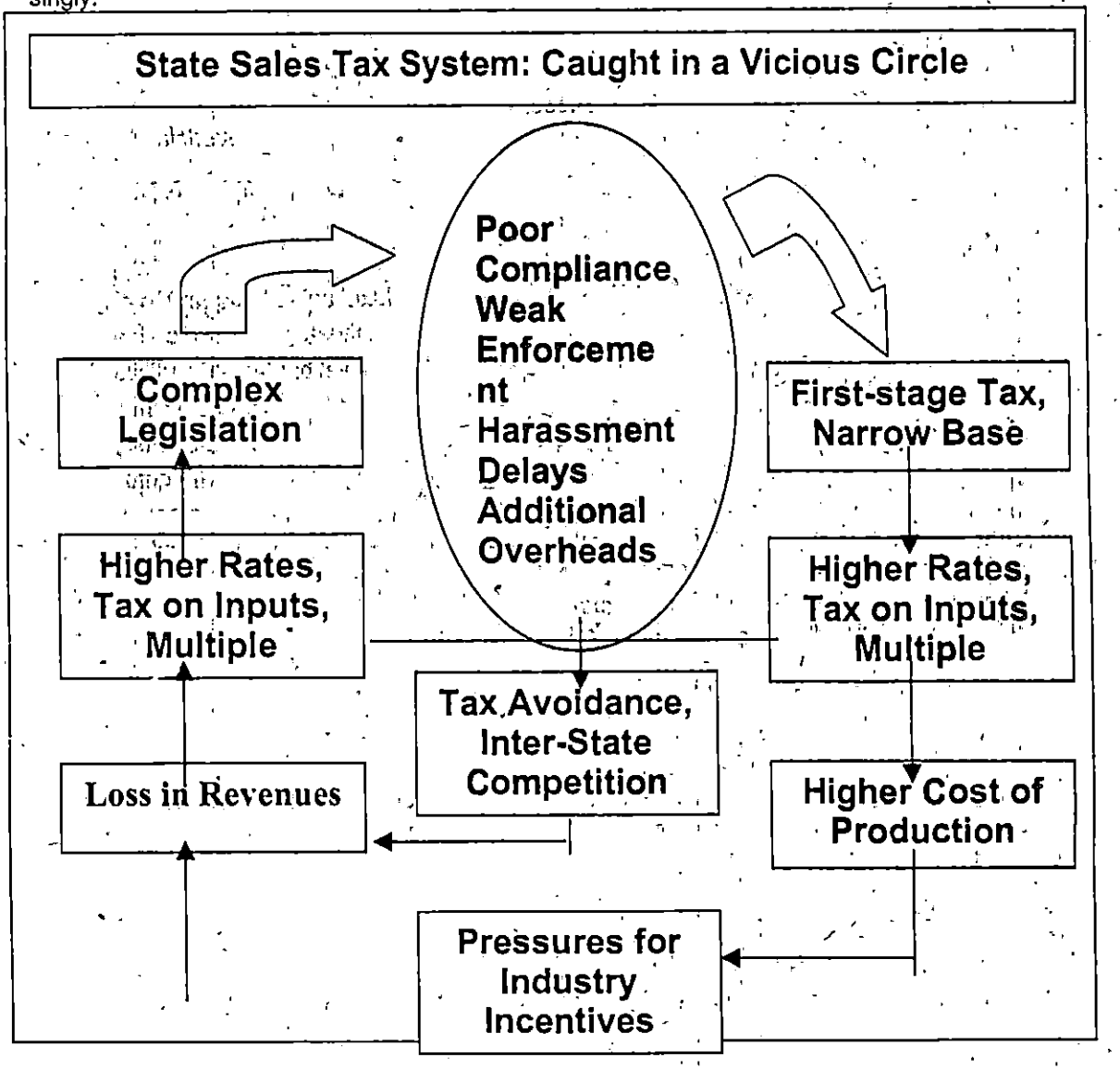
7.36 Committees in the past have pointed out the high burden of taxation on vehicles *per se*, as well as on the operating cost. *The Road Transport Taxation Enquiry Committee* (GOI, 1967) indicated that for vehicles, "in all 43 per cent of the ex-factory price or 34 per cent of the final price for the consumer goes for taxes and duties". Such a calculation did not take into account the tax element in the cost of materials out of which truck bodies are made. Taking into account all elements, the study by NCAER (1979) found the burden to be around 65 per cent. As for the tax element in the operating cost, the *Road Transport Taxation Enquiry Committee* (GOI, 1967) came up with a figure of 35.2 per cent. The NCAER's figure was higher at 42 per cent. The corresponding figures for UK and US were 5 per cent and 17 per cent respectively, in the early sixties. Our own estimate of the tax burden in the price of the vehicle is 31 per cent, and in operating costs the figure is 56 per cent. A high tax burden would naturally affect competitiveness of our products. While it may not be reasonable to expect this burden to come down to levels obtaining in the advanced countries, rationalization should necessarily lead to efficiencies (Newbery and Stern, 1987, Ray, 1993). While it is expected that the adoption of VAT on a much larger scale than at present would reduce the cascading effect to some extent, there is a widespread feeling that the burden would continue to be substantial.

Overview of Tax Litigation

7.37 The litigation figures are an example of the inefficient tax administration in States. As in the case of Union Excise, the complex and irrational structure of the sales tax system has created a huge backlog of unresolved disputes before the appeal authorities and courts. The number of cases pending for decision before the appeal authorities exceeded 57,000 in one State alone (West Bengal). Even in a relatively small State like Kerala, over 20,000 cases

were reported to be pending for adjudication before the Appellate Tribunal only[35]. In the National Capital Region of Delhi, nearly 40,000 cases were pending before the appellate authorities at the end of 1991-92, whereas the total number of registered dealers was no more than 119,243. It speaks ill of the tax administration system where assessments are disputed on this scale and remain undecided for long periods. In commodity taxes in particular, such litigation creates uncertainty in incidence for years together. When the cases are finally decided, problems arise in the implementation of judgements. If they go in favour of the assessee, refunds can lead to 'undue enrichment', while adverse judgements cause problems to assessees as they cannot recover the tax from their customers.

7.38 The following figure is a schematic presentation of the systemic mess in the taxation system. The starting point in the vicious circle is the poor compliance by taxpayers and weak enforcement of tax laws by administrators. The enforcement may be weak because of administrative inefficiencies, and also because of the prevalence of corrupt practices. These factors lead authorities to impose tax at the first point of sale. The narrow tax base at this point necessitates higher tax rates, extension of tax to business inputs with nil or only partial rebates, and experimentation with supplementary taxes in the form of surcharges and turnover taxes. The higher rates and the cascading lead to increased tax avoidance and inter-State competition, thus creating pressure for industrial incentives. These forces further undermine revenue potential of the tax system, and elicit policy response in the form of yet higher rates, supplementary taxes, ad hoc adjustments and even more harmful taxes like the octroi and entry tax. The result is more and more complex tax structures, which can only worsen compliance and enforcement. The problem with sales tax systems have become so acute and intractable that little room is left for maneuvering on the part of any individual State singly.



7.39 MODVAT and VAT will rationalize the commodity taxation system to some extent. But transportation equally suffers from the tax levied on motor vehicles under the Motor Vehicles Act. Various committees set up by the Government of India have proposed considerable changes in the motor vehicle taxation system.

Rationalization of Motor Vehicle Taxes

7.40 In view of the varying structure of base, rates, nature and the types of taxes levied in different States, it is important that we aim at a tax system which is: (i) neutral, (ii) efficient in allocation of resources, (iii) administratively expedient and (iv) avoids cascading. Keeping these objectives in view, we present below possible reforms in the rate, the basis and the types of taxes mentioned above.

7.41 The first attempt at rationalization of motor vehicle taxes was made by the government on receipt of the report of the *Indian Road Development Committee* (Jayakar Committee) in 1927. The committee had suggested: (i) compounding of local taxes into one Provincial Tax and (ii) abolishing of tolls altogether. Following these recommendations, tolls were abolished in most States on private cars, but were retained on commercial vehicles. Other committees set up included the following.

(i) Motor Vehicle Taxation Enquiry Committee (1950) (Dalal Committee)
(ii) Road Transport Reorganisation Committee (1959) (Masani Committee)
(iii) Committee on transport Policy and Co ordination (1966) (Tarlok Singh Committee)
(iv) Road Transport Taxation Enquiry Committee (1967) (Keskar Committee)
(v) National Transport Policy Committee (1980) (Pande Committee)

7.42 Briefly, all the committees have stressed that the approach to motor vehicle taxation should foster development of the road transport sector. These committees have also highlighted disparities in the basis and rates of taxation in different States, multiplicity of taxes, etc. They have unanimously recommended major simplification in the tax procedures and have favoured single-point taxation, especially in the case of inter-State traffic. With regard to the issue of uniformity in the rates of taxes prevailing in different States, there are elements of similarity, though the emphasis differs. While the Tarlok Singh Committee recommended that the taxation of motor vehicles throughout the country should be regulated by the central government, the Pande Committee pointed out the need for uniform basic rates between States, so that the incidence of taxation in the neighboring States is comparable.

7.43 No action has been taken by the government for introducing reforms in the area of motor vehicle taxation. The AITD Steering Committee observed that operators were particularly irritated over inter-State variations in tax rates and the procedure for collection. The representatives of the All India Motor Transport Congress and other transport associations suggested that the existing system of granting national permits with endorsement of different States should be abolished and that there should be only two categories of permits; inter-State and intra-State permits. Generally a truck operator seldom moves out of a particular zone, his operations are restricted to three or four States. Loading/unloading operations do not take place in all States. As such, payment of equal amount of tax for all States seems illogical.

Proposals for Rationalization of Motor Vehicle Taxes

7.44 The AITD Steering Committee concluded that the present system of motor vehicle tax needs to be streamlined/rationalized. Different rates of MV tax in different States have created imbalances in the economy, giving rise to unhealthy competition among States. This needs to be checked through legislative measures. The various recommendations for rationalization of taxes can be grouped under the following heads.

Uniformity in Tax Structure

7.45 Lack of uniformity in motor vehicle tax causes diversion of vehicle registrations to States where the tax rate is low. One possible method is that rates are fixed by the Central

government instead of by State governments. This would, however, require amendment of the Constitution, transferring the subject from the State list to the Central list.

7.46 Considering that State governments have limited avenues for raising resources, which include sales tax, land revenue and MV tax, the takeover of the power of taxation by the Centre is expected to encounter strong opposition by States. Even if one considers only inter-State operations for purposes of uniformity, one has to appreciate that a large number of commercial vehicles registered for inter-State operations also enter intra-State operations, making it difficult to segregate the two operations. As such uniformity, in motor vehicle tax, although desirable, may not be practical in a federal system. Therefore, efforts should be made to at least bring parity of tax rates in neighboring States, so that the problem of diversion of registration of vehicles from one State to another is resolved.

Uniform Basis for Levying Taxes

7.47 There are different practices with regard to the basis of motor vehicle tax in various States. This has created problems for transport operators. There is need for a general agreement between States on the following uniform norms.

(i) Stage carriages have different seating capacities and sizes. For these vehicles, the norm could be the seating capacity, along with the authorized number of standees.

(ii) Contract carriages are required to be addressed as a whole; hence a lumpsum tax depending on the registered seating capacity of the vehicle would be suitable.

(iii) Small vehicles, that is, those that are used on a hire basis like taxis and 3-wheelers, should have a flat rate for the sake of convenience of making payment.

(iv) In respect of goods vehicles that are expressed in terms of GVW, the basis for levy of tax should be the GVW recorded in the registration certificate of each vehicle. Such rates would also be applicable to the trailer, independent of prime movers. When any truck is independently registered, the rate of tax should be based on its maximum propulsion capacity. A suggestion has been made that the MV tax must be ad valorem. The reasoning is that to have buoyancy in the tax system, it would be useful to resort to a tax system that is based on the cost of vehicles, with an additional factor of occupancy or length of routes or goods dispatched. However, this may result in higher taxes on multi-axle vehicles that ought to be taxed somewhat lightly relative to two-axle vehicles. For example, the excise duty structure may provide an incentive for purchase and use of MAVs and articulate vehicles. In line with this, excise duty on MAVs may be reduced to levels that were prevalent before 1996. Further, the MV tax should also provide incentives for possessing such vehicles.

(v) In respect of goods vehicles operating under the national permit scheme and tourist vehicles under the all India Tourist Permit scheme, the basis for tax should continue to be a composite fee in lieu of all taxes payable per plying State/UT, as is the system at present.

Combined Road Tax, Passenger Tax, Goods Tax, Etc.

7.48 Rajasthan and Andhra Pradesh have already amalgamated various taxes successfully. This has helped in reducing costs of collection and has also led to saving in time for vehicle owners. More importantly, tax revenues realized have not suffered after such amalgamation. Such experiences should be replicated in other States.

One-Time Tax

7.49 At present, some States have one-time MV tax on personal vehicles. This has advantages in terms of saving time, as also in the cost of handling the tax administration. The system of one time tax payment was examined by the AITD Steering Committee in the context of tighter emission norms announced by the government. These norms are applicable to new vehicles. There are no norms for on-road vehicles, which contribute substantially to air pollution. It is understandable that the government is considering the introduction of an effective Inspection and Maintenance Programme for on-road vehicles to check emission-related aspects. At present, revalidation of the fitness certificate of a vehicle is required after

15 years. Keeping in mind the need for emission control, one of the AITD recommendations was that the renewal of fitness certificate for non-transport vehicles should be mandatory after 5 years and subsequently after every 3 years, so that inspection is done on a regular basis after a reasonable interval of time. In case of transport vehicles, renewal of fitness certificate should be on annual basis. Accordingly, one-time tax payment will need to be modified to suit the proposed Inspection and Maintenance Progamme.

Local Taxes

7.50 As for local taxes, these too vary significantly from State to State. Octroi is still in place in some States, including more progressive ones like Maharashtra. Despite recommendation for its abolition by almost every committee set up to examine road taxation in the past, the recommendation has not found favour on the plea that octroi gives access to funds on a day-to-day basis. This would not be possible with an alternative like local sales tax. This is not a compelling argument. Rajasthan has done away with octroi. Some States levy an entry tax as a substitute for octroi. This is an account-based levy, collected as per cent of turnover. The yield from entry tax has shown much higher growth than sales tax revenue of the State concerned. In Karnataka, for example, the revenue from sales tax has increased at a rate of 20 per cent, while the yield from entry tax has increased by 35 per cent. The growth of revenue from entry tax in Madhya Pradesh has also been impressive.

7.51 It was reported by the All India Motor Transport Congress that a truck travelling in 4 to 5 States, spends on an average Rs. 10,000 to Rs. 15,000 towards levies of local bodies in a month (about 4 to 5 trips).

Lease Tax

7.52 The State governments should seriously consider withdrawing lease tax levied on pure financial transactions of commercial vehicles. Similarly sales and turnover taxes levied on transitions under hire purchase and lease of vehicles must be withdrawn. These measures will give a boost to the leasing of vehicles.

Cap on Tax Burden

7.53 The present high burden of tax at 31 per cent on the price of the vehicle and 56 per cent on its operating cost affects the competitive position of products. It is essential that measures should be taken for rationalization of taxes so that the tax burden is limited to between 15 and 20 per cent.

Single Agency

7.54 A single agency should be entrusted with the task of collecting the MV tax, the passenger/goods tax and even fees for national permits. This will greatly reduce the time spent at different counters set up for the purpose.

Pollution Abatement Incentives

7.55 Considering the high concern for pollution control, some incentives could be built into the tax system for promotion of non-polluting vehicles. The structure of tax on motor vehicles in most countries follows differentiation on the basis of fuel use or catalyst or use of leaded or unleaded petrol. It is therefore, recommended that built-in fiscal incentives be promoted for pollution abatement.

Incentives for Attaining Policy Objectives

7.56 Motor vehicle taxes could be used to encourage the plying of multi-axle vehicles (MAVs). It is common knowledge that overloading of 2-axle vehicles causes excessive damage to roads. Transportation of heavy loads without causing excessive damage to road pavements can be best achieved by using MAVs, as these can distribute the load on more

axles, thereby causing comparatively less damage. Besides, these vehicles are fuel efficient, economical and eco-friendly.

7.57 Tax policy can also be used to achieve noise reduction and higher revenue from expensive vehicles. The tax rate can be inversely related to noise pollution and positively to the value of vehicles, exceptions being made in the case of MAVs.

Levy of Entry Tax

7.58 There is diversion of sale of vehicles and payment of motor vehicle taxes to States where the rate of sales tax is low. At the time of registration, entry tax should be levied to equalize the amount of MV Tax. This will discourage people from registering in a State where the rate of sales tax is low.

Evolving Principles of Taxation

7.59 Entry 35 in the Concurrent List requires the government to lay down the principles of taxation. However, no attempt has so far been made, either by the Central government or by State governments to implement this. Considering the burden of MV taxes on commercial vehicles, there is a need to lay down principles for taxation to serve as guidelines to States when they decide on tax rates. Various reports of expert committees set up by the government in the past have enunciated some general principles.

To give due consideration to the capacity to pay.

To ensure reasonable rate of return for the operator and to provide funds for growth and expansion.

To evolve parity in tax structure between States.

To make sure that the amount of tax is related to the cost of operation, fuel and freight rates, vehicle utilization, road construction programme etc.

To bring down the number of taxes to the minimum, by combining two or more taxes, such as passenger and goods tax.

To set up a single agency for collection of various taxes.

The AITD Steering Committee recommended the setting up of an independent central authority; its functions were to include laying down principles for taxation.

Inter-State and National Permits

7.60 Vehicles that operate within a State must obtain a permit by paying the motor vehicle tax of the State. Where vehicles operate in more than one State, there are two broad categories, (i) counter-signature permits and permits under reciprocal agreements, and (ii) national permits introduced by Government of India in 1975 for movement between the home State and three or more other States.

7.61 In the case of the counter-signature permit, the operator is required to pay the tax of the home State as well as the tax of the other State. For national permits, he pays the tax for the home State and also provides demand drafts at the rate of composite tax for each of the other States. Transport Development Council recommended that UTs and small States should charge composite tax of Rs 3000 and larger States Rs. 5000 for each State other than the home State, on a uniform basis. In practice, this recommendation has not been followed by most States. Also, there is considerable delay in forwarding demand drafts to concerned States. This creates problems of revalidation of drafts, as well as arrears of revenue due to non-realization of drafts in time.

7.62 The AITD Steering Committee suggested that inter-State permits and counter-signature permits or reciprocal agreement permits should be abolished. There should be national permits for all inter-State operations. This will have the following advantages:

(i) The time consuming process of issuing counter-signature permits will be removed.
(ii) Payment of MV tax by the operator at one counter will save time.
(iii) This will protect the interests of operators who ply in less than three States.

The AITD Committee also recommended a telescopic fee structure for inter-State permits.

Payment Arrangements for National Permit Fee

7.63 As already mentioned, vehicles covered by national permit authorization are required for 3 or more States apart from the home State, and motor vehicle tax has to be deposited through bank drafts. The drafts of the composite fee are deposited in the permit issuing transport office, and such drafts collected during the month are sent to the Transport Commissioners of the concerned States. There is however delay in forwarding the drafts by the home State and receiving these drafts at the headquarters of the concerned State, creating the problem of revalidation of drafts, as well as arrears of revenue due to non-realization of drafts in time. To remove such difficulties, the AITD suggested that the payment for composite tax should be made in authorized banks in favour of the State concerned. Besides, it should be the bank's responsibility to transfer the payment to the account of the concerned agency and transfer the payment to the account of the concerned State.

Chapter 8: Other Barriers in Trucking Operation

8.1 The preceding sections have highlighted regulations and tax related barriers. But free flow of commerce is obstructed due to a variety of other reasons. Logistics, paper formalities, etc. are scores of other impediments, which consume lot of time and cause excessive delays. Any obstruction in the movement of goods leads to an increase in cost, whether it is on account of taxation, regulation or inefficiency. Such barriers are basically fundamental to the systemic framework, and are also responsible for frequent delays and stoppages. For example, the complex paperwork required with the consignment and fixing responsibility for any mistake.

Complex Paperwork

8.2 There are almost 58 forms contained in the Central Motor Vehicles Rules, 1989. In all, 186 different kinds of basic information are collected by the various transport departments of States and Union Territories. The forms are usually not user friendly and much of the information required to be filled-in is repetitive in nature. The entire range of forms (1-58) suffer from redundant information. For instance, every application for issue of learning license shall be accompanied by a medical certificate in Form 1-A. An application for a medical certificate (Form 1) contains the applicant's declaration pertaining to his/her physical fitness. The information sought in Form 1A under item number 3 is a repetition of the information sought in Form 1. Moreover, once physical fitness of the applicant is certified by the competent authority (Medical Officier), the applicant's declaration in this regard does not serve any purpose. The applicant address is classified into permanent address, temporary address, official address, etc. Sub-classification of the applicant's address leads to unnecessary complications and does not serve any specific purpose. Likewise, both the date of birth and age of the applicant have to be furnished in many forms. Form No. 2, Form No.4 and Form No. 6 contain details of vehicle classification as motor cycle with or without gears, invalid carriage, light motor vehicle, heavy motor vehicle, medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle and heavy passenger motor vehicle, with the intention that the applicant should tick mark one of the vehicle categories.

8.3 There are other such discrepancies in all the Forms, from 1-58. There are scores of other forms related to goods, C-Form for Central Sales Tax, Form 31 and 32 for Entry and

Exit Permit in Uttar Pradesh. Each State has its own set of forms related to vehicle movement and commodity transported. Complexity in paper work can be translated into costs and such costs ultimately increase the operational/transaction cost indirectly. Annexure 1 shows the multiplicity of data required in various forms. Annexure 2, which is indicative, shows how this multiplicity of information can be collapsed into a single form. This can be submitted in advance, even electronically, before a truck reaches a check-post. And in such instances, clearance at the check-post can be automatic. Such smart forms and smart cards will eliminate barriers to movement for 90 to 95% of trucks and detailed scrutiny will only be necessary in 5 to 10% of cases. Such attempts have been successfully experimented with in countries like Hong Kong and Singapore. A necessary pre-requisite for such experiments to be successful is removal of the present policy-induced cum legislative bias in favour of small truck companies and single-truck owners. Large companies will not only improve the lot of drivers, as they have in countries like the United States, they will also make trucking operations more efficient by exploiting economies of scale and make financing easier.

Complex Practices

8.4 A buyer in Lucknow has made a purchase from Mumbai. Any goods entering Uttar Pradesh must be accompanied with Entry Permit - Form 32. Form 32 requires basic information to be filled in with regard to the consignment, for example, nature of the commodity, name and address of the seller, total amount of goods in terms of quantity and value, name of the transporter, registration number of the truck, date of despatch, etc. The buyer at Lucknow is supposed to fill in the form and send it to the supplier at Mumbai so as to enable the Entry Permit Form 32 to accompany the consignment. It is practically not possible for the buyer at Lucknow to know the name of the transporter and the truck number that will be carrying his consignment to Lucknow at the time of purchase. So as part of the deal, the buyer sends a blank Form 32 to the seller at Mumbai so that it can be filled in appropriately. It must be ensured that no cutting or eraser is used on the form.

8.5 The seller at Mumbai fills the document with requisite information regarding sales, but still leaves the form incomplete because he prefers to transport the consignment through a transporter, who can despatch the consignment for Lucknow on an immediate basis. Thus, the supplier sends the incomplete form to the Booking Agent. The Booking Agent identifies the transporter and sends the necessary receipts along with an incomplete Form 32. This is understandable because he is not aware of the truck number, which will carry the goods.

8.6 On the transporter's premises, the person responsible for loading and unloading is the supervisor for a big company and a driver in the case of a small company. Nevertheless, the transport supervisor inspects loading of the cargo and hands over the papers to the driver. The driver fills the requisite details in Form 32 to the best of his abilities. Thus, at the end of a transaction, the entry or exit permits are essentially filled by drivers, rather than purchasers or sellers, because of the informational requirements. If the driver has made some mistake or his entries are illegible in Form 32, the truck will be detained at the Uttar Pradesh border, say Ghaziabad. Eventually the purchaser will have to come to Ghaziabad and take up the usual recourse of 'dispute resolution' to allow the consignment to travel to Lucknow. In the entire chain of events, the purchaser suffers for no fault of his. The seller suffers in terms of payment delays. The transporter suffers because his vehicle is out of business. The driver suffers in terms of detention. In reality, the fault lies in the form or in the type of information required in the form.

8.7 This is a common phenomenon for all such types of forms. For instance, the purchaser sends an incomplete C-Form as part of the essential requirement of an inter-State transaction to the seller, so that the seller can include usual discounts and commissions in the total value of goods that need to be shown for tax purposes. Likewise, there are other discrepancies in forms that accompany the receipt and consignment.

Law & Order

8.8 The pervasive effect of the poor law and order situation is also seen in the transportation of goods. Frequent looting of consignments on the way is one such example. But more alarming is the phenomenon of 'chakka' jam practices that is gaining large acceptance. Frequent 'chakka' jams on the national highways are increasingly impeding. By the time law enforcement agencies arrive on the scene, there are long queues of motor vehicles. For example, a 'chakka' jam on NH-2 due to a hit and run case resulted in blockade of traffic for more than 8 hours. The blockade ended when the local authorities agreed to pay compensation to the family. Such incidents are becoming too frequent on our national highways.

8.9 Traffic movement also suffers on account of bandhs and strikes. In the last year, NH-28 was closed on fourteen occasions for about 4-6 hours because of bandhs and strikes called by various political parties. Success of bandhs or strikes is measured in terms of traffic closed on highways or railways. But restoring the traffic movements on major highways after a bandh call can further delay smooth movement of traffic by almost 5-8 hours. All such stoppages on the highway can be easily avoided if the law enforcement agency is efficient and effective.

8.10 Another example of weaknesses of the systemic framework is that all barriers and check-posts are not at one location. Each department has its own scantily manned check-post at more than one place. But more than that, civic authorities in major townships have banned the movement of heavy goods carriers between specific working hours for safety reasons. In the absence of bypasses in the road network, if a truck has to pass four such cities on its way to the final destination, this can result in stopping the vehicle for more than 8 hours, depending on the time of arrival at the first crossing. The prohibition stands valid for all heavy traffic movement, whether the goods are going to be unloaded in the city or just pass to some other destination. In both cases, the vehicle is detained.

8.11 Then there is harassment by police and RTOs. The highway police units are supposed to ensure smooth traffic flow on highways and take immediate action in case of accidents, traffic jams, road-robberies etc. But the AITD survey revealed that the police and RTOs play an exactly opposite role. The town police, and even the rural police at outposts, stop trucks with the help of wooden barriers or barrels at night hours and demand money. As mentioned earlier, regular drivers are well acquainted with these practices and they even know the exact locations and 'working hours' of these squads. As a result, they adjust their driving hours to avoid confrontation with these squads as far as possible. As a consequence, they eventually over speed to cover the time and backlog or to pass a certain place before certain hours. This practice is dangerous from the safety point of view. The RTO check-posts en-route mainly function as revenue collection centres for individual benefits rather than for State exchequers. Overloading is openly allowed in Maharashtra and Gujarat at Rs. 100 per MT, without receipt. In Haryana, overloaded trucks are allowed at Rs. 150 per MT, with a receipt issued by the Commercial Tax Department, wherein it is specifically mentioned that this receipt has nothing to do with any action that may be taken for overloading under the MV Act or any other Act. Mechanical tax collection in Orissa is about Rs. 800 per vehicle per calendar month or part thereof.

An Observation

8.12 In general, the road conditions are poor, barring a few stretches. The worst road conditions are in Bihar, where the surface is totally washed out and has been in that condition for several years. Road makings and traffic signs are almost non-existent, with a few exceptions. The AITD survey team observed as many as 30 accidents on NH-2 in Bihar, including a few head-on collisions due to drivers trying to avoid pot-holes while in speed. Several overturned vehicles and those with broken axles and spring assemblies were also observed. In every city/town en-route NH-2, ribbon development of habitats and other commercial activities was observed. Slow moving vehicles like bicycles, scooters, tongas, auto rickshaws as well as pedestrians were seen to be mingling with the through traffic.

Chapter 9: Costs and Rewards

9.1 The usual impression is that the truck business is lucrative. A single truck operation in one year can add another truck to the fleet. Costs and rewards in truck business need to be judged on the basis of their compliance with the tax and regulatory regime. In terms of costs, the transportation sector confronts a variety of direct and indirect costs. For instance, transportation activities have significant environmental, social and economic impacts. Sustainability planning and cost impact analysis requires consideration of all these impacts. But current transport-related planning focuses on a few impacts, particularly the quality of vehicle traffic (roadway level of service, congestion delay, average traffic speeds). This assumes that public resources should be allocated to transportation improvements based on current travel behavior, and that the problem with motor vehicle traffic is that there is not enough of it. This directs investments towards highway improvement, to accommodate growth in vehicle travel, rather than development of better forms of access.

9.2 Current planning and investment practices over-emphasize highway capacity expansion. Such objectives tend to contradict other sustainability goals by leading to more automobile dependent transportation and land use patterns. Increasing the capacity of congested roads tends to reduce two costs (congestion delays and vehicle costs), but increases many others over the long term, as indicated below.

9.3 Overemphasizing highway capacity expansion rewards high-mileage drivers at the expense of people who drive less than average or not at all. Rather than simply measure a transportation system's ability to move vehicles, a more appropriate index is based on "mobility," that is, the movement of people. But as far as goods transportation is concerned, increasing the highway capacity is an integral part of transport planning. However, mobility is an inadequate index, since it implies that movement is an end in itself rather than a means to an end. The best transportation indices focus on "access," the ability to reach goods, services, activities and destinations. Access can often be achieved with reduced movement, for example, by telecommuting to work, by improving delivery systems, removing regulatory and other barriers, and through land use changes that reduce the distances between residences, employment and services. Traffic congestion can exacerbate other costs (accidents), road and parking facility costs and some types of environmental-related costs.

9.4 To estimate in terms of costs and rewards it is essential to break up the entire delivery process into four stages, namely, Stage-1: Loading, Stage-II: Journey Time, Stage-III: Stoppages & Delays, Stage-IV: Unloading and Return Journey.

Transportation Costs Affected by Increased Roadway Capacity

Costs Reduced by Increased Road Capacity	Costs Increased by Increased Road Capacity
Goods Transport	Passenger Transport
Congestion delays and vehicle costs	Total vehicle costs
	Parking
	Road facilities
	Accidents
	Air pollution
	Resource externalities
	Waste disposal
	Barrier effect
	Municipal service costs
	Land use impacts
	Water pollution
	Roadway land
	Noise
	Equity & option value

Stage-1: Loading

9.5 The AITD survey revealed that the goods carried were loaded through brokers by paying lump-sum amounts as commission. Taking the example of a Mumbai-Delhi journey, it was found that the truck was overloaded. It was also reported that the total loading time is approximately 1/4th of the total trip-time. A similar finding was also observed for loading/unloading on Delhi-Calcutta and Delhi-Chennai trips. This was mainly because of long queues for loading, specific hours to access warehouses under municipal limits, etc. The longest waiting time in queues for loading a consignment was around 32 hrs, inside the plant during the Chennai-bound trip. No compensation is paid to the truck owner for such delays. Loss in terms of working hours in loading can vary between 24-48 hours.

Stage-II: Journey Time

9.6 It is difficult to estimate approximate journey time for major locations, because of high degree of uncertainty on the highway. There are various reasons for stoppages, it can be regulatory, maintenance, etc. But occasionally, it can be also related to the poor law and order situation. Truck operators with long term arrangement with various official agencies (monthly rent paid to the agencies for trouble free trip) rarely get their trucks detained. There are also instances when the truck driver, as a regular visitor, has cut out deals by paying a paltry amount at the check-posts. Such instances are common for short-distances or movement between one or two States. On long distances, such arrangements cannot be worked out, because of the interplay of a wide variety of State departments. Therefore, the focus is on the driver to pay and move, in cases where the firm has not been able to cut out a long-term deal with the official agencies.

9.7 In the light of the above, the following trip time based on the AITD field survey may have some limitations. But it can indicate a general pattern of trip time.

Distribution of Trip-Time by Activity

9.8 Total trip time and its distribution into actual moving time and halting time, as well as further break-up of halting time for different reasons, is as follows.

Table 1: Distribution of time by activity (% to total trip time)

Activities	Mumbai-Delhi	Delhi-Calcutta	Calcutta-Chennai
Total Trip Time (Hrs.)	62.5	89.5	142.5
1. Moving time	69.2	54.4	38.0
2. Total halting time	30.8	45.6	62.0
3. Loading/Unloading	7.5	24.8	25.3
4. Getting Papers/Advance etc.	7.1	0.5	-
5. Octroi, RTO & other check-posts	4.8	2.4	1.8
6. Diesel top-up & mechanical attendance	2.9	0.4	3.8
Meals/Snacks/Bath & Rest	8.5	17.5	31.1

9.9 The percentage of actual moving time to the total trip time was 69.2 per cent, 54.4 per cent and 38.0 per cent for Mumbai-Delhi, Delhi-Calcutta and Calcutta-Chennai routes respectively. The comparatively lower percentage of moving time for Calcutta-Chennai trip is noted, because the percentage of time spent for rest and meals, etc. during the Calcutta-Chennai trip is higher than the first two trips. This is essentially due to single driver operations. Total trip time of 142 hour and 30 minutes is also high for this trip due to the same reason.

9.10 Contrary to perceptions, the AITD survey shows that the percentage of halting time at different check-posts is between 2 per cent to 5 per cent of the total trip time. On the basis of personal interviews, many drivers rejected this observation. Some of the reasons attributed

for this anomaly are a single time observation on each route, regular drivers operating, and a lopsided field survey biased in favour of large firms who had established close relations with check-post staff and were well acquainted with short-cut ways of getting clearances easily.

9.11 It may not be out of place to mention that all the drivers of these three trips knew the timings and locations of RTO flying squads in different States en-route and thus successfully managed to avoid their encounter on many occasions. This is stated in the AITD survey report.

Average Speeds Observed

9.12 The following table shows the overall average of each trip, based on the actual moving time only. There is no significant variation in the average overall speed per hour for the three routes. However, further analysis of speeds attained in different States shows wide variation between 17.33 km/h in Maharashtra to 22.05 km/h in Bihar and 50.50 km/h in Haryana. The reasons for this were found to be heavy traffic congestion, poor road surface and even surfaced and wide roads in Rajasthan and Haryana. The hours at which these distances were covered also played an important role, for example, at night roads are almost free of local traffic and other activities.

Table 2: Average Speed in Different States

	Mumbai-Delhi	Delhi-Calcutta	Calcutta-Chennai
Average speed (Kmph)	33.05	30.64	34.13
	MAH- 17.33	HAR –50.50	WB- 29.35
	GJ- 33.33	UP-36.20	ORS- 30.91
	RJ- 44.17	BH-22.50	AP-37.65
		WB-32.20	TN-37.65

Driving Spell

9.13 The details of driver-wise spells during the trips along with actual steering duty hour in each spell and number of halts during each spell, with time spent in such halts is shown below. This is based on the AITD survey.

9.14 Though there were two drivers, the steering duties were not uniform for both of them. The main drivers shouldered the lion's share of driving, whereas the second driver was utilized more or less like a reliever. The steering duties of main drivers are well above 10 hours (even up to 15hrs - 45 min), with a gap between two consecutive duties ranging between 2 to 6 hrs only. The survey also revealed that the second driver was 19 years old and did not have a valid heavy-duty license. Therefore, he only drove during the stretches that were considered safe.

Stage-III: Stoppages & Delays

Vehicle Conditions & En-Route Maintenance

9.15 The trips from Mumbai to Delhi and Delhi to Calcutta were covered by Tata-make LPT vehicles with high-sided wooden bodies (called Punjab body). The Calcutta-Chennai trip was done by Ashok Leyland CS 1611 model with semi high-sided body. The cumulative kms done by these trucks were 2.90 lakhs, 0.03 lakhs and 0.44 lakhs respectively. The tyre conditions were good, except for the Chennai-bound vehicle. The rear left pair of tyres fitted on this vehicle was almost worn out and the stepney tyre was fitted with nuts and bolts on the side-walls. It was observed that due to the high-sided wooden body and extended and bad road conditions, the unladen weight of these vehicles was higher as compared to the half body trucks typically operated in Central and South India. This resulted in restriction of payload capacity to around 9 MT only, as against 10 MT for the South Indian vehicles. However, from the safety point of view, the high-sided body was much better. Regarding

preventive maintenance norms followed, it was observed that nipple greasing was done every 500 kms intervals. Engine oil top-up was not done during any of the three trips en-route. Tyre pressure was checked from time to time, whenever the vehicle halted for any reason and even during traffic jams. All the vehicles were fitted with additional air-pressure horns, with an option of switching over to regular electric horns to be used only in cities.

Table 3: Driving Spell (Mumbai-Delhi)

Driver	Steering Duty (Hours-Min)	Gap Between Consecutive Spell (Hours-Min)	No Of Halts. Time (Hours-Min)	Total Halting (Hours-Min)	Rest Time During Halts (Hours-Min)
I (Main)	7-00	-	1	0-35	0-20
	12-30	4-30	2	1-25	1-25
	15-45	6-55	5	2-05	1-20
II (Second)	4-15	-	1	0-15	0-15
	7-30	7-00	2	1-00	1-00
	9-25	12-45	2	1-30	1-00

Table 4: Driving Spell (Delhi-Calcutta)

Driver	Steering Duty (Hours-Min)	Gap Between Consecutive Spell (Hours-Min)	No Of Halts.	Total Halting Time (Hours-Min)	Rest Time During Halts (Hours-Min)
I (Main)	1-20	-	1	0-20	Nil
	13-05	2-25	2	2-05	1-40
	7-20	4-25	1	0-15	0-15
	10-25	6-20	3	1-25	1-10
	13-45	5-15	4	6-20	3-05
II (Second)	2-20	-	1	0-45	Nil
	1-55	14-35	Nil	Nil	Nil
III (Cleaner)	1-50	-	1	0-20	0-20
	4-15	NA	Nil	Nil	Nil
	5-15	NA	Nil	Nil	Nil

En Route Expenditure

9.16 The total en-route expenditure incurred for the three routes and its percentage distribution under different heads is given below. A further break-up of official and unofficial expenses towards official agencies and octroi, etc. are also shown in terms of percentages.

Table 5: En-Route Expenses Incurred

	Mumbai-Delhi	Calcutta-Delhi	Calcutta-Chennai
Total en-route Expenditure	Rs. 8100	Rs. 6550	Rs. 7500
Distribution of Exp. (% of total)			
1. Diesel & Oil	51.85	64.12	65.83
2. Crew Expenses	7.41	7.63	9.33
3. RTO & Police	29.88	6.71	9.08
Official	(24.8)	Nil	(54.4)
Unofficial	(75.2)	(100.0)	(45.6)
4. Octroi & other taxes			
Check-post Exp.	1.05	3.66	3.34
Official	(29.4)	(12.5)	(Nil)
Unofficial	(70.6)	(87.5)	(100.0)
5. Toll fees	0.80	0.31	1.27

6. Broker's Commission	5.56	5.35	2.00
7. Loading/Unloading	2.22	12.22	3.79
Official	(83.3)	(100.0)	(71.4)
Unofficial	(16.7)	(Nil)	(28.6)
8. Others (Weighting, minor repairs, tyre puncture, etc.)			
Official	(30.0)	-	(89.6)
Unofficial	(70.0)	-	(10.4)

9.17 A major share of around 52 per cent to 66 percent of the total en-route expenses goes for fuel and oil. In case of RTO and police expenses, it was as high as around 30 percent for the Mumbai-Delhi route, of which, major expenses were unofficial. This was due to overloading of goods to the tune of around 4 tons in terms of GVW, though the actual overloading in terms of material carried was 3.5 MT. The RTO and olice expenses during the Delhi-Calcutta trip were entirely unofficial. The other unofficial expenses include tips given to loading staff, security personnel of dockyards and donations extracted by locals on the way for festivals and fairs, especially in West Bengal and Orissa.

9.18 The per km en-route expenses worked out to Rs. 5.12 for Mumbai-Delhi, Rs. 4.39 for Delhi-Calcutta and Rs. 4.07 for Calcutta-Chennai routes. On the Mumbai-Delhi route, expenses on RTO/Police due to overloading were to the tune of Rs. 1.53 per km. The freight earned per km was Rs. 12.64, Rs. 11.40 and 7.50 for Mumbai-Delhi, Delhi-Calcutta and Calcutta-Chennai routes respectively. The higher freight rate of Mumbai-Delhi was mainly due to the 3.5 MT overloading, while that of Delhi-Calcutta was also comparatively high because it carried perishable commodities, that is, apples.

Other Observations

9.19 The AITD survey found that in every State, local drivers always tend to be aggressive. Haphazard overtaking, over speeding, cutting in immediately after overtaking, was normal. The same drivers, once they enter another State, become comparatively defensive. On two-lane carriage-ways, everybody tries to be in the center of the road and while passing oncoming vehicles, reluctantly switches to the left by just a few inches. Lathi-charge on the on-coming vehicle's front glass to get right of way was also witnessed in Gujarat.

9.20 It was also observed that there was no particular schedule followed by truck drivers. As mentioned earlier, in case of double driver operations, there was hardly any halt for rest. Similarly, there were no particular timings for meals/bath etc. As result, meals at odd hours were a common phenomenon. It was also observed that during the journey, the crews normally take minimum food so as tc avoid drowsiness etc. It may be worth mentioning that the survey team witnessed drivers taking naps at the wheel, lasting 5 to 10 seconds, particularly towards the end of long driving spells, when stretched beyond 10 hours.

9.21 The topmost grievance of drivers is against harassment by police and RTOs. The highway police units are supposed to ensure smooth traffic flow on highways and take immediate action in case of accidents, traffic jams, road-robberies etc. But the AITD survey witnessed that the police and RTO play exactly the opposite role.

Delays: International Borders

9.22 Another survey by UN-ESCAP also highlighted the pervasive effect of delays in the free flow of goods from India across international borders, namely Nepal and Bangladesh. The delays at the borders may sometimes even be 7 days. As a result of this, the transporter suffers from additional waiting costs and movement of vehicle for the next trip. Usually, the cost burden at the border is estimated as US$ 1.5- 10 per ton, which is considerably higher than in most developed economies.

9.23 Such delays have an impact on prices of commodities and freight charges. Transporters also find high waiting time at the borders a major deterrent, because their vehicle is out of rotation from usual cycle of revenue generation. The paperwork is also quite complicated and enormous in cross-border movements by road.

9.24 The North East sector is supposed to be worst sector for transporting agencies because of various reasons, namely, difficult driving conditions and poor legal enforcement measures. At most places in the North East and Eastern sectors, various extremist organizations and mafias run an independent local government and extract movement fees from trucks. Thus, transporters have to shelve twice the amount for the safety of their truck and consignment, which is ultimately passed on to the consignee and consumer.

Table 6: Transport and Transit: Performance Indicators

	Time Delays (in days)			Costs (US $/ton)		
	Transit time	Border Crossing	Transfer Time	Transit Costs	Border Crossing	Transfer
Calcutta-Petrapole-Benapole-Dhaka (Road)	1.5 - 2	0.5 - 2	1 - 2	64	2 – 3	7 - 8
Kathmandu-Biratnagar-Calcutta (Road)	5 - 7	1.5 - 2	1 - 2	10 - 40	1.5 – 3	7 - 8
Kathmandu-Birganj-Calcutta-Haldia (Multimode)	5 - 7	3 - 7	NA	20 - 40	7.5 – 10	7 - 8
Patna-Hill-J.Bridge-Dhaka-Chittagong (Road)	10 - 15	1 - 3	0.5 - 2	8 - 10	5 – 10	7 - 8
Guwahati-Shillong-Dawki-Tamabil-Chittagong (Road)	6 - 10	0.5 - 2	0.5 - 2	NA	NA	NA

Stage-IV: Unloading & Return Trip

9.25 It is evident from the AITD survey that loading and unloading time is almost identical in most cases. But the identification of freight on the return journey is a matter of much concern, because the efficient growth of intermediaries (brokers) has not taken place. Unhealthy competition among these agencies has rendered the trade unattractive for new entrants. Both brokers and booking agents have no written document. They function by word of mouth, which often results in their dealing only with known operators. Thus, small firms suffer from partially loaded trucks on their return journey. It is also interesting to note that while the only liability of the broker is to ensure payment of freight charges by booking agents to the truck owners, nearly 74 per cent of brokers have complained of delays in payment. Thus, the transport owner suffers on two accounts, loss of revenue on his return journey and delay in payment for the first leg of the trip.

Rewards & Costs

9.26 Finance is a major problem plaguing the transport sector. Banks provide direct finance to the SRTOs under the Priority Sector Lending Scheme. This scheme is applicable to only those operators who do not own more than 10 trucks. This scheme has certain benefits in terms of interest rates, which range between 14 and 15 per cent.

9.27 Under this scheme, the category of borrowers includes a variety of other players like operators of taxis, autos, buses, carts, cycle rickshaws, etc. But for truck operators, banks usually grant loans for the purchase of chassis and not for bodybuilding, resulting in truck owners cutting corners in building bodies for the truck. Though banks are asked to follow a flexible approach towards margin requirements, they usually insist on 20-25 per cent of the total cost as margin requirement. The repayment schedule is set for three-five years, through monthly/quarterly installments. The high rate of interest on loans for the road industry is an

area of concern. Currently, around 90 per cent of commercial vehicles sold are on hire purchase/lease finance/loans. Hence, interest payment becomes a critical component of the operating cost while determining the operational feasibility of running the truck.

9.28 Working capital is a critical component. This is required to meet the day-to-day expense on diesel, salaries, wages, rent and maintenance of assets. Besides, it also includes other hidden costs that are levied because of regulatory and other impediments. Proper costing is a precondition for estimating the proper working capital requirements. But the existence of a lot of grey areas in terms of rents at different places makes the cost estimation a difficult proposition. The amount of working capital is also dependent on nature and size of the business.

9.29 There are no set formulae for determining the working capital needs of an enterprise. Road transport is a high risk and low reward proposition. It is a service industry, where efficiency and size are not closely related to economies of scale. The share of total freight movement via road is almost 65 per cent. A hypothetical estimate of working capital required during a month for operating a two-axle vehicle between Delhi-Mumbai (to and fro distance 2800 km) is given in the box. It is assumed that a truck operates 3 round trips in a month and the average fuel consumption is around 3.85 kms per litre. On an average, Rs. 50,000 is estimated as the working capital required for three round trips.

9.30 The charges are Rs. 12,000 per trip to Mumbai from Delhi for a fully loaded truck. Thus, the total earnings from three trips are Rs. 72,000, resulting in an income of Rs. 22,000 per month. As far as economics is concerned, this is fair business in terms of returns. But there is a significant un-recovered fixed cost, which includes interest, cost of office, waiting time, etc. Single interest payment on a truck varies between Rs.10,000 and 12,000 per month, assuming the cost of an LCV to be around Rs. 3.5 lakhs and that of HCV around Rs. 6.5 lakhs. Having made an investment of 6.5 lakhs, a truck owner also has to spend around 1.5 lakhs for bodybuilding and other accessories, thus amounting to a total investment of around Rs. 8 lakhs before the truck (HCV) can be used for transporting goods.

9.31 With an investment like this, the owner deserves an income of about Rs. 8000 per month. But to generate income, he has to also make allocations for working capital. Thus, the costs more than neutralize rewards. Rewards can only increase if the owner can make a greater number of trips or circumvent the regulatory regime. Besides, it is not always that a truck gets cargo for a round trip without adequate tie-ups with brokering agencies or major transport agencies. These estimates of the working capital do not include monetary benefits distributed to various official agencies (other than the usual ones like RTO, Octroi, etc.) on the way for freer movement and also waiting and stoppage costs.

Sample Survey of En route Expenses
(Mumbai-Delhi Route)

		(Rs.)
Total en route expenses		8100.00
Distribution of expenses		
1.	Diesel and Oil	4199.85
2.	Crew expenses	600.21
3.	RTO and Police	2420.28
	of which	
	- Official	600.22
	- Unofficial	1820.06
4.	Octroi & other taxes, Check-post expenses	85.05
	Of which	
	- Official	25.00
	- Unofficial	60.05
5.	Toll fees	64.80
6.	Broker's Commission	45.36
7.	Loading/Unloading	179.82

	Of which	
	- Official	149.79
	- Unofficial	30.03
8.	Others (weighing, minor repairs, tyre puncture, etc. and also donation, dock entry)	99.63
	of which	
	- Official	29.89
	- Unofficial	69.74

Source: *AITD Report of the Study on Trucking Operations in India*

9.32 Logistically, a truck moving from Delhi towards Mumbai encounters the first check-post (sales tax) at the Haryana border. The sales tax check-post inspects the consignment and respective forms and receipts. At this check-post, the driver has to also declare whether any delivery is to be made within territorial boundaries of Haryana. If any delivery is to be made in Haryana, relevant entry papers and tax paid certificates are checked for the consignment. If the entire consignment is to be delivered at Mumbai, the driver will have to declare the route to be taken, as well as the exit point from Haryana (*Baheti*). Under this obligation, the vehicle is not allowed to change its route plan. It is a common experience that trucks do not adhere to declared route plans. For instance, due to chakka jam on the route, drivers take arterial roads to avoid jams. Once the truck is on the arterial road, the truck over-speeds to get back to the declared route as fast as possible. Otherwise, sudden check and deviation may lead to impounding of the vehicle and arrest of the driver.

9.33 The second check-post is octroi at the district level. Octroi check-posts are at all the district entry points. At all such points, the vehicle will be stopped for collection of octroi. Poor law and order situation has resulted in the emergence of illegal octroi check-posts under the umbrella of local mafia. This can lead to double taxation. In case the driver attempts to avoid such check-posts, there is always the threat of manhandling, looting and even stealing of the entire consignment midway. If a State has seven districts on the way, the vehicle will pay octroi at seven locations.

9.34 The third check-post is of the RTO to check the vehicle papers and requisite permits to enter the State. These check-posts are on district-basis and the vehicle is stopped usually at the point of entry in the State. But since the RTO's jurisdiction is on district-basis, each RTO is interested to obtain his pound of flesh.

9.35 The fourth check-post is related to the Forest Department, which is empowered to check each and every vehicle under suspicion. This check-post is not so important for goods transport, but to avoid harassment, the vehicle needs to show papers as and when required. These check-posts are also at the district level.

9.36 The fifth check-post is the tollbooth for the use of bridges, flyovers, etc. Such tollbooths can range between 3-6 tollbooths in progressive States and 2-4 tollbooths in not so progressive States.

9.37 Apart from these, there can be sudden checks by different law enforcement agencies like District Supply Office, local police, etc. On its way to Mumbai, a truck has to pass Haryana, Rajasthan and Gujarat. In all three States, the vehicle will be stopped at the respective check-posts for inspection of papers and collection of taxes and other monetary benefits. It is suggested that the overall indirect cost can be two times the freight cost, depending on the destination. In terms of time delays, a passenger vehicle that is free from such checkpoints takes around 48-60 hours to reach Mumbai. But a goods vehicle, which is answerable to all the checkpoints, take almost 6-7 days. In other words, the overall increase in travelling time is around 3-4 days. Such delays are rarely translated into costs. But roughly, one can say that the India incurs losses of almost 3 days of GDP for every week through inadequate transportation.

9.38 Transporters confided that profits are more in transporting goods without adequate papers. There are scores of coloured receipts available with transporters, which are well

known in government circles. At check-posts, the number of coloured receipts decides the payment (hearsay information is Rs.25 per coloured receipt). Once the truck driver makes the payment for the coloured receipts, there is no stopping of the vehicle on the way. In cases of surprise checks also, the plain paper receipt is shown to inspectors for free passage. In other words, there is a lot of understanding between the government staff manning the borders. Usually, time taken to deliver unauthorized goods is 3-4 days, as against 5-6 days for a regular Delhi-Mumbai trip. The reason cited by most truck drivers is that they are aware of the timings when the checks at border or various city limits are minimal, so they start their journey accordingly. Major coverage of the route is carried out in the night and usually rest is in the morning hours. Transporting unauthorized goods is a risky proposition, but a profitable one, because the transporter charges more than the prevalent rates (approximately twice the normal charges). At the same time, drivers feel safe to drive such consignments, because the rates are already fixed and therefore they do not experience harassment and other complications. All check-posts allow smooth passage to such vehicles. In some cases, even the law enforcement officials take extra precautions with such vehicles by way of information about troubled areas. Besides, such vehicles are also allowed unofficially to change their route plan depending on the circumstances.

9.39 On the basis of personal interviews with transporters, if all the additional costs are eliminated, the delay can be reduced by approximately 3 days and transportation costs halved.

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Annexure 1: Multiplicity of Requirements in MTW-related Official Forms

S.No	Particulars	Form Numbers										
		Issue of Driving License	Licensing for establishment of Motor Driving School	Registration of Motor Vehicle	Transfer of ownership of Motor Vehicle	Agreement of Hire/ Purchase/Lease/ Hypothecation	Authorizing Testing Stations	Registration of Motor Vehicle on behalf of Diplomat /Consular Officer	Grant of License in respect of Tourist Vehicle	Certificate of Insurance	Accident information report	Approval of foreign insurer
1	2	3	4	5	6	7	8	9	10	11	12	13
1	Name of the Applicant	F1, F1A, F2, F3, F4, F5, F6, F7, F8, F9, F10	F14, F15, F16, F18	F20, F27, F28, F41	F29, F30, F33		F40	F42, F44	F45, F46, F48			
2	Son/Wife/Daughter of	F1, F2, F3, F4, F5, F7, F9, F10	F14, F16, F18	F20, F21, F23, F24, F26, F27, F28	F29, F30, F32, F33		F40	F42, F43	F45, F46, F48			
3	Permanent Address	F1, F2, F3, F4, F5, F6, F7, F9, F10	F14, F16, F17, F18	F20, F21, F23, F24, F25, F26, F28, F41	F29, F30, F32, F33		F40	F42, F43	F45, F46, F48			

S.No	Particulars	Form Numbers										
4	Temporary Address	F1, F2, F3, F4, F5, F6, F7, F9, F10	F14, F16, F17, F18	F20, F21, F23, F24, F25, F28	F30, F32		F40					
5	Official Address (if any)	F1, F2, F3, F4, F5, F6, F7, F9, F10	F14, F16, F17, F18	F20, F21, F23, F24, F25, F28	F30, F32, F33		F40	F42				
6	Date of birth	F1, F2, F3, F4, F6, F10	F14									
7	Age on date of application	F1		F20			F40	F42				
8	Identification marks (I) (II)	F1, F1A, F2, F3, F4										
9	Any medical Deficiency	F1, F1A										
10	Blood Group	F1A, F2, F3, F4, F6, F7, F8, F9										
11	RH Factor	F1A, F2, F3, F4, F5, F8, F9										
12	Medical Fitness	F1A, F2, F3, F4,										

S.No	Particulars	Form Numbers									
		F5, F7, F8, F9									
13	Name and Designation of the Medical Officer/Practitioner	F1-A									
14	Registration number of Medical Officer	F1-A									
15	Description of Motor Vehicle(s) (a) Motor Cycle without gear (b) Motor Cycle with gear © Invalid carriage (d) Light Motor Vehicle (e) Medium Goods Vehicle (f) Medium Passenger Motor Vehicle (g) Heavy	F2, F3, F4, F6, F7, F8, F9, F10	F11, F14, F15, F16, F17, F19	F20							

S.No	Particulars	Form Numbers										
	Goods Vehicle (h) Heavy Passenger Motor Vehicle (l) Road Roller											
16	Educational Qualifications	F2, F4, F6, F10										
17	Effective Date of holding driving license	F2										
18	Written consent of parent/guardian (in the case of applicant being a minor)	F2, F4										
19	Name and Address of Driving School with License no. & date of validity period	F2, F4, F5	F11, F12, F13, F15									
20	Payment of the Fee	F2, F4, F8, F9	F12, F16,	F20, F25	F34	F35, F36			F46			

S.No	Particulars	Form Numbers										
			F17, F18									
21	Exempted from the Medical Test under Rule 6 of Central Motor Vehicle Rules, 1989	F2, F3, F4										
22	Exempted from the preliminary test under Rule 11(2) of Central Motor Vehicle Rules, 1989	F2, F3, F4										
23	Name and Address of the Parent/Guardian	F2										
24	Relationship of guardian with applicant	F2										
25	Passed the test with date	F2, F4, F8, F9	F14									
26	Learner's License no.	F3, F4, F8	F14									
27	Passed the	F3, F4										

S.No	Particulars	Form Numbers										
	preliminary test											
28	The validity period of Learner's License	F3	F14									
29	Previously held driving license no. with date	F4, F7										
30	Driving Certificate no:	F4							F48			
31	Full name and designation of testing authority	F4, F6, F8, F10										
32	Date and enrolled no. of driving school	F5	F14, F15									
33	Course of training of class of vehicle	F5										
34	Period of training	F5	F14									
35	Driving License no. with date	F6, F7, F8, F9, F10	F14				F40		F48		F54	
36	Validity period of license to	F6, F7, F9, F10					F40		F45, F48		F54	

S.No	Particulars	Form Numbers										
	drive motor vehicle											
37	Badge no.	F6, F7									F54	
38	Licensing authority by which the license was issued	F9, F10	F14				F40		F45, F48		F54	
39	Licensing authority by which the license was last renewed	F9									F54	
40	Name of the school and extent of facilities available for training		F12									
41	Qualification of staff engaged for imparting instructions		F12									
42	Make and model of engine to be used for training purposes		F12									
43	Details of the registration marks of the		F12									

S.No	Particulars	Form Numbers										
	vehicles used for imparting driving instructions											
44	Hours spent in actual training school		F15									
45	Whether the applicant is a manufacturer or dealer in motor vehicle, approved repairer of vehicles, engaged in building bodies of vehicles, engaged in business of higher purchase, lease, Hypothecation		F16	F23								
46	Number of certificates required		F16									
47	Serial		F17									

S.No	Particulars	Form Numbers										
	number of trade certificate											
48	Trade number assigned in respect of the certificate		F17, F18, 19									
49	Date of expiry of the certificate		F17, F18									
50	Name and address of the dealer and manufacture r from whom the vehicle was purchased			F20								
51	Vehicle is ex-army vehicle, imported vehicle, locally manufacture d vehicle			F20, F24, F41								
52	The Motor Vehicle is (a) New vehicle (b) Ex-army			F20, F23, F24, F25, F41	F30			F42, F43		F51		

S.No	Particulars	Form Numbers										
	vehicle (c) Imported vehicle											
53	Type of body			F20, F24, F25				F42, F43				
54	Type of vehicle			F20, F21, F22, F23, F24, F27, F28	F29, F30, F32	F36	F40	F42, F43	F45, F48	F51	F54	
55	Maker's name			F20, F21, F23, F24, F25, F41	F32	F36			F45, F48	F53		
56	Month and year of manufacture			F20, F21, F23, F24, F25								
57	Number of cylinders			F20, F21, F23, F24, F25, F41				F42, F43				
58	Horse powers			F20, F21, F23, F24				F42		F53		

S.No	Particulars	Form Numbers										
59	Cubic capacity			F20, F21, F23, F24, F25, F41								
60	Wheel base		F20, F23, F24									
61	Chassis number			F20, F21, F22, F23, F24, F25, F27, F28, F41	F29, F30			F42	F46, F47	F51	F54	
62	Engine Number			F20, F21, F22, F23, F24, F25, F27, F28, F41	F29			F42, F43	F46, F47	F51	F54	
63	Seating capacity (including driver)			F20, F21, F22, F23, F24, F25, F27,	F29			F42, F43	F46, F47	F51	F54	

S.No	Particulars	Form Numbers										
				F28, F41								
64	Fuel used in engine			F20, F21, F23, F24, F25, F41								
65	Unladen weight			F20, F21, F23, F24, F25, F41				F42, F43	F46, F47			
66	Previously held registration number of the vehicle			F20, F21								
67	Colour or colours of body wings and front end			F20, F21, F24				F42, F43		F52		
68	Number description and size of tyres			F20, F21, F24				F43				
69	Front axle			F20, F21, F23, F24					F48			
70	Rear axle			F20, F21,					F48			

S.No	Particulars	Form Numbers										
				F23, F24								
71	Gross vehicle weight			F20, F21, F23, F24, F41					F46, F47			
72	Maximum axle weight (a) Front axle (b) Rear axle			F20, F21, F23, F24				F42, F43				
73	Overall length			F20, F23, F24				F43				
74	Overall height			F20, F23, F24								
75	Overall width			F20, F23, F24								
76	Overhang			F20, F23, F24								
77	Type of body of semi-trailer			F20, F23, F24								
78	Weight of semi-trailer			F20, F23, F24								
79	Number, description and size of			F20, F23, F24								

S.No	Particulars	Form Numbers										
	each axle of trailer											
80	Maximum axle weight in respect of each axle			F20, F23, F24								
81	Valid insurance certificate number with validity period			F20, F24						F51, F52	F54	
82	Motor vehicle is subject to hire purchase lease/ hypothecation			F20, F21, F25, F26, F27, F28	F29, F30, F31, F33, F34	F35, F36, F37						
83	Motor vehicle registration number with validity period			F20, F25, F26, F28, 41	F30, F31, F33, F34	F35, F37	F38	F42	F45, F46, F47, F50	F53	F54	F57
84	Brand name of the vehicle delivered			F21								
85	Date of delivery			F21								
86	Name of the buyer			F21, F23,	F31, F34							

S.No	Particulars	Form Numbers										
				F24, F25, F26								
87	Vehicle complies with the provisions of the Motor Vehicle Act, 1988 with respect to pollution standards			F22								
88	Vehicle complies with the provisions of the Motor Vehicle Act, 1988 with respect to body of the vehicle			F22								
89	Maker's classification			F25								
90	Police complaint registration number for loss of registration certificate			F26								
91	Motor vehicle			F27	F29, F32	F35, F36	F38	F44	F46			

S.No	Particulars	Form Numbers										
	number											
92	Name of the state of registration			F27								
93	Date and period of registration			F27	F29							
94	Previous registration number with validity period			F27, F41								
95	New registration mark			F27								
96	Registering authority which originally registered the vehicle			F28								
97	Period of stay in the state			F28								
98	Period up to which motor vehicle tax has been paid			F28								
99	Pending tax details			F28								
100	Vehicle involved in any theft			F28								

S.No	Particulars	Form Numbers										
	cases with details											
101	Action pending against section 53, 54 or 55 of motor vehicle act 1988			F28								
102	Any case against transporter prohibited goods			F28								
103	Name of the purchaser				F29, F30	F36, F37						
104	Address of the purchaser				F29, F30	F36, F37						
105	Effective date of transfer				F29, F30, F31							
106	Full name of the financer				F30, F31, F33, F34	F36						
107	Address of the financer				F30, F31, F33, F34							
108	Relationship with the deceased				F31							

S.No	Particulars	Form Numbers											
	registered owner												
109	Date of transfer of ownership in case of motor vehicle purchased or acquire in public auction				F32								
110	The new address				F33								
111	The period of renewal of fitness certificate in case of transport vehicle						F38						
112	Number of letter of authority for testing station with date						F39, F40						
113	Name of authority holder						F39						
114	Address of authority holder						F39						
115	Address of						F39						

S.No	Particulars	Form Numbers											
	the premises of the testing station												
116	Period of validity of authority for testing station						F39, F49						
117	Renewed period of authority						F39						
118	Experience in automobile workshop						F40						
119	Directly/indirectly in all in transport business						F40						
120	Machinery & equipment						F40						
121	Staff engaged in different cadres (i) Manager (ii) Mechanic (iii) Helper (iv) Other administrative staff						F40						
122	Driving experience of various						F40						

S.No	Particulars	Form Numbers											
	type of transport vehicles												
123	Endorsement of driving license, if any						F40						
124	Proof of land owned by or held by the applicant						F40						
125	Whether garage is equipped with (i) Water supply (ii) Electricity (iii) Toilet (iv) Rest room						F40						
126	Source of finance						F40						
127	Designation of Diplomatic officer/ consular officer							F42, F43, F44					
128	Name and address of the person from whom the vehicle was							F42					

S.No	Particulars	Form Numbers										
	purchased											
129.	Country from which imported							F42				
130	Year of manufacture							F42, F43				
131	Register number of motor vehicle belonging to diplomatic or consular officer							F43				
132	Registering place of vehicle							F44				
133	Period of stay of the vehicle in the state							F44				
134	Status of the applicant, whether individual company or partnership firm or cooperative society etc.								F45, F48			
135	If applicant holds heavy passenger motor								F45, F48			

S.No	Particulars	Form Numbers										
	vehicle license											
136	Details of other permits, if any, held in respect of particular vehicle								F45			
137	Details of total number of tourist permits held by the applicant								F45, F48			
138	Registration mark and year of manufacture								F46, F47	F51, F52		
139	Permit number, the authority which has issued the permit and date of issue and date of expiry of the permit								F46, F47			
140	Period for which authorization is sought for								F46			
141	List of states								F46			

S.No	Particulars	Form Numbers										
	for authorization granted											
142	Name and address of permit holder								F47, F50			
143	Name of the permit issuing authority								F47			
144	Date of expiry of the permit								F47			
145	Number of bill of lading								F50			
146	Name of the consignor								F50			
147	Name of the consignee								F50			
148	Point of origin								F50			
149	Point of destination								F50			
150	Number of articles								F50			
151	Weight in kg.								F50			
152	Freight charges paid								F50			
153	Freight charges to pay								F50			
154	Total charges								F50			

S.No	Particulars	Form Numbers										
155	Truck number								F50			
156	Name and address of the insured									F51, F52		
157	Persons or class of persons entitled to drive									F51, F52		
158	Permit is for stage-carriage/. contract carriage-private service vehicle									F51, F52		
159	Name of the government to which property belongs									F52		
160	Name of the local authority/state transport undertaking									F52		
161	Exemption certificate for insurance by the order number with date									F53		

S.No	Particulars	Form Numbers										
162	Validity period of exemption certificate for insurance									F53		
163	Name of the police station										F54	
164	CR No/Traffic accident report											F55
165	Date, time and place of accident											F55
166	Name and full address of the injured/deceased											F55
167	Name of the hospital to which he/she was removed											F55
168	Name and address of the driver										F54	
169	Name and address of the owner of the vehicle at the time of accident										F54	

S.No	Particulars	Form Numbers										
170	Name and address of the insurance company with whom the vehicle was insured and the particulars of the divisional office of the said insurance company										F54	
171	Route permit particulars										F54	
172	Action taken, if any, and the result thereof										F54	
173	Name of the foreign insurer											F55, F56, F57
174	Domicile at											F55, F56, F57
175	Expiry date of the guarantor											F56
176	Certificate number of foreign insurers											F57

S.No	Particulars	Form Numbers										
177												
178	Name and address of guarantor											F57
179	Name and address of visitor											F57
180	Date of commencement of the policy											F57
181	Passenger or classes of persons entitled to drive in India											F57
182	Any limitations as to use of Motor Vehicle in India											F57
183	Particulars of any other vehicle(s) which the foreign visitor is entitled to drive in India and any limitation as to use of such vehicle											F57

S.No	Particulars	Form Numbers										
	in India											
184	The period of validity of endorsement											F58

Source: AITD (1998)

Annexure 2: Smart Form for Trucks

1. Status of the Transporter: Individual/Company/Partnership firm/Co-Operative Society
2. Name of the Transporter:-
3. Address:-
4. Type of Motor Vehicle:-
5. Vehicle Registration Number:-
6. Registering Authority:-
7. Vehicle Insurance Policy Number/valid up to:-
8. Driver/s in Vehicle:-

Name	*Driving License No.*	*Place of Issue/Valid till*	*Badge Number*

9. Period up to which road tax has been paid:-
10. Certificate of Pollution Control Number/Valid up to:-
11. Certificate of Road Worthiness/Valid up to:-
12. Details of State Permit held by the applicant:-

State/Union Territory	*Valid up to*	*Issuing Authority*

13. Details of Consignment-

Consignor	*Consignee*	*Receipt Number*	*Point of Origin*	*Destination*	*Value (Rs.)*

14. Total freight charges paid:-
15. Total value of goods transported:-
16. Goods Insured:- Yes/No
17. If Yes: Insuring Agent/Policy No./Validity:-

A

Background Paper*

on

ARTICLE 262 AND INTER-STATE DISPUTES RELATING TO WATER

*This Paper was prepared for the Commission by Shri P.M. Bakshi.

ARTICLE 262 AND INTER-STATE DISPUTES RELATING TO WATER

CONTENTS

		Page No.
1	Introduction	1357
2	Constitutional provisions relating to Inter-State Waters and their History	1358
3	Enactments relating to Inter-State Waters	1360
4	Legal Doctrines relating to Inter-State Waters	1361
5	Disputes in India as to Inter-State Waters	1363
6	The Cauvery Dispute	1375
7	Tentative Suggestions	1380
8	Legend	1382

CHAPTER 1

INTRODUCTION

1.1 Importance of the subject

Water covers more than 70% of the surface of the earth. It fills the oceans and the rivers; it resides underground and is also present in the air which we breathe. Great civilisations have risen where water was plentiful and have fallen, when the supply of water failed. Great cities have been born on the rivers and many have vanished when the rivers dried up. Today, more than ever, water is both slave and master to the people. It has more uses than can be counted on the fingers, and it is utilised in almost every activity of the civilised man. But one important fact about water is, that while our demand for it is increasing, it is not possible to increase the supply. Viewed in this light, water must be preserved and managed properly.

Disputes relating to water should therefore deserve our closest attention. This is particularly so, where the disputes are between two or more political units, because, then, the tensions between the people may mount.

1.2 Scope of the study

It has been considered desirable to prepare a separate study devoted to inter-State disputes relating to waters, rather than deal with it in the general study relating to mechanism for the settlement of inter-State disputes. This course was considered desirable for several reasons, but three of them will be mentioned here.[ii]

1.3 Importance of water

In the first place, water is the most important natural resource for mankind. Great civilisations have been founded on the banks of rivers – the Egyptian civilisation (on the Nile), the Mesopotamian civilisation (on the Tigris and the Euphrates), the Indian civilisation (on the Indus) and the Chinese civilisation (on the Hwange He). Great civilisations have perished for scarcity of water – e.g., the Sumerian civilisation (Mesopotamia), which was destroyed because of salt built up in the soil.[iii]

In the Indian context, this aspect becomes still more important, because over 85 percent of Indian territory lies within its major and medium inter-State rivers.[iv] India has 14 major rivers[v], which are all inter-State rivers. (A "major" river is a river with a catchment area of 20,000 square kilometers or more).

India has 44 medium rivers, of which 9 are inter-State rivers. (A "medium" river is one with a catchment area of between 200 and 20,000 square kilometers).

1.4 Past experience

Secondly, past experience in India, in connection with the resolution of inter-State disputes relating to waters, has not been very happy.[vi] It is not easy to say whether this is due to the nature of the disputes, political factors or inadequacy of the constitutional provisions on the subject. Whether or not an effective solution can be found to the problem, is a different matter. But the subject does seem to require separate study.

1.5 The legal provisions – further action needed

Thirdly, there is prima facie need for considering the matter afresh. As Setalvad has observed.[vii]

> "The tribunals appointed under the Inter-State Water Disputes Act to adjudicate upon them have so far produced no results. We know from the experience of other countries, how long drawn-out and expensive these adjudications can be; and our country cannot afford either the expense or the long delays. Our Constitution-makers,

anticipating such situations, have provided ample power to the Union to enable it to deal with them. Why should not the Union, it is asked, exercise its powers of legislation under Entry 56 of List 1, which empowers it to legislate for the regulation and development of inter-State rivers and river valleys, to the extent, to which such regulation and development under the control of the State is declared by Parliament by law to be expedient in the public interest? Such action by the Union, it is urged, will have the advantage of ensuring a quick solution of these disputes arrived at from the national perspective".

1.6 Scheme of discussion

Taking into account this background, we shall now proceed to deal with various aspects of the problem, so as to cover the factual history and the law relevant to the problem.

CHAPTER 2

CONSTITUTIONAL PROVISIONS RELATING TO INTER-STATE WATERS AND THEIR HISTORY

2.1 Legislative competence

(a) Under the Indian Constitution, States have power to legislate (State list, entry 17), with respect to the following subject:

> "Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power, subject to the provisions of Entry 56 of List 1."

(b) Union list, entry 56, reads as under:

> "Regulation and development of inter-State rivers and river valleys, to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

2.2 Article 262

Article 262 of the Constitution reads as under:

"262. Adjudication of disputes relating to waters of inter-State rivers or river valleys:

(1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, in any inter-State river or river valley.

(2) Notwithstanding anything in this Constitution, Parliament may, by law, provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1)."

[It should be noted that the "dispute" need not be between States, as such].

2.3 Act of 1956

(a) In exercise of the power conferred by article 262 of the Constitution, Parliament has enacted the Inter-State Water Disputes Act, 1956.[viii] Section 3 (and succeeding sections) of the Act contemplate the reference of a "water dispute" to a Tribunal. Section 2(c) of the Act defines "water dispute", as meaning any dispute or difference between two or more State Governments with reference to the specified matters. However, the word "complaint", used in article 262 of the Constitution, is not used in the Act of 1956.

(b) Under the provision of the 1956 Act quoted above, the request to the Central Government has to be made by a State Government. A citizen cannot directly make a "complaint", - though the Constitution, in article 262, mentions a dispute or a complaint without confining it to a dispute raised or a complaint made by a State Government.[ix]

2.4 Government of India Act, 1919

The subject has an interesting history. When dyarchy was introduced in the Provinces (in British India) under the Government of India Act, 1919, irrigation became a Provincial, but "reserved" subject. Before the Provincial Government could take up any project involving the interests of more than one Province, the prior approval of the Secretary of State had to be obtained.

2.5 Government of India Act, 1935

(a) The Government of India Act, 1935 (Provincial List, Entry 19) placed irrigation within the sole jurisdiction of the Provinces.

(b) However, sections 130 to 133 of the Act of 1935 made detailed provisions as to inter-Provincial, etc., disputes concerning water. The relevant provisions applied to "States" also, i.e., to those Indian States, which may ultimately join the contemplated federation. Any Province or State whose interests were perpetually affected in respect of water supplies from a natural source, owing to the action of another Province or State, could complain to the Governor General.

(c) The Governor General was required to appoint a Commission to investigate and report to him on the matters to which the complaint related (unless, in his opinion, the issues were not of sufficient importance).

(d) After consideration of the report, the Governor General was to give such decision as he deemed proper.

(e) The order of the Governor General was to be binding upon the parties. However, before the Governor General gave his decision, the Governor of any State (or the ruler of a Princely State), affected by the order, could require the Governor General to refer the matter to His Majesty in Council, which could give such decision as it deemed proper.

(f) Jurisdiction of the Federal Court (or any other court) was barred, if action to lodge a complaint had been taken by the Governor of a Province, etc.

2.6 Bill in the Constituent Assembly

In the draft Constitution, the corresponding provision (articles 239 – 242 of the draft) contained propositions substantially similar to those contained in sections 130 – 133 of the Government of India Act, 1935, except that the President was substituted for the Governor General and the reference of a dispute was to be by the President to the Supreme Court under the latter's advisory jurisdiction. (Jurisdiction of all other courts was barred).

2.7 Dr. Ambedkar's revised draft

For simplicity and effectiveness, Dr. Ambedkar recast the whole scheme. Article 242A (as revised by him), was in the same form as present article 262.[x]

CHAPTER 3

ENACTMENTS RELATING TO INTER-STATE WATERS

3.1 The Inter-State Water Disputes Act, 1956

Pursuant to the power conferred by the Constitution (article 262), Parliament has enacted the Inter-State Water Disputes Act, 1956. Its main features can be thus summarised:

(a) A State Government which has a water dispute with another State Government may request the Central Government to refer the dispute to a tribunal for adjudication.

(b) The Central Government, if it is of opinion that the dispute cannot be settled by negotiation, shall refer the dispute to a Tribunal.

(c) The Tribunal's composition is laid down in the Act. It consists of a Chairman and two other members, nominated by the Chief Justice of India from among persons who, at the time of such nomination, are Judges of the Supreme Court.

(d) The Tribunal can appoint assessors to advise it in the proceedings before it.

(e) On the reference being made by the Central Government, the Tribunal investigates the matter and makes its report, embodying its decision. The decision is to be published and is to be final and binding on the parties.

(f) Jurisdiction of the Supreme Court and other courts in respect of the dispute referred to the Tribunal is barred.

(g) The Central Government may frame a scheme, providing for all matters necessary to give effect to the decision of the Tribunal. The scheme may, *inter alia*, provide for establishing an authority for implementing (section 6A).

3.2 The River Boards Act 1956

(a) The River Boards Act, 1956, provides for the establishment of River Boards, for the regulation and development of inter-State rivers and river valleys.

On a request received from a State Government or otherwise, the Central Government may establish a Board for "advising the Government interested" in relation to such matters concerning the regulation or development of an inter-State river or river valley (or any specified part) as may be notified by the Central Government.

(b) Different Boards may be established for different inter-State rivers or river valleys.

(c) The Board is to consist of the Chairman and such other members as the Central Government thinks fit to appoint. They must be persons having special knowledge and experience in irrigation, electrical engineering, flood control, navigation, water conservation, soil conservation, administration or finance.

(d) Functions of the Board are set out in detail in section 13 of the Act. Subject-wise, they are very wide, covering conservation of the water resources of the inter-State river, schemes for irrigation and drainage, development of hydro-electric power, schemes for flood control, promotion of navigation, control of soil erosion and prevention of pollution.

But the functions of the Board are advisory and not adjudicatory.

(e) By section 14(3), the Board is directed to consult all the Governments concerned and to secure their agreement, as far as possible.

Thereafter, by section 15, the Board is empowered to frame schemes, obtain comments of the interested Governments and finalise a scheme. [Section 15(4)] But the schemes do not seem to have a mandatory force. It appears from section 15(5) and section 15(6) of the Act that:

(i) the Board can advise the Governments concerned as to execution of the scheme and

(ii) the Central Government can "assist the Governments interested", in taking such steps as may be necessary, for execution of the scheme.

CHAPTER 4

LEGAL DOCTRINES RELATING TO INTER-STATE WATERS

4.1 Scope of the Chapter.

In the area of the law relating to waters flowing inter-State, there have emerged certain legal doctrines, which can be usefully considered at this stage. No doubt, these doctrines belong to the field of substantive law, rather than to the area of process for the adjudication of inter-State disputes. It is also true, that some the of them were evolved in the context of international disputes, rather than inter-State disputes. Nevertheless, a brief look at the subject may possess some utility, when examining the question of evolving an appropriate procedure for the settlement of such disputes.

4.2 The various doctrines

It would be convenient, to enumerate at the outset, the various doctrines that have emerged in this area. These are as under:

(1) Doctrine of riparian rights
(2) Doctrine of prior appropriation
(3) Doctrine of Territorial Sovereignty (Harmon doctrine)
(4) Doctrine of Community of interest
(5) Doctrine of equitable apportionment.

4.3 Doctrine rights of Riparian

The doctrine of riparian rights emphasises the recognition of equal rights to the use of water by all owners of land abutting a river, as long as there is no resulting interference with the rights of other riparian owners. The doctrine may not be of much use in the context of inter-State rivers[xi]

4.4 Doctrine of prior apportionment

The doctrine of prior apportionment has been applied in some decisions of the US Supreme Court.[xii] The cardinal rule of the doctrine is, that priority of appropriation gives seniority of rights.

As against this, there is the doctrine of equality – also applied in some cases in the US Supreme Court.[xiii]

4.5 The doctrine of territorial sovereignty (Harmon Doctrine)

This doctrine (not applied in inter-State disputes) was evolved by Attorney General Harmon, of the US[xiv] in 1896, to justify the action of the United States in reducing the flow of the river Rio Grande into Mexico. According to Harmon, the rules of international law imposed, upon the United States, no duty to deny to its inhabitants the use of the waters of that part of the Rio Grande which was lying wholly within the Unites States, although such use resulted in

reducing the volume of water in the river below the point where it ceased to be entirely within the United States. In his view, the supposition of the existence of such a duty was inconsistent with the sovereign jurisdiction of the United States over the national domain.

4.6 Doctrine of community of interest

According to the theory of community of interest, a river passing through several States is one unit and should be treated, as such, for securing the maximum utilization of its waters.[xv] This theory, if properly applied, would secure integrated development. Its smooth implementation would seem to require mutual agreement. The Kosi project (India and Nepal) is often cited as an example of the adoption of this approach.

4.7 Doctrine of equitable apportionment

(a) The doctrine of equitable apportionment seems to have originated in the United States, as is illustrated by the following decisions of the US Supreme Court:
- (i) *Connecticut Vs. Massachusetts*, (1931) 282 US 670.
- (ii) *New Jersey Vs. New York*, (1931) 283 US 336.
- (iii) *Nebraska Vs. Wyoming*, (1945) 332 US 54.

4.8 Legislation in US

The theory (equitable apportionment) is not applied (in the US) where, by legislation, an appropriation of the waters has been already made. [*Arizona Vs. California*, (1963) 373 US 541].

Thus, in *Arizona Vs. California*, (1963) 373 US 541, there was complete agreement for gross allocation of water to lower basin States, but no agreement could be arrived at, as to the precise quantum to be made available to each State. Consequently, the apportionment was made through legislation by Congress. The dispute was still raised before the Supreme Court, which held as under:

> "Where the Congress has so exercised its constitutional power over waters, courts have no power to substitute the notion of an equitable apportionment for the apportionment chosen by the Congress."

4.9 Equitable apportionment in India

The theory of equitable apportionment has been recognised in India also – though, at the same time, its vagueness has also been taken note of. Here are few examples[xvi]:

(a) The Indus Commission (1943) (Report, pages 5-75) recorded its views as under:

- (i) The most satisfactory settlement of such disputes is by agreement.
- (ii) Failing agreement, the rights of the parties must be determined by applying the rules of equitable apportionment, each unit getting a fair share of the water of the common river.
- (iii) However, equitable sharing, once made, may cease to be equitable, in the face of new circumstances

(b) The Krishna Water Disputes Tribunal [Report, pages 52 and 93][xvii] took note of the position, as under:

"In India also, the rights of States in an inter-State water are determined by applying the rule of equitable apportionment, each unit getting a fair share of the waters of the common river.

But the Krishna Tribunal also noted, that the concept does not lend itself to precise formulations and its meaning cannot be written into a code that can be applied to all situations and at the all times. The standard of equitable apportionment requires an adaptation of the formula to the necessity of the particular situation.

(c) The same doctrine was noted by the Godavari Water Disputes Tribunal [Report (1979), Vol. 1, page 19].[xviii]

4.10 The Narmada Tribunal and equitable apportionment

The Narmada Water Disputes Tribunal[xix] [Report, 1978, Vol. 1, pages 109-113] did accept the doctrine of equitable apportionment[xx] as applicable. In fact, it acknowledged that the diversion of water of an inter-State river outside the river basin was legal and the need for diversion of water to another basin may be a relevant factor on the question of equitable apportionment, in the circumstances of a particular case.

The Narmada Tribunal (Report Vol. 1, pages 109, 113) contains an elaborate discussion of the doctrine and its application. It would be convenient (for the present purpose) to analyse the relevant passage and break it into propositions, as under:

(a) The doctrine of equitable apportionment cannot be put in a narrow strait jacket of fixed formula.

(b) In determining the just and reasonable shares of the interested States, regard must be had, in the first instance, to whatever agreements, judicial decisions, awards and customs that are binding upon the parties.

(c) As to any aspects not covered by these factors, the allocation may be made according to the relative economic and social needs of the interested States.

(d) The other matters to be considered, include the following:

(i) the volume of the stream;
(ii) the uses already being made by the concerned States;
(iii) respective areas of land, yet to be watered;
(iv) physical and climatic characteristics of the States;
(v) relative productivity of the land in the States;
(vi) State-wise drainage;
(vii) population which is dependent on the water supply and degree of their dependence;
(viii) alternative means of satisfying the needs;
(ix) amount of water, which each State contributes to the inter-State stream;
(x) extent of evaporation in each State; and
(xi) avoidance of unnecessary waste in the utilisation of water by the concerned States.

CHAPTER 5

DISPUTES IN INDIA, CONCERNING INTER-STATE WATERS

5.1 Scope of the Chapter

It is proposed to present in this Chapter a brief survey of the manner in which, in India, in the past, some of the notable disputes concerning inter-State rivers have been resolved.

5.2 Constitutional history

Some of the disputes concerning such rivers date back to the 19th century and relate to a period when (British) India was governed by enactments prior even to the Government of India Act, 1919. Some relate to the period when British India was governed by the

Government of India Act, 1919 or the Government of India Act, 1935. Many such disputes have been adjudicated after the commencement of the Constitution, by Tribunals constituted under article 262 of the Constitution, read with the Inter-State Water Disputes Act, 1956.

5.3 Common features

However, it seems that whatever may be the constitutional scenario applicable to each particular dispute, most disputes seem to have shared the features noted below –

(a) Vagueness regarding the legal doctrine applicable.
(b) Acrimonious tension between the parties.
(c) Overall delay in completion of the adjudication, due to various factors.
(d) Similar other unsatisfactory features.

There is, of course, an occasional silver lining. Some disputes have, for example, been resolved by mutual agreement – even if the parties reached agreement, only after the lapse of a long period.

5.4 The Indus Commission Report[xxi]

The Indus and its tributaries had been always a source of dispute among the concerned Provinces, from the early years of the 20th century. The root cause was the apprehension of the Punjab Province, and of Sind (which was then a part of Bombay Presidency), about the availability of adequate waters for the Bhakra Project of the Punjab and the Sukkur Project in Sind. Disputes arose, and the Central Government appointed a Committee in 1935, (the Indus Committee or the Anderson Committee). The Committee comprised eight experts, namely, six Chief Engineers of the concerned Provinces or States, and two independent Engineers, including the Chairman of the Committee, Sir. John Anderson. The basin Provinces/States were Punjab, Bombay (Sind), North West Forntier Province, Bahawalpur, Khairpur and Bikaner. The Committee submitted its recommendations in the same year (1935) and these were accepted by the Government of India. However, the change in status, of the subject of water supplies, irrigation cannals and water storage etc., from a 'reserved subject' (in the Government of India Act, 1919), to a "transferred subject" (in the 1935 Act), necessitated a further reference. Accordingly, the Governor-General appointed a Commission, in September 1941, on a complaint from Sind Province. (under the Chairmanship of B. N. Rau). Apart from Mr. Justice B.N.Rau, (then Judge of the Calcutta High Court), the Commission included P. F. B. Hickey, retired Chief Engineer, Irrigation, (United Provinces) and E.H.Chave, Chief Engineer, (Madras).

5.5 Consensus as to law (equitable apportionment)

At the stage of preliminary issue, it had been accepted by all the parties that the rule of "equitable apportionment" should be applied to determine the rights of the several units concerned in the dispute. The Commission recommended as under –

(a) An agreement arrived at among the various units concerned, on the present dispute, providing for final apportionment of waters of the Indus and its tributaries, would be the most satisfactory solution.

(b) A Technical committee be set up to examine the two barrage projects in Sind. The contemplated projects in the Punjab be restrained till 1-10-1945.

(c) If the recommendation for a Technical Committee was not accepted or the parties failed to come to an agreement, the Punjab Government was to be permitted, after the three years period, to proceed with the link and small storage schemes without any conditions.

(d) The Bhakra and Beas Dam Scheme could be taken up, subject to the regulation of the supplies and compensation for damage in lieu thereof.

5.6 Response of parties

The numerous recommendations made by the Indus Commission in its Report of July 1942, were accepted neither by Punjab nor by Sind. Both the Governments represented against the findings and recommendations of the Commission, to the Government of India, under section 131 of the Government of India Act, 1935. The matter was accordingly referred to His Majesty in Council. Though mutual consultations at the Chief Engineers' level were held in the meantime, and even a draft agreement prepared in September, 1945, nothing concrete materialized till 15 August, 1947. Through the enactment and operation of the Indian Independence Act, 1947, India and Pakistan emerged as two different Dominions, and the attempted settlement or resolution of the disputes proved abortive.

5.7 Detailed propositions (Indus Commission)

The Report pf the Indus Commission contains the following propositions –

(i) The most satisfactory settlement of such disputes is by agreement, the parties adopting the same technical solution of each problem, as if it were a single community, undivided by political or administrative frontiers. In the absence of such an agreement, the rights of the several parties must be determined by applying the rules of equitable apportionment, each unit getting a fair share of water of the common river. Equitable sharing, once made, may cease to be equitable in the face of new circumstances.

(ii) Priority of appropriation gives superiority of right. For the purposes of priority, the date of a project shall be the one on which it reaches finality.

(iii) As between projects of different kinds, the order of precedence must be:
1. Use for domestic and sanitary purposes,
2. Use for navigation,
3. Use for power and irrigation.

Even though the Indus Commission had claimed in its Report that all the parties accepted the principles formulated by it, the claim was belied by the parties, by contradicting it.

5.8 The Krishna Water Disputes Tribunal

(a) Krishna is the second largest river in the Penisular India.[xxii] Rising near Mahabaleswar, in the Mahadev range of the Western Ghats, it flows down a length of 1392 km, through Maharashtra, Mysore and Andhra Pradesh, before it drops into the Bay of Bengal. Out of a total catchment of 2,55,949 sq.km. 6821 sq.km. lie in Maharashtra, 1,11,959 sq.km in Karnataka and 75369 sq.km in Andhra Pradesh.

(b) In 1951, in the backdrop of major development proposals being formulated by the States of Bombay, Hyderabad, and Madras, (among the total of four riparian States, including Mysore), an agreement was drawn up, apportioning the available supply among them. However, disputes arose, Mysore refusing to ratify the agreement.

(c) Notwithstanding the best efforts of the Central Government towards convening several inter-State conferences, the disputes could not be settled. Further, the States moved for reference of the matter to a Tribunal. Accordingly, the Krishna Water Disputes Tribunal was constituted in April 1969, and the matter was referred to it.

5.9 Krishna dispute : Rival Contentions

(a) The contention of Karnataka, in essence, was, that the 1951 understanding, not having matured into an agreement, was not binding, and therefore equitable distribution of the waters should be made. The implementation of Andhra's projects

and Maharashtra's proposal for West-ward diversion of Krishna waters in excess of 67.5 TMC, should be stayed.

(b) Maharashtra too disowned the Agreement of 1951. further, it objected to implementation of other States' projects without its prior consent. A fresh assessment of dependable flow as well as of equitable apportionment thereof, was sought.

(c) In contrast, Andhra affirmed the validity of the 1951 Agreement, and held Karnataka and Maharashtra guilty of breach thereof. It sought an injunction, restraining them from undertaking works involving utilization of more waters than anticipated as their respective shares. It also sought to restrain them from intercepting flows to the delta, as well as to other irrigation works of Andhra. A number of issues were framed. (lit is not necessary to quote them).

5.10 Krishna Dispute : The award on various issues

(a) The Krishna Tribunal first dealt with the question whether there was a concluded agreement. It noted that the law on the subject was well settled. As B. K. Mukherjea J observed in *Jainarain Ram Lundia Vs. Surajmall Sagar*, (1949) FCR 379.

"When parties enter into an agreement on the clear understanding that some other persons should be a party to it, no perfected contract is possible, so long as this other person does not join the agreement. This would be the position in law, apart from any rule of equity."

As Mysore did not ratify the agreement, there was no concluded agreement between the other States.

(b) However, on some points, the party States did come to interlocutory agreements and the Krishna Tribunal was therefore relieved of the duty of deciding those issues. Certain other issues were decided by the Tribunal.

5.11 Duration of the Krishna Tribunal (1969 – 1976)

The Krishna Tribunal was set up in April 1969 and forwarded its Report to the Government of India in December 1973, in less then five years time. Within three months, however, all the party States and the Government of India made further references to the Tribunal. The Further Report of the Tribunal was forwarded in May 1976, giving therein, such explanation and guidance as it deemed fit, regarding regenerated flows. So, in all, it took seven years for the Tribunal, to consummate the process of adjudication.

5.12 Principles as emerging, formulated

The following principles of a general nature may be deemed to have emerged from the Report of the Krishna Water Disputes Tribunal:

(i) A river basin has to be treated as an indivisible physical unit.

(ii) The conflicts of interests of the riparian States must be resolved by agreement, judicial decree, legislation or administrative control, so as to evolve a fair and just distribution of water resources among the concerned States.

(iii) A State represents all its inhabitants and water-users within its territory, in a complaint filed by or against it under section 3, Act of 1956.

(iv) If there is enacted a central legislation on the subject of apportionment of inter-State rivers or river valleys, that law will bind all the States. The rights of States in inter-State rivers are determined by applying the rule of equitable apportionment, and that no State has a proprietary interest in a particular volume of the water of an inter-State river on the basis of its contribution or irrigable area.

5.13 Final order

Final order of the Krishna Tribunal which was issued in 1976 includes the following stipulations:

"Clause XIV

(A) At any time after the 31st May 2000, this order may be reviewed or revised by a competent authority or Tribunal, but such a review or revision shall not, as far as possible, disturb any utilisation that may have been undertaken by any State within the limits of the allocation made to it under the foregoing clauses.

Clause XV

Nothing in this order of this Tribunal shall impair the right or power or authority of any State to regulate within its boundaries the use of water, or to enjoy the benefit of waters within the State in a manner not inconsistent with the order of this Tribunal."

5.14 Narmada Water Disputes Tribunal Report (1978)

Narmada, the largest West-ward flowing river of the peninsula, rises near Amarkantak in Madhya Pradesh. It has a length of 1312 km., draining a catchment of 98796 sq.km., of which 87% lies in Madhya Pradesh, 1.5% in Maharashtra and 11.5% in Gujarat.[xxiii]

In 1946, the then Government of Central Provinces and Berar, and the then Bombay Presidency requested the Central Waterways, Irrigation and Navigation Commission (CWINC) to take up investigations there, for basin-wise development. On a reconnaissance, excellent prospects were revealed, and detailed investigation on seven projects were recommended. An *ad hoc* Committee under Dr. A. N. Khosla, the then Chairman, CWINC, scrutinized the proposal and recommended detailed investigation in respect of:

(a) Bargi Project
(b) Tawa Project
(c) Punasa Project
(d) Broach Project

5.15 Narmada Dispute: The Preliminaries and Addition of Navagam

(a) The CWINC completed investigation of the Tawa, Punasa and Broach Projects by 1949 and prepared the Project Reports. Subsequently, the Central Water & Power Commission (C.W.& P.C), (which replaced the CWIMC, in 1955) resumed the investigation of Bargi Project which had been suspended for want of funds, in 1960 and the Project Report was prepared in 1963. The riparian States at this stage were Madhya Pradesh and the composite state of Bombay (later Maharashtra and Gujarat).

(b) The CW & PC made a closer scrutiny of the dam site at the Broach Project, and selected "Navagam" as against "Gora" and the Government of Bombay approved the proposal. The Navagam dam which was to have F.R.L. at 160 in the first stage, would be raised to 300, in the second stage. Certain revisions which were thus necessitated in the Project Report were accordingly incorporated.

5.16 Height of the dams

After bifurcation, Navagam fell in Gujarat (May 1960). An agreement between Gujarat and Madhya Pradesh (November 1963) about the height of the dam (Bhopal agreement) was later repudiated. Khosla Committee was constituted by the Centre, to suggest measures for integrated development. In the meantime, Madhya Pradesh and Maharashtra reached agreement. (Jalsindhi agreement), about a dam between Navagam and Harinphal.

1209 LJ&CA/2002—11A

5.17 Khosla Committee

The Khosla Committee recommed a Master-Plan and one project (Navagam) and Gujarat broadly endorsed it.

5.18 Narmada Tribunal and equitable apportionment

(a) A series of inter-State meetings under the auspices of the Centre, thereafter ensued, but to no avail. Meanwhile, on 6th July, 1968, Gujarat asked for the appointment of a Tribunal under the Inter-State Water Disputes Act, 1956, and the Narmada Water Disputes Tribunal was constituted on 6 October 1969 and the disputes referred to that tribunal.

(b) Subsequently, on the 16th October 1969, the Government of India made another reference of certain issues raised by Rajasthan under section 5 (I) of the Inter-State Water Dispute Act, 1956.

(c) After hearing and examining the statements of case and the respective rejoinders to each other's statement by the concerned States, the Tribunal framed 24 issues in the first instance, but, on further consideration, the same were amended and modified. The issues need not be quoted here. All the States expressly made it clear that the correct legal principle applicable in the dispute was the doctrine of equitable apportionment.

5.19 Narmada Tribunal – Award on Preliminary Issues

(a) After hearing elaborate arguments of counsel on behalf of the party States, and the Attorney General on behalf of the Union of India, the Tribunal gave its judgment on preliminary issues. According to the Tribunal, reference of a matter raised by Rajasthan, a non-basin State was *ultra vires* of the 1956 Act, but reference of the one raised by Gujarat was not.

(b) Also, it had jurisdiction to give appropriate relief to direct Madhya Pradesh and Maharashtra to take steps, by way of acquisition or otherwise, for making sub-merged land available to Gujarat in order to enable Gujarat to execute the Navagam Project and to give consequential directions to Gujarat and other Party States regarding payment of compensation to Maharashtra and Madhya Pradesh and for the rehabilitation of displaced persons.

5.20 Appeal to Supreme Court and subsequent compromise

(a) Madhya Pradesh and Rajasthan appealed to the Supreme Court by special leave, against the decisions of the Tribunal, obtaining a limited stay of the proceedings of the Tribunal, in May/June, 1972. The Chief Ministers of Madhya Pradesh, Maharashtra, Gujarat and Rajasthan thereafter entered into an agreement to come to a compromise with the assistance of the Prime Minister of India. An adjournment of the proceedings was ordered by the Tribunal, as requested by the parties.

(b) In August, 1974, the parties jointly filed the Agreement of party States dated 12th July 1974 which sought deletion of issues 4,5,7, 7(a), 7(d), 7(e), 7(f), 8, 10, 11, 12 & 20 and modification of issues 6, 7 (b), 13 and 17. Only the remaining issues were to be determined by the Tribunal. The Tribunal adhered to the provisions of the Agreement produced by the parties. The appeals filed by Madhya Pradesh and Rajasthan naturally were withdrawn.

(c) The parties came to agreement on : (i) the quantity of water, (ii) requirements of Maharashtra and Rajasthan; (iii) the net available quantity of water for use in Madhya Pradesh and Gujarat, (iv) apportionment by Tribunal between Madhya Pradesh and Gujarat, (v) the height of Navagam dam to be fixed by the Tribunal, and (vi) the level of the canal should be fixed by the Tribunal.

1209 LJ&CA/2002—11B

5.21 The Narmada Tribunal-Various Doctrines Considered

The Narmada Tribunal made an in-depth consideration of the law relating to equitable apportionment of the waters of inter-State rivers in India. Various competing doctrines and principles were examined.[xxiv]

(a) The Harmon Doctrine professes absolute territorial sovereignty of the upper riparian State, which could abstract any amount of water at the head reaches of a great river and make a desert of the State that was situated lower down.

(b) The English Common Law Principle of Riparian Right would on the other hand authorize a lower riparian to exercise a veto against abstractions upstream.

(c) In between, there are those like the Doctrine of Equitable Apportionment and the Equitable utilisation Theory.

The Tribunal itself (by agreement) accepted the doctrine of equitable apportionment.

5.22 Narmada Dispute-Allocation Made

(a) The Narmada Tribunal did apportion the waters among Madhya Pradesh and Gujarat. Madhya Pradesh with 97.59% of the drainage area and contributing 98.75% of the flow, was awarded 18.25 MAF (67%), while Gujarat with 0.56% of the drainage area contributing 0.26% of the flow, got 9 MAF (33%). It was also decided that excess as well as distress should be shared by the two States in the same proportion as their shares. Rajasthan's claim for a share in the excess flow was turned dwon. However, between Rajasthan and Maharasthra, excess or scarcity was decided to be distributed in the proportion of 1/56:1/12.

(b) In deference to the wishes of the parties, the Tribunal agreed that allocations be made subject to review and modicication after the lapse of a reasonable period of time. It was decided, accordingly, that the allocations should be subject to review after a period of 45 years from the date of order of the Tribunal.

(c) The Tribunal had also to elaborately deal with intricate technical questions, such as fixing the full supply level of Navagam Canal, its bed gradient, determination of the height of Sardar Sarovar Darn, the quantum of the re-generated flow and return flow etc. it also presented an exhustive scheme to set up a machinery for implementing its decisions.

5.23 Narmada Tribunal :duration (1969 – 1978)

The Narmada Tribunal had been constituted in October 1969. Its gave its Report in August 1978. Within three months thereafter, the Union of India and the States of Gujarat, Madhya Pradesh, Maharastra and Rajasthan, filed five separate references before the Tribunal, as stipulated in the statute, seeking explanation/guidance. The Tribunal, accordingly gave its Further Report, in December, 1979.

5.24 Narmada Tribunal Report: Significant Features

The Narmada Water Disputes Tribunal Report contained some significant features:

(a) It was held that Rajasthan, a non-riparian State, was not entitled for a share in the Narmada waters. The State was, nevertheless, favoured with an allocation, based on an agreement of Chief Ministers.

(b) The Tribunal observed that diversion of water of an inter-State river outside the river basin is legal; and the need for diversion of water to another watershed may therefore be a relevant factor on the question of equitable apportionment in the circumstances of a particular case.

(c) The Tribunal held that it had jurisdiction to limit the period of operation of the award. It observed:

"....We are therefore of opinion that the express power granted to the Tribunal by Parliament under this sectin (section 4 of the Inter-State Water Disputes Act, 1956) to investigate water disputes and to give decision thereon involves, by necessary implication, that the Tribunal has the power to prescribe whether the decision should be of permanent duration or whether the decision should be subject to review after a lapse of a reasonable period of time."

(d) The Narmada Tribunal not only adjudicated the inter-State water dispute between the party States, but also directed the establishment of a machinery for operating and implementing its award, with the object of accomplishing the optimum utilization of Narmada waters. This machinery (the Narmada Control Authority), was constituted subsequently, and was authorised to frame detailed rules and regulations and to carry out water accounting.

5.25 Godavari Water Disputes Tribunal Report (1979)

Godavari, the largest among the peninsular rivers, is held in reverence as "Vriddha Ganga". Rising in the Nasik District of Maharashtra, it joins the Bay of Bengal after traversing a length of 1465 km. Of its total catchment of 3, 12, 812 sq.km, 49% lies in Maharashtra, 21% in Madhya Pradesh, over 1% in Karnataka, over 5% in Orissa, and 24% in Andhra Pradesh.

5.26 The Godavari Disputes-Background

(a) Till the mid-nineteenth century, only minor irrigation works were to be found in the Godavari river basin. The first major one, The Godavari Delta Canal System, was completed in 1877.[xxv] Prior to Independence, the Provinces of Bombay, Madras, Orissa, Central Provinces, and the princely States of Hyderabad, Bastar and Kalahandi were the riparian States. After 15 August, 1947, the basin fell within the territorial jurisdiction of the States of Bombay, Madras, Madhya Pradesh, Hyderabad and Orissa. At the instance of the Central Government, after Indepedence, parleys were held among the party States and a memorandum of understanding was prepared in 1951, apportioning the available flow of roughly 1900 TMC. (Orissa had kept out of the memorandum).

(b) Subsequent to the enactment of the Andhra Pradesh Act, 1953, and the bifurcation of Bombay in 1960, the configurations and borders had changed and the States of Maharastra, Andhra Pradesh, Karnataka, Madhya Pradesh and Orissa became the party States. The Government of India formulated a scheme for-re-allocation, which was rejected by the States in a conference held in 1960.

(c) In 1961, the Government of India set up the Krishna Godavari Commission to deal with the problems in the Godavari, as also in the Krishna River. The Commission found that accurate assessment of dependable flow in the river could not be made without further data-collection and discharge observations. These were later started; in the meanwhile, the Government of India found, that the earlier Memorandum of Understanding was ineffective and unenforceable.

5.27 Godavari Tribunal (1969)

The Godavari Water Disputes Tribunal was constituted under the Inter-State Water Disputes Act, in April 1969. While referring to the Tribunal, for adjudication, the water disputes

regarding the inter-State river Godavari and the river valley thereof, the Government of India also requested the Godavari Tribunal to consider the representations of some of the States, concerning the possibility of diversion of the Godavari waters to the Krishna river and the objections thereto by some other States.

5.28 The Godavari Tribunal – Issues

Several issues were framed by the Godavari Tribunal : We need not quote them. The disputants had exhibited a spirit of accommodation, and continued to exert themselves in the interlocutory stage, to reach bilateral or multi-lateral agreements on several points of dispute.

5.29 Godavari Tribunal (Report)(1980) (Trans-basin diversion)

(a) The Report of the Godavari Tribunal (7 July, 1980) was mostly a formal consolidation of agreements arrived at by the parties themselves. The Tribunal, however was forthright on an important question of policy, namely of trans-basin diversion. It held:

Each of the States concerned will be at liberty to divert any part of the share of the Godavari waters, allocated to it from the Godavari basin, to any other basin.

(b) Though the Godavari Tribunal dealt with various uses of water, no order of priority among them was laid down. The final order of the Tribunal envisaged alteration, amendment or modification of all or any of its provisions, through agreements between parties or legislation by the Parliament.

5.30 Ravi and Beas Tribunal (Report 1986)

Ravi and Beas belong to the Indus system. That system comprises

(a) The Indus and its 3 Tributaries on the West (Kabul, Jhelum, Chenab) and
(b) Ravi, Beas and Sutlej on the East.

5.31 Ravi-Beas dispute; and Rao Commission

(a) Canal irrigation was extensively used in the Indus basin: By 1919, several projects were on blue print, including the Sutlej project, the Sukkur Barage project and the Bhakra project

(b) Despite Bahawalpur's objections, the Sutlej Valley Project was completed by 1932. Bahawalpur protested. The Government of India thereupon appointed a committee of experts, known as the Anderson Committee, to go into the disputes. The Committee made unanimous recommendations, which were accepted by the concerned party States and by the Government of India.

(c) On the complaints of Sind, the Rau Commission was appointed in 1941, which submitted its report in the subsequent year. But the contestants viz. Punjab and Sind, rejected the recommendations, and hence negotiations were held to solve their differences. By 1945, an agreement was reached, but, before a final decision could be taken, the country was partitioned.

5.32 Radcliffe Award and Indus Treaty

(a) Sir Cyril Radcliffe, the eminent King's Counsel, was entrusted with the task of demarcating an international boundary by piercing through the heart of undivided India. The upper reaches of the main River Indus and its East tributaries came to lie in India, while the lower reaches and a vast part of canal network found their place in Pakistan. But the installations that supplied water to these canals were situated in India. Naturally, Pakistan had its own apprehensions over supplies to its canals. Also,

it had its misgivings about the proposed Bhakra-Nangal project restricting supply water to the Bahawlapur area.

(b) In 1951, the President of the World Bank offered the "good offices" of the Bank to help the two countries to find a solution. Negotiations started, but in vain. In 1954, the Bank proposed a plan under which the waters of the Western rivers (the Indus, the Jhelum and the Chenab) would be reserved for the exclusive use and benefit of Pakistan, whereas the entire flows of the three Eastern rivers (The Ravi, the Beas and the Sutlej) would be available for the exclusive use and benefit of India, except that, for a specified transitional period required for the construction of replacement canals in Pakistan (later fixed as ten years), India would continue to supply these rivers in accordance with an agreed schedule of withdrawals in Pakistan.

5.33 Indus Treaty (1960)

The Bank's proposal (with certain modifications) led to the signing of the Indus Treaty of 1960. Thus, so far as the Eastern rivers, namely, the Ravi, the Beas and the Sutlej are concerned, unrestricted rights of development and use of their waters came to be conferred on India, after the said transitional period ended on 31st March 1970.

5.34 Ravi Beas Disputes: Post Partition Developments

While the Indus Treaty of 1960 was on the anvil, there was a parallel process on the domestic front. The State Governments of Punjab, Pepsu, Jammu and Kashmir and Rajasthan were required to prepare a development programme for the utilisation of the waters of the eastern rivers. The waters of the Sutlej had already been planned to be utilised in the States of Punjab, Pepsu and Rajasthan, through the Bhakra Nangal Project, but the surplus waters of the Ravi and the Beas (excluding the pre-partition use) had to be planned for utilisation by the States of Punjab, Pepsu, Jammu and Kashmir and Rajasthan. An agreement was reached, whereunder the party States were to have allocation thus:

Jammu and Kashmir	: 0.65 MAF
Pepsu	: 1.3 MAF
Punjab	: 5.9 MAF
Rajasthan	: 8.0 MAF

Punjab and Pepsu

Pepsu subsequently merged with Punjab, whose share thereby rose to 7.2 MAF. There was also bifurcation of the State of Punjab into separate entities, viz, Punjab and Haryana. Thus, the 7.2 MAF share from the Indus waters too became dispute-ridden, in the wake of the relevant provisions in the Punjab Reorganisaton Act, 1966.

5.35 The Ravi dispute

(a) The State of Haryana laid claim over 4.8 out of 7.2 MAF (which was the entitlement of the composite Punjab State), on the principle of equitable distribution. The new State of Punjab, on the other hand, conceded nothing to Haryana, mainly on the plea that, Haryana was not a riparian State. Acting under section 78 of the Punjab Reorganisation Act, 1966, the Union Government, allocated 3.5 MAF each to the parties and 0.2 MAF to Delhi. It was also observed that, on further exploitation, it would be possible to augment the allotment by 0.617 MAF, in which case Haryana would have a further entitlement. A scheme proposal, namely the Sutlej Yamuna Link (SYL), was mooted for the full utilisation of the of the water allotment to Haryana under this statutory decision.

(b) An aggrieved Punjab moved the Supreme Court against the statutory decision. Haryana, on the other hand, moved the same Court for compelling Punjab to implement it. In the meantime, Chief Ministers of the three States of Punjab, Haryana and Rajasthan arrived at an agreement on 31st December, 1981, whereunder it was

agreed that out of the surplus waters of Ravi-Beas allocated to Rajasthan (namely, 8.5 MAF), until such time when that State was able to utilise its full share, the unutilised portion could be used by Punjab, whose normal share would otherwise be 4.22 MAF, that of Haryana being 3.5 MAF. It was further stipulated that Punjab would complete the SYL canal within a period of two years. The suits pending in the Supreme Court were withdrawn, and Punjab issued a White paper on 23rd April, 1982, hailing the Agreement, which had resulted in increase of 1.32 MAF of waters to Punjab over the allocation made by the Central Government (the allocation to Haryana remaining unchanged).

5.36 Punjab settlement

But, in November, 1985, the Punjab Legislative Assembly passed a resolution, repudiating the Agreement of 31st December,1981 and declaring the White paper to be redundant and irrelevant. Prolonged negotiations then ensued, culminating in the Punjab settlement of 24th July, 1985. The political settlement referred to above, included three provisions relating to Ravi-Beas waters:

1. The farmers of Punjab, Haryana and Rajasthan would continue to get water from the Ravi-Beas system, to the same extent as on 01-07-1985. Waters used for purposes of consumption would also remain unaffected. Quantum of usage claimed should be verified by the Tribunal referred to below.

2. The claim of Punjab and Haryana regarding their shares in their remaining waters would be referred for adjudication by a Tribunal to be presided over by a Supreme Court Judge. The decision of this Tribunal would be rendered within six months and would be binding on both the parties.

3. The construction on the SYL canal should continue[xxvi] and should be completed by 15th August, 1986.

5.37 Ravi Beas Tribunal:Genesis (1986)

The President of India promulgated an Ordinance in January, 1986, setting up the Ravi-Beas Tribunal as above, but repealed it, on the notion that the object thereof could be better achieved by the constitution of a Tribunal under the Inter-State Water Disputes Act, 1956.[xxvii] The Act was accordingly amended by inserting the newly added section 14, with an explanation of the term "Punjab Settlement."[xxviii] On 2nd April, 1986, the Central Government constituted the Ravi and Beas Waters Tribunal, for the verification and adjudication of the matters referred to in the Punjab Settlement of 24th July, 1985 mentioned above.

The reference to the Ravi Beas Water Disputes Tribunal related to verification and adjudication of two matters:

1. The farmers of the Punjab, Haryana and Rajasthan will continue to get water not less than what they were using from the Ravi-Beas system as on 01-07-1985. Waters used for consumptive purposes will also remain unaffected. Quantum of usage shall be verified by the Tribunal.

2. The claim of Punjab and Haryana regarding the shares in their remaining waters will be adjudicated by the Tribunal.[xxix]

5.38 Ravi Beas Disputes:Contentions

The party States responded to the Tribunal's notice and filed the respective statements of case, and (subsequently) the counter-statements. The contentions of the parties were briefly thus:

(a) **Punjab**

The waters of the Ravi and the Beas belonged to the Punjab State. It was but a concession made by it to the farmers of Haryana and Rajasthan, to continue the committed uses as on 1st July, 1985. It was for the Tribunal to verify the quantum of usage in those States, as well as in the Punjab.

As to the second term of reference, the quantities of actual usage should be set apart as guaranteed for the users and the balance left out from the total available supply should be taken as the remaining waters. Haryana and Rajasthan, not being riparian States, should not claim any share from such balance, which was the entitlement of Punjab alone.

(b) **Haryana**

The Tribunal should first verify the quantum of usage as on the specified date and thereafter adjudicate on the claims of Punjab and Haryana as to the remaining waters. The Tribunal must verify the use of waters by the farmers at the farm gates and not at the canal heads. The basis of distribution should have been actually the water year ending 30th June, 1985. It would be reasonable, if verification of the use with reference to a period of four or five years (omitting the year 1984-85 when breaches had occurred), be made. The State of Haryana could not utilise its share of the Ravi-Beas waters, as the SYL canal had not been completed.

(c) **Rajasthan**

Jurisdiction of the Ravi Beas Tribunal was restricted to verification of the usage from the Ravi-Beas system as on 1July 1985. Since the State's share was settled by the 1955 Agreement and re-inforced by the 1981 Agreement, it was not concerned with the second term of reference. The State also prayed that the Tribunal should hold, that it had no jurisdiction under section 14 of the Act or under the terms of reference, to alter, vary or affect Rajasthan's share.

The Ravi-Beas Water disputes Tribunal felt that item II of the reference could be divided into three parts:

1. The farmers of the States would continue to get water not less than that as on 1 July, 1985.
2. Water used for consumption purposes remained unaffected.
3. The Tribunal was to verify the quantum of usage by the party States.

Item 2 of the reference called for adjudication of the claims of Punjab and Haryana, regarding their shares in the remaining waters.

5.39 Ravi Beas Disputes: Tribunal's Conclusions

(a) The Ravi Beas Tribunal did not agree with the plea of Punjab, that the use by farmers for one year should be counted on the basis of the release at the canal head as on 1 July 85, multiplied by 365. As the data of a single day (or even a single year) cannot give any true picture of the extent of use, the Tribunal thought that the most feasible course was to take an average of the figures for the years 1980-81 to 84-85 re-constructing the data for breach periods. In regard to Haryana's plea, the Tribunal came to the conclusion that as the actual deliveries to the farm were not being measured at the farmgates, it was not possible to verify the water used by farmers on that basis.

(b) The net result of the verification by the Ravi-BeasTribunal in accordance with the first term of reference, was the following:

Quantum of Ravi and Beas water used by Punjab as on 1 July, 1985, excluding pre-Partition use was 3.106 MAF, including 0.352 MAF of permissive use by Punjab out of Rajasthan's share. Quantum used by Rajasthan as on the date, excluding pre-Partition use, was 4.985 MAF. Use of Haryana as on the date was 1.62 MAF.

(c) By reference 2, the Tribunal was required to adjudicate the claims of Punjab and Haryana "in their remaining waters". The Tribunal agreed with the contention of Rajasthan, that its share had been settled by the previous Agreements and that it was not a party to the second reference.

(d) As to the plea of Punjab, that the waters of the Ravi and the Beas belonged to it absolutely, and in its entirety, to the exclusion of both Haryana and Rajasthan, the Tribunal held that the plea was not sustainable. It very relevantly pointed out that the Territorial Sovereignty Theory (canvassed by Punjab in the instant case), would not be to its benefit, it being the lower-most riparian, as the theory is generally invoked by the upper-most riparians.

(e) Punjab's contention, that the State of Haryana was situated outside the basin, was also rejected by the Tribunal. It pointed out that the river courses changed, and so did the State boundaries, and that it was one such change which took place on 1 November, 1966, that gave rise to arguments. Before November, 1966, when Haryana was part of composite Punjab, it had the same right as the present day Punjab. The Tribunal thought it appropriate to quote from the decision of the U.S. Supreme Court, in *Missouri Vs. Holland*,[xxx] wherein water had been compared to migratory birds. It made an allocation of 5 MAF to Punjab, and 3.83 MAF to Haryana, the total quantity apportioned being 8.33 MAF, including 1.11 MAF surplus available. The fluctuations in flow were to be shared in the same ratio as the allocation. The claim of Delhi for additional supply over the existing 0.2 MAF of water was rejected, as falling outside the scope of the reference to the Tribunal.

5.40 Ravi Beas Tribunal Report: Comments

(a) It may be mentioned that the Ravi and Beas Waters Tribunal was constituted *suo motu* by the Central Government, through an amendment of the Inter-State Water Disputes Act, 1956 by way of insertion of the new section 14 which made express provision the on the subject.

(b) The Ravi-Beas Waters Tribunal upheld the legality and validity of prior Agreements that had been entered into, by the respective States. The Doctrine of Riparian Rights, as also the Theory of ownership Rights of a State in river waters, was rejected. The concept of integrity of river basin was also upheld, by rejecting the plea for treating Ravi and Beas as separate entities. They formed a part of the entire Indus basin and were treated accordingly.

CHAPTER 6

THE CAUVERY DISPUTE

6.1 Geography

(a) Cauvery, the Ganga of the South, rises at Thalakaveri, in the Brahmagiri range of hills of the Western Ghats, in the Coorg district of Karnataka, at an elevation of 1341m. After traversing a tumultuous course in the district, it receives the Harangi (which has been dammed at about 19 kms. North-West of Mysore). Two other tributaries- Hemavathy and Lakshmana theertha, - join the Cauvery into the Harangi reservoir. The main river continues to flow East-wards for 15 km upto Sreerangapatnam and then changes its course South-East wards.[xxxi]

(b) In its next 25Km. stretch, it receives Kabini, an important tributary that originates in the Wyanad district of Kerala and carries bounteous flows. Then, it joins with Suvarnavathy and takes a North-Easterly direction, piercing the Eastern Ghats at Sivasamudram.

(c) At Sivasamudram, the river dips by about 97m. in a series of falls and rapids and, after flowing through a very narrow gorge, continues its East-ward journey and forms the boundary between the States of Karnataka and Tamil Nadu for a distance of about 64km. Below Sivasamudram, it receives the Shimsha, and then Arkavathy, just before entering the territory of Tamil Nadu.

(d) In Tamil Nadu, the river Cauvery continues to flow East-wards upto Hogenakal Falls and takes a Southerly course and enters the Mettur reservoir. It leaves the Eastern Ghats below Mettur and is joined by Bhavani, about 45 km. downstream. This important tributary then turns West-ward in the Nilgiri District of Tamil Nadu and takes a detour in Kerala territory for about 38 km and turns back to Tamil Nadu, before joining the main river. Cauvery thereunder takes a more Easterly course there and is joined by Noyil, and then by Amaravathy.

(e) Amaravathy, an important tributary of the Cauvery, has its origin in the Idukki district of Kerala, where it is known as Pambar, and carries rich flows in Kerala. The main river then enters the Tiruchirappalli district and gets wider with a sandy bed in the reach. Just below Tiruchirappalli, the Cauvery splits into two branches, which are controlled by the Upper Anicut constructed in 1836. The Northern branch, called the Coleroon, [the main flood carrier on which is the Lower Coleroon Anicut (1836)] flows in a North-Easterly direction to enter the Bay of Bengal near Porto Novo. The Southern branch, however, continues to trek under the name of Cauvery itself.

(f) It further divides into Cauvery and Vennar below the Grand Anicut, which is said to have been built in the 2nd century AD, at the tail end of the Srirangam island, which has the upper Anicut at the upstream end. The Cauvery and Vennar channels are utilised as the main canals for irrugation in the delta. Some branches find their way to the Bay of Bengal, while others are lost in the deltaic plains.

(g) The Cauvery branch descends into the Bay at Pompuhar, 13km North of Tranqobar as an insignificant stream. The river has a total length of 802 km, and a catchment area of 81,155 sq. km, of which 2,866 sq.km.lie in Kerala, 34,273 sq.km. in Karnataka and 44,016 sq.km. in Tamil Nadu.

The Agreements of 1892 and 1924, mentioned below[xxxii] (relating to the Cauvery) are important land-marks in the history of this dispute.[xxxiii]

6.2 The Agreement of February 18, 1892

(a) Controversies between Mysore and Madras over the use of Cauvery waters had arisen, as early as 1807. But decades passed uneventfully. On the representation of the Mysore Government to the Government of India, the Mysore and Madras Governments held further discussions, which led to the Agreement of 1892.

(b) The Agreement of 1892 contained six rules. Rule I contained definitions of terms. Rule II laid down restrictions on Mysore in building any new irrigation reservoir on the scheduled main rivers or building any new anicut across any of the scheduled streams. Rule III enjoinded on Mysore to forward to Madras full details of any new reservoir or anicut and, on Madras, to accord consent therefore, except for the protection of its prescriptive rights. Rule IV provided that in case of difference of opinion, the matter would be referred for a final decision of joint arbitrators or of the Government of India. Rule V referred to the consent of Madras given for certain new irrigation reservoirs scheduled in the Agreement and for compensation by Mysore on account of inadequate maintenance to three named reservoirs. Rule VI stipulated that

the foregoing rules would apply, as far as might be, to Madras, as regards streams flowing through British territory into Mysore.

6.3 Developments 1910-1924

(a) In 1910, Mysore Government proposed a reservoir at Kannambadi (Krishnarajasagar) with a capacity of 41.5 TMC which was objected to by Madras, the latter having its own project in view, namely, the Cauvery Mettur Project, with a storage of 80 TMC. After a reference to the Government of India, permission was accorded to Mysore, but for a reduced storage of 11TMC. But the latter, apparently accepting the condition, put up a dam, foundation, suiting the earlier desired full storage. The dispute continued.

(b) In view of the incompatible stands taken by Mysore and Madras, the Government of India referred the matter at issue to arbitration under Rule IV of the Agreement of 1892. Sir H. D. Griffin was appointed arbitrator and M. Nethersole, the Inspector General of Irrigation in India, was made the Assessor. They entered on the proceedings on 16 July 1913 and the Award was given on 12 May 1914.

(c) In giving the Award on 12 May 1914, Sir H. D. Griffin had given decisions on the various issues, making a significant observation as under:

> "In conclusion, I regret that it has been impossible to arrive at a settlement satisfactory to both the parties. Each party set out claims which, on examination, were found inadmissible in whole or in part. The claims of Madras, if allowed, would probably have resulted in making the Mysore Project impossible: those of Mysore, in seriously impairing the interests of Madras. Throughout the proceedings, there has been a regrettable lack of the spirit of compromise. The resolution we have arrived at, recognises the paramount importance of the existing Madras interests, has for its primary object the safeguarding of those interests and does, we believe, safeguard them effectually. At the same-time, it gives to Mysore the opportunity of utililzing for their own benefit their fair share of the surplus waters of the Cauvery."

6.4 The 1924 Agreement

On appeal by Madras, against the above award of 1914 relating to the Cauvery, the Secretary of State for India suspended the Award. Negotiations between the Governments of Mysore and Madras were re-started and a new Agreement was signed in February 1924. It is unnecessary to quote its terms.

6.5 Agreements of 1929 and 1933

(a) Subsequently, in June 1929, the parties signed supplementary agreements, incorporating certain modifications to the detailed rules of regulation. In consequence, Mysore could complete its Krishnarajasagar Project; and Madras was enabled to complete its Mettur Project. By virtue of a subsequent agreement reached in September, 1933, Madras and Mysore decided, *inter alia*, to construct some new anicuts and tanks to distribute water.[xxxiv]

(b) Agreement of 1924, relating to the Cauvery water, contemplated the re-consideration of certain arrangements after the lapse of fifty years. In the meantime, the Indian Independence Act and later developments marked the beginning of wide changes in the configuration of the political entities involved in the Cauvery basin. The State of Travancore ever remained a Cauvery basin State, with a major tributary originating in its territory and flowing therein, in the name of Pambar. Coorg, (which became a Part C State), Mysore, Madras and Pondicherry were the other entities in the basin.

(c) A change was, however, brought about by the States Reorganisation Act of 1956. The States of Kerala, Madras (subsequently, Tamil Nadu), Mysore (subsequently, Karnataka), and the Union Territory of Pondicherry, have since been the parties to the dispute regarding Cauvery.

6.6 The Kerala Stand

(a) The State of Kerala strove hard to assert its claims on the Cauvery waters and vigorously pursued investigations towards developing the basin resources, particularly of the Kabini and the Bhavani. Two major hydro-electric projects and a number of irrigation schemes were investigated and project reports prepared and forwarded to the Central Government for sanction. But they were rejected. Tamil Nadu and Karnataka were vigorously opposed giving clearance to the said schemes. Subsequently, however, during the Eighties, Kerala took up the Kuttiyadi Augmentation Scheme in Kabini basin, seeking to utilise about 6TMC for power generation and irrigation.

(b) As to Pondicherry, the traditional requirement of water for the Karaikal area, for agricultural purposes is its principal demand. Industrial and drinking purposes are also to be taken into account.

6.7 Central Government Efforts

(a) The dispute over Cauvery waters, in its totality, includes the above-mentioned aspects. By 1970, the Central as well as the concerned State Governments were seized of the urgent necessity for a final settlement.

(b) As a result, inter-State negotiations were started, apparently in right earnest. Even the suits filed by Tamil Nadu and Kerala in the Supreme Court, seeking direction to the Central Government to appoint an Inter-State Water Disputes Tribunal (as envisaged in the Inter-State Water Disputes Act of 1956), for adjudicating the disputes, were withdrawn.

(c) In the meantime, a Cauvery Fact Finding Committee (CFFC), constituted by the Central Government as per the understanding with the States, collected data on aspects such as, yield of the river, adequacy of supplies, excessive use of water for irrigation purposes etc. it submitted its first report in June 1972. It gave an additional report later in August 1973.[xxxv]

(d) A series of inter-State meetings based on CFFC's reports was held in 1973 and 1974 under the chairmanship of successive Union Ministers for Irrigation. At the final meeting of this series held in November 1974, and subsequently in February 1975, a draft agreement was discussed, but not adopted. In August, 1976, however, a draft agreement prepared by the Union was accepted by all the States, and the fact announced in the Parliament by the Minister for Agriculture. But in the next meeting of the Chief Ministers, Tamil Nadu backed out of the agreement. Karnataka followed suit. Kerala, with optimism about the impending possibility of commencing its long-pending development projects in the Cauvery basin; even agreed to forego about two-thirds of its contribution to the flow, but it was disappointed.

(e) Inter-State meetings under the auspices of the Union Government, and otherwise, went on in vain, till 1986 when a Farmer's Association of Tanjavur moved the Supreme Court, seeking a direction to the Central Government to constitute a Tribunal under the Inter-State Water Disputes Act, 1956, for adjudication of the disputes. During the pendency of this suit, negotiations were carried on for four more years, though fruitlessly. In the last of the inter-State meetings held in April 1990 the principal contestants viz. Tamil Nadu and Karnataka, predictably, agreed to differ.

6.8 Supreme Court Order (1990).

The Supreme Court, by its order of 24th April 1990, directed the Central Government to constitute a Tribunal as envisaged in the Inter-State Water Disputes Act, 1956 and refer the disputes to it. Thus, in June 1990, the Central Government issued orders constituting the Cauvery Water Disputes Tribunal and referring the disputes to it.

6.9 The Cauvery Tribunal

(a) The Cauvery Tribunal duly started functioning but, in the meanwhile, it had to consider quite a number of interlocutory applications, on various related matters. There was, one filed by Tamil Nadu, seeking a mandatory injunction on Karnataka for immediate release of water and other reliefs. The Tribunal dismissed it, as being beyond its purview, but was compelled to re-consider that stand, by the Supreme Court, at Tamil Nadu's instance.[xxxvi]

(b) Accordingly, the Tribunal heard the matter again and gave an interim award on 25th June 1991, favouring Tamil Nadu and enjoining upon Karnataka to release waters to Mettur reservoir on a stipulated pattern. Karnataka was also directed, not to increase its area of irrigation utilising Cauvery waters. Karnataka's reaction to this was extremely adverse. Negativing the effects of the Tribunal's order, it issued an Ordinance.

(c) At this juncture the President of India made a reference of the Cauvery matter to the Supreme Court, under Article 143 of the Constitution for its opinion. The opinion of the Supreme Court, rendered subsequently, upheld the interim award of the Tribunal and denounced the Ordinance issued by the Governor of Karnataka. As the Supreme Court rendered its opinion, favouring Tamil Nadu, the Central Government gazetted the interim award of the Tribunal, on 11th December, 1991. Demonstrations followed in Karnataka and Tamil Nadu.

6.10 Developments 1992-1995 (Cauvery Tribunal)

(a) During the interregnum (1992 to early 1995), the Cauvery basin was blessed with good Monsoon rains, and tranquility prevailed. In accordance with the earlier directions, the party States had come up before the Tribunal with lists of witnesses to be examined, and filed their affidavits. The examination of the witnesses started in early December 1993. Till December '96, only the examination of the nine experts presented by Tamil Nadu was over. Those in respect of the other two States and Pondicherry, remain to be examined.

(b) By the middle of 1995, the forebodings of a lean monsoon became a reality, and it paved the way for a further period of tension and anxiety. In December 1995, Tamil Nadu moved the Supreme Court, seeking an order for 30 TMC to be released by Karnataka from their reservoirs. The apex court passed it on to the Tribunal for appropriate decision, and the latter ordered 11TMC to be released by Karnataka. The State of Karnataka pleaded helplessness, its reservoirs too being short of enough water to cater to the needs of farmers in Karnataka.

6.11 Supreme Court Suggestion (1995) and Action Thereon

(a) Tamil Nadu again approached the Supreme Court, apprising it of the seriousness of the situation. The Supreme Court thought it expedient that the Prime Minster should intervene and bring about a compromise (1995). Accordingly, a Conference of the Chief Ministers of all the party States and of the Union Territory of Pondicherry, along with other political leaders, was convened by the Prime Minister on 30 December '95. The Prime Minister took keen interest in the matter, and, based on his parleys with the Chief Ministers of Tamil Nadu and Karnataka, gave his decision that Karnataka

should make an immediate release of 6TMC for saving the standing crops in Tamil Nadu.

(b) Karnataka abided by the Prime Minister's decision. As to the actual situation existing in the areas in question (both in Tamil Nadu and in Karnataka), an expert committee was constituted, to make on the spot studies and report. The report was subsequently submitted.

(c) In the meantime, Karnataka approached the Cauvery Tribunal with a Civil Miscellaneous Petition (March 1996). But the other parties were quite opposed to the move and the petition was dismissed.

A scheduled sitting of the Cauvery Tribunal did not take place on 27 June, '96, and was postponed for 11, 12, of July '96, an order of the Tribunal was issued to the effect that the Chairman of the Cauvery Water Disputes Tribunal had resigned with effect from 1 July 1996. Later developments are not material, for the present purpose.

CHAPTER 7

TENTATIVE PROPOSALS

7.1 Some inference about present position

The brief resume of working of the Tribunals constituted under article 262 of the Constitution, read with the Inter-State Water Disputes Act, 1956, does not create, in the minds, any deep sense of satisfaction. Several factors stand out.

First, the proceedings before the Tribunals take a fairly long time. Even granting that the issues are complex in their character and technical in their nature and are surcharged with political feelings, delay should be avoidable, because the Tribunal is given full freedom to operate in its sphere and is not troubled with numerous humdrum controversies.

Secondly, the awards of the tribunals are often bulky – a situation partly due to the fact that (following the traditional style), a good deal of matter is devoted to a discussion of the competing doctrines of substantive law.

Thirdly, wherever the parties have been able to come to an agreement endorsed by the Tribunal, the situation has proved to be somewhat more satisfactory, than in other cases.

In this connection, one is reminded of what the Supreme Court of the United States said in a leading judgment relating to water disputes.[xxxvii]

> *"The reason for judicial caution in adjudicating the relative rights of States in such cases is that, while we have jurisdiction over such disputes, they involve the interests of quasi sovereigns, present complicated and delicate questions and due to the possibility of future change of conditions, necessitate expert administration, rather than judicial imposition of a hard and fast rule. We say of this case, as the court has said of inter-State differences of like nature, that such mutual accommodation and agreement should, if possible, be the medium of settlement, instead of invocation of our adjudicatory power."*

7.2 Difficulty of finding a solution: emphasis on negotiation

However, the question can be legitimately raised, as to what is the course to be adopted when negotiations fail? Section 4(1) of the Inter-State Water Disputes Act, 1956 does take note of the importance of negotiations. The Central Government is empowered to constitute a tribunal, only if negotiations fail. Once a tribunal is constituted, tempers run high. The adversary element takes over; and the natural desire of each party is to accentuate the differences and even to over-argue one's case. An able negotiator could be nominated and

encouragement be given to sincere efforts made by him, for persuading the parties to come to a settlement.

7.3 An alternative to the Tribunal

Since the mechanism of a formal Tribunal has not proved to be very satisfactory[xxxviii], it should be considered whether some other alternative should not be adopted. We are aware, that it is easy to make an abstract, suggestion, but not so easy to work it out.

It appears to us, that as an alternative to the Tribunal, the mechanism contemplated by the Government of India Act, 1935 should be considered. We have already given an outline of the relevant provisions of the Act.[xxxix] The gist of the provision lies in two of its principal features:

(a) The Governor General was to constitute a Commission, to investigate the dispute.

(b) If the report of the Commission was not found acceptable by any party, the Governor General was to refer the matter to His Majesty in Council, whose decision was final.

This scheme could be adopted, of course, with suitable adaptations. The merit of the scheme chiefly lies in the fact, that what is contemplated, is not a Tribunal, but a Commission. It is true, that nomenclature does not always make a difference. But in this case, it will make a difference, because the change-over to a Commission and its substitution in place of "Tribunal" would highlight the fact that a functional change was intended.

7.4 Another alternative conferring the power on Parliament

Another – and more radical – alternative would be, to amplify the power of Parliament and also to enhance its responsibility. The scheme will have to be worked out. But some of its main features could be as under:

(a) Parliament's legislative power (Union List, entry 56) should not be constrained by the requirement, that Parliament should declare, that regulation by Parliament is in the public interest.

(b) Where an inter-State dispute relating to waters arises (and negotiations fail), the Central Government should appoint a Commission for the purpose.

(c) The Commission should give its report within three years. If the report is not forwarded within three years, the Central Government shall declare that the Commission *id funclus officio* and the matter should be placed before Parliament, which shall be free to enact appropriate legislation for resolving the controversy on appropriate lines.

(d) Whether or not the Commission's report is accepted by the disputing parties legislation, be enacted to give it Parliamentary sanctity.

7.5 Jurisdiction of courts barred

Jurisdiction of the Supreme Court and all other courts should be barred in respect of matters falling within the above proposals (whichever alternative is adopted).

7.6 Substantive law to be laid down by Parliament

Whichever alternative is adopted regarding resolution of the dispute in individual cases, Parliamentary legislation should be enacted, to lay down the substantive law for resolving disputes relating to inter-State waters.

Prima facie, the doctrine of equitable apportionment seems to be acceptable. Its vagueness could be removed, to a large extent, by specifying some of the important criteria.[xl]

LEGEND

[i] Consultation Paper No. 17.

[ii] Para 1.3 to 1.4, Infra.

[iii] Valsalan, Inter-State Water Disputes in India (Central Board of Irrigation and Power), (1997), page 1 (hereinafter referred to as "Valsalan").

[iv] C.V.J. Varma, Foreword to Valsalan.

[v] Valsalan, pages 11-12; para 2.3, 2.4.

[vi] See Chapters 2-6, Infra.

[vii] Setalvad, Union State Relations under the Indian Constitution (1974), pages 95-96.

[viii] See Infra.

[ix] See para 2.1, supra.

[x] 9 Constituent Assembly Debates; Valsalan, pages 19, 20.

[xi] Krishna Water Disputes Tribunal Report (1973), Vol. 1, page 93; Valsalan, page 25.

[xii] *Wyoming Vs. Colorado*, (1922) 259 US 419.

[xiii] *Connecticut Vs. Massachusetts*, (1931) 282 US 670.

[xiv] Valsalan, pages 26, 27.

[xv] Valsalan, pages 27-28, para 4.12

[xvi] Cf. Valsalan, pages 31-38

[xvii] Valsalan, pages 31, 32, 44

[xviii] Valsalan, page 31

[xix] Valsalan, pages 31; 51

[xx] See also para 5.21, Infra

[xxi] Some of the material in this chapter is compressed from Valsalan, pages 36-80.

[xxii] Report of the Krishna Water Disputes Tribunal, page 72.

[xxiii] Narmada Water Disputes Tribunal, Report, (Delhi, 1978) Vol. I, pages 39,27.

[xxiv] See also para 4.19, supra

[xxv] Godavari Water Disputes Tribunal, Report (1979), page 1.

[xxvi] The Punjab Settlement (July 1985), para, 9.

[xxvii] Ravi and Beas Report, page 3.

[xxviii] Section 2, Inter-State Water Disputes (Amendment) Act, 1986

[xxix] Ravi and Beas Report, page 5.

[xxx] *Missouri Vs. Holland*, 252 U.S., 415.

[xxxi] Chapter relating to Kaveri is based mainly on Valsalan Chapter 7 , pages 71-77.

[xxxii] Para 6.2, 6.3 and 6.4 infra

[xxxiii] Central Water Commission Publication: Agreements on Development of Inter-State and International Rivers (1978), page 200.

[xxxiv] ibid.

[xxxv] Guhan – The Cauvery River Disputes: Towards Conciliation (Madras) (1993), page 26; Valsalan, pages 77-78.

[xxxvi] For various Supreme Court rulings relating to Cauvery see (a) *In the matter of Cauvery Water Disputes Tribunal*, AIR 1992 SC; (b) *T.N. Cauvery NPV Sangam Vs. Union of India*, AIR 1990 SC 1316; (c) *State of T.N. Vs. State of Karnataka*, (1997) 5 SCC 473.

[xxxvii] *Colorado Vs. Kansas*, (1943) 320 US 383.

[xxxviii] Para 7.1, supra.

[xxxix] Chapter 2, supra

[xl] See the Narmada Tribunal Award.

A

Background Paper*

on

PACE OF SOCIO-ECONOMIC CHANGE AND DEVELOPMENT

* This Background Paper was prepared for the Commission by the Advisory Panel on "Pace of Socio-Economic Change and Development Under the Constitution".

PACE OF SOCIO-ECONOMIC CHANGE AND DEVELOPMENT

CONTENTS

		Page No.
1.	Securing Good Governance	1389
2.	Transparency and openness in Governance	1390
3.	Citizen's Charter	1390
4.	Sensitization of Public Servants	1390
5.	Elimination of Hunger	1391
6.	Establishment of Residential Talent Schools	1393
7.	Protection of Educational Interests of Weaker Sections	1394
8.	Establishment of Residential Talent Schools	1397
9.	Prohibition of occupations that are degrading and offend human dignity: Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993	1398
10.	Human Dignity - Elimination of Untouchability and Prevention of Atrocities	1401
11.	Adequacy of representation in Public Services	1405
12.	Representation in Higher Judiciary	1408
13.	Allocation and Management of funds – Revitalization of Special Component Plan for the Scheduled Castes and Tribal Sub-plans	1408
14.	Social Responsibilities of the Private Sector	1412
15.	Transfer of Areas under Fifth Schedule to the Sixth Schedule	1413
16.	Transfer Of Tribal Land	1414
17.	Protection Of Land Ownership/Land Tenures	1416
18.	Strengthening of constitutional provisions	1417
19.	Empowerment of Women	1418
20.	Unorganised labour	1418
21.	Statutory Protection To Farmers	1419
22.	Bonded Labour and Child Labour	1420
23.	Immoral Trafficking in Women – Rescue & Rehabilitation	1420

1.1 The first and foremost task appears to be for a radical redefinition of governance, to change the mind-set of bureaucracy, to surmount the colonial hang-over of the persistent notion of the 'Rulers' and the 'Ruled', governors and the governed, Government and the people – the "us" and "they" divide. The interaction between the Administrator and the citizenry needs to be informed by the awareness of and respect for the constitutional rights of the people and that the inter-action is essentially as between a free and self-governing people on the one hand and the agents chosen by them to serve them on the other. Massive and sustained participation of civil society initiatives, self-help groups, voluntary organizations, etc, appears necessary in order to achieve a faster pace of socio-economic development and for building a more just, caring and equitable society which the Constitution has enshrined. The movement must be from Governance to self-governance. Respect for human dignity, human rights, and the rights of the citizenry, are critical to development and are not merely its rewards. This requires a radical reshaping of policies so as to create an enabling and facilitating environment in which effective interaction between the Government and the institutions of civil society becomes possible.

1.2 There is a need for a radical redefinition of governance to change the mind-set of the political executive and permanent civil services. The movement should be towards acceptance of self-governance as a substantive and major part of governance, shedding maximum possible areas and activities of governance in favour of self-governance especially in areas relating to socio-economic development and even in other areas of governance associating institutions of self-governance. Recognition be paid to the fact that constitutional rights of citizenry, human dignity, Human Rights and human security are not rewards to development but are critical to development. A sensitive, sensitised and responsive civil services has to be ensured. It is accordingly suggested that:

(a) Emphasis should be placed on participatory governance and institutions of concomitant democracy in areas relating to socio-economic development and the progressive realization of the socio-economic goals of the Constitution.

(b) Self-governance must necessarily include developmental autonomy for Scheduled Castes and Scheduled Tribes through institutions on their behalf and empowerment of Scheduled Castes, Scheduled Tribes, Backward Classes and other deprived categories to shape policies for their development and the implementation of those policies.

(c) As an incentive to promote institutions of concomitant democracy, a specific share of expenditure on welfare programmes such as – education, health, social security, etc. be earmarked for being spend through voluntary organisation, NGOs, Self-Help Groups, etc. This is apart from the suggestions made separately in this Paper with regard to developmental autonomy and developmental empowerment of the Scheduled Castes and Scheduled Tribes, through National & State Scheduled Castes and Scheduled Tribes Development Authorities, etc.

(d) To promote a sense of good governance of the sensitive, important and key positions in administration shall be identified and listed. Posting and transfers of officers which have a key role in socio-economic change shall be through Civil Services Board in which heads/experts from management institutions shall be invited to participate in the evaluation of previous performance and track records and future suitability for the post.

(e) As a mechanism of promoting sensitivity towards the Scheduled Castes and the Scheduled Tribes and Backward Classes, a provision for "Social Justice Clearance" be established, regarding which details are given later in this Paper.

Transparency and openness in Governance

2.1 Openness is in the public interest and that 'sunlight is the best disinfectant' against the virus of corruption. As a general rule, secrecy in governance is an unreasonable practice. It promotes corruption and suppresses accountability. Governance, therefore, needs to be transparent and open especially in policy-making, programme-formulation and implementation in areas pertaining to socio-economic empowerment and advancement of the weaker sections of the society.

Citizen's Charters

2.2 Article 350 of the Constitution recognizes the rights of citizenry to petition for redress of grievances. Citizens' Charters in respect of every service-provider agency of the State is suggested to ensure effective, purposeful and user friendly delivery of public services. The Citizens' Charters would list the entitlement of the citizenry of public goods and services along with time schedule within which he is entitled to expect services from such government organisations and from each functionary at various levels. In order to ensure that Citizens' charters become an effective instrument for improved and user-friendly delivery of public services, it is further suggested that in case any person fails to receive the public goods and the services in the manner and to the extent set out in such charters, such persons should have recourse to an easy and effective system of grievance redressal through chartered Ombudsman. A scheme for criminal juries compensation should be established.

Sensitization of Public Servants

3.1 Public Servants need to be made sensitive to the special needs of the Women, the Scheduled Castes, the Scheduled Tribes and the Other Weaker sections of the society in order to ensure full enjoyment of constitutional rights and protection by these sections of the society. A perception unfortunately exists that members of the public services, in general, are averse to working in the fields pertaining to the Scheduled Castes, the Scheduled Tribes, other backward classes, women, etc. It is also said that instead of being guided by the constitutional objectives and aspirations, many of them are guided by their own biases and prejudices in dealing with issues pertaining to aforesaid classes of people which results in denial of rights to them. Such attitudes amongst members of public services require to be changed.

3.2 As a means of achieving this objective, it is suggested that a personnel policy should be drawn up, whereby, *inter alia*, officers of the IAS and other services directly or substantially relevant to Scheduled Castes, Scheduled Tribes and backward classes will find it possible to advance their career only by working for at least a period of five years in areas and sectors directly or mainly pertaining to Scheduled Castes, Scheduled Tribes and backward classes at grassroot level, executive level and policy level and none of them should be allowed to get posts in generally coveted areas and sectors, like Commerce, Economic Affairs, Industries, etc., without acquiring this qualification; it is ensured that those who voluntarily devote the major part of their service to areas and sectors wholly or mainly pertaining to Scheduled Castes, Scheduled Tribes and backward classes should not hereafter be losers in their career; and providing for protection from persecution by powerful persons inside and outside government to be given to honest officers/employees of all ranks working sincerely for the development and protection of Scheduled Castes and Scheduled Tribes; and provision is made for "Social Justice Clearance" (just like 'integrity clearance') before an officer of Class-I or Class-II is promoted; and it is ensured that service in tribal areas does not put any public servant to any disadvantage in the matter of net family income or the education of the children; and provision is made of a formula of accelerated promotion for those who spend at least five years continuously in areas and sectors directly or mainly pertaining to Scheduled Castes, Scheduled Tribes, backward classes. Social Justice Clearance should be implemented seriously by including specific performance of officers, for example, with regard to the effectuation of Section 15A of the Protection of Civil Rights Act, 1955,

thorough implementation of the Reservation Policy with accountability in their respective spheres and concrete achievements in the socio-economic development of weaker sections of the society, in particular, Scheduled Castes, Scheduled Tribes and Backward Classes. These should be similar but separate posts of the Personnel Policy in respect of Backward Classes and Women.

Elimination of Hunger

4.1 Public Distribution System is essentially the food subsidy programme explicitly targeted towards poor and is aimed at reducing hunger. Central Government incurs an annual expenditure of about Rs.12,125 crores on food subsidies. There are, it is claimed, four and a half lakh Fair Price Shops in India serving 180 million Ration Card holders/ families. The Public Distribution System is an important component of Anti-Poverty Programme. The country, unfortunately, witnesses the paradoxical situation of surplus unlifted stock of food grains in the godowns of the Food Corporation of India co-existing with hunger for lack of purchasing power. Even after fine-tuning of the Targeted Public Distribution System, the performance of the fair price shops in some of the States as revealed by some studies, is dismal. In some States the percentage of fair price shops not opening even once a week is estimated to be 87%. The transfer of income intended by Public Distribution System has, by and large, benefited the urban sectors and the Above Poverty Line sections of the society more than the poor. Investigations also indicate that about one-third of the supplies in the Public Distribution System are diverted. The delivery system, according to widely held public perception, seems to be the substantial beneficiary.

4.2 Introduction of cash subsidy or the scheme of Food Coupons (see Section 10.2.1.1 of Consultation Paper) as an experimental measure in areas where public distribution system is not functioning well and is showing persistent defiance of ethical norms and, if found successful, its extension to other areas or improving the existing public distribution system itself are amongst the options to improve the situation.

4.3 It has also been suggested that a certain percentage of the shops should be allotted to the members of the Scheduled Castes, the Scheduled Tribes and Other Backward Classes. Some State Governments already allot a particular percentage of Fair Price Shops to the Scheduled Castes and the Scheduled Tribes. Constitutionality of such allotment has already been upheld by the Court.

4.4 In respect of poor people, who at present still have the purchasing power to avail themselves of the benefit of the PDS, it is suggested that, keeping in view the fact that bulk of the genuine beneficiaries belong to the Scheduled Castes and Scheduled Tribes and "lower" backward classes; the following steps may be taken:

(i) There should be fair price shops/ration shops in every Scheduled Castes basti, Scheduled Tribes hamlet and identifiable backward classes localities like fishermen's localities, banjaras/tandas, etc. in the rural areas. In the urban areas, there should be fair price shops/ration shops in every slum/locality wholly or predominantly inhabited by the Scheduled Castes or the Scheduled Tribes or the backward classes with particular attention to the slums.

(ii) The number of fair price shops/ration shops in each basti/hamlet/urban locality/slum should be based on the population of each such habitations.

(iii) The allottees of these fair price shops/ration shops, should be selected on the basis of the social profile of the habitation in question. Thus in a Scheduled Castes basti, the fair price shops should be allotted only to a Scheduled Caste candidate and similarly in other cases. In urban slums, where Scheduled Castes and Scheduled Tribes and backward classes may have a mixed population, the candidates should be selected from the largest group.

(iv) In localities where the pre-dominant population belongs to any religious/linguistic minorities, candidates should be selected from those minorities, but keeping in view the Scheduled Castes/Scheduled Tribes and backward classes angle also since most of the minorities belong to one of these categories.

(v) There are some localities which are very much mixed and do not have a specific community character. Such localities may also increase in number in the future. Some of them may also have residents who are pre-dominantly poor and are eligible for the benefit of the PDS. In the allotment of fair price shops/ration shops in such localities, the reservation rules prevalent in the State should be followed.

(vi) The allottee should be selected by the whole community at a plenary meeting in the presence of the concerned officers. On no account, the department or departmental officers should select or impose whether from the same community or from any other community. The candidate selected should have the necessary minimum qualifications/eligibility and he/she should be strengthened by an appropriate practical training in matters like maintaining accounts books and filling up periodical reports. A Committee elected by the general body of the locality should monitor and supervise the proper working of the fair price shops. The Committee should give particular representation to youths of the community of the locality and also include a limited number of other sections of the society who have no clash of interests with the main community of the locality.

(vii) This arrangement will ensure social responsibility and social accountability on the part of the fair price shop owners and also civil society participation in the proper sense of the term, i.e. that segment of people who are directly concerned.

(viii) In each category, it is necessary to have a due proportion of women. Fair price shops/ration shops allottees other than to the Scheduled Castes, Scheduled Tribes and Backward Classes should also be selected from economically poor sections of the population from families eligible for PDS benefit.

(ix) This scheme is intended to see that fair price shops/ration shops do not become another area for professional shop owners and there is no socio-economic hiatus between those running the fair price shops/ration shops and the beneficiaries of the PDS. In order to prevent this scheme from being defeated through Benami, it is necessary to ensure that the allottees are given full and prompt support in terms of fixed capital as well as working capital through a systematic arrangement provided by the appropriate Finance and Development Corporation (e.g. Scheduled Tribes Development Corporation, Scheduled Castes Development Corporation, Minority Development Corporation, etc.) duly involving the banks.

(x) Special attention should be given to especially disadvantaged groups of Scheduled Castes, Scheduled Tribes and backward classes like, for example, communities engaged in "scavenging", etc. both in the allocation of the fair price shops/ration shops and in the selection of candidates who run the fair price shops/ration shops.

4.5 In respect of poor people who do not have the purchasing power even to buy subsidised foodgrains available through PDS, it is suggested:

(a) A massive programme of employment should be undertaken to create purchasing power.

(b) Existing schemes of employment generation under the poverty alleviation category should be expanded to cover the entire needy population for the requisite part of the year.

(c) Their implementation should be strengthened by eliminating the contractor system, which is often allowed by the backdoor.

(d) This employment programme should provide employment at the statutory minimum wage rate fixed in the State for the agricultural labourers for at least 100 days in the year over and above the unsteady employment that they have in the normal course.

(e) The works undertaken through their labour should be of a permanent nature of direct benefit to the classes of people who work on the schemes like irrigation resources for their lands, development of their lands or construction of common work places for themselves, for construction of their houses and so on. On no account should this population be put on work creating infrastructure for the other classes.

(f) In order that this benefit really reaches the people, this should be enshrined as Right to work as a Fundament Right under article 21, by a constitutional amendment introducing a new clause.

(g) A substantial part of the wages should be paid in kind i.e. foodgrains. The mechanism of these payments could be in the shape of a card entitling the beneficiary to get foodgrains of the prescribed quantity from the fair price shop/ration shop of his area of residence.

4.6 (i) Similarly, there should be reservation for Scheduled Castes, Scheduled Tribes and backward classes including a due proportion of women from these categories also in the matter of other allotments like petrol filling stations, LPG gas agencies, CNG agencies and other agencies through which commodities are distributed by public authority. The percentage of reservation should be in accordance with the reservation percentage in force in the State for the purpose of employment under the State.

(ii) In order to keep out benami operators from other sections and classes who take advantage of the financial weakness of the Scheduled Castes, Scheduled Tribes and backward classes allottees/licencees, it is recommended that the allottees should be given necessary fixed capital and working capital support in full and in time through the appropriate Finance and Development Corporation duly involving the banks.

(iii) Even in the case of categories not eligible for reservation, poor boys and girls should be selected for the allotments and they should also be given similar financial support through loans from appropriate financial institutions and banks.

(iv) While considering selection of candidates for allotment/ reservation due consideration should be given to minorities and especially the Scheduled Castes/Scheduled Tribes/backward classes amongst the minorities.

4.7 In case of benami operations of PDS or other allotments, laws should be made declaring such benami operation as void and providing for cancellation of allotment/licences after due process of law. Cancelled allotments/licences/permits should be given to eligible persons from the same social status. This law should also make it clear that subterfuges like power of attorney documents, or agreement to sale or transfer shall not be valid for the purposes of allotments/reservations, etc. This is both in keeping with the Constitution as well as the judicial pronouncements. Such Benami transactions should also be declared as an offence punishable under law. The person to be punished under this provision should not be the allottees, but the rich person who has taken advantage of the poverty, helplessness and the absence of adequate institutional financial support for the allottees.

Establishment of Residential Talent Schools

5.1 In India, the prospects of talented children achieving their potential depend on the accident of their birth and in particular the social and economic background of the family of birth. Those born in affluent families have opportunities of education and

training in elite schools while the talents of those in poorer circumstances merely waste and wither away owing to lack of opportunity. This is the lot of brilliant children with talent and promise, in poor families and it has its chilling effects on the requisite opportunity. It is necessary, therefore, to identify and groom talent amongst the boys and girls of the Scheduled Castes, Scheduled Tribes and Other Backward Classes and train them in special talent schools to enable them to compete with the rest of the society in an equal manner.

5.2 In view of this and taking into account the Eighty-third Constitutional Amendment recently passed by the Lok Sabha and the Rajya Sabha, it is suggested as follows:-

(i) The above Amendment should be further amended as not to give the State the option to decide the manner in which elementary education should be provided and it ought to provide the same type of quality education to all children, as the discretion to the State to decide the manner in which elementary education should be provided will in practical terms result in children of poor families, particularly Scheduled Castes, Scheduled Tribes and backward classes being palmed off with an inferior type of education in the name of non-formal education, handicapping them in further stages of education and in life opportunities. This is contrary to the letter and spirit of the Constitution, which mandates equality including equality of opportunity.

(ii) Another amendment required is to protect parents penalised where children are not found in school because typically many poor children especially of Scheduled Castes, Scheduled Tribes and backward classes belonging to agricultural labour and other labour categories, artisans, etc. are not able to send their children to school not because of unwillingness or lack of interest but because their children's labours contribute to the meagre family income. The remedy for this is not to penalise the parents but to provide a widespread employment programme as recommended earlier on the one hand and on the other hand to provide food or foodgrains or foodgrains entitlement card or equivalent cash per Scheduled Castes, Scheduled Tribes child who attends school, a system which has been followed in a few States especially Himachal Pradesh. This is in line with the Supreme Court judgement in the M.C. Mehta Vs. Union of India regarding child labourers released from the factories in which it was laid down that such children should be provided non-formal bridge course of education followed by admission to formal educational institutions along with employment for the parents of children or a compensation of Rs.100 per month for delays. This type of payment, which should be made more extensive covering all children of disadvantaged categories of communities especially Scheduled Castes, Scheduled Tribes and extremely backward classes properly categorised should not be viewed as incentive but as a compensation for the opportunity cost incurred by the family when their earning/economically supporting children are sent to school. The cost of this is a necessary part of the cost free and compulsory education to be borne by the State in terms of the Constitution and no *alibi* should be sought by or allowed to the State to escape from this responsibility.

Protection of Educational Interests of Weaker Sections

5.3 Article 46 of the Constitution provides that the 'State shall promote with special care the educational and economic interests of weaker sections of the people and, in particular, of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation'. A.P. High Court in D. Murali Krishna Public School Vs. Regional Jt. Director of School Education (AIR 1986 AP

204) has declared that education is a fundamental right of the Scheduled Castes and Scheduled Tribes. The State, therefore, has a mandatory duty to provide facilities and opportunities for education at all levels to the weaker sections of the society particularly to the Scheduled Castes and Scheduled Tribes.

5.4 Accordingly, it is suggested as follows:

(i) Reservation in government institutions should be fully implemented. The Scheduled Castes, Scheduled Tribes and backward classes students should be got admitted in every good professional institution in the district/state/country, whether public or private, in the same proportion as the percentage of reservation in education for them existing from time to time and should be educated there up to the level of their choice. The Government should meet the full cost of the education and maintenance of each student in accordance with the actual cost of study in each such institution and boarding and lodging expenses in a hostel attached to such institution(s) or in the absence of such attached hostel, in other appropriate hostel(s); and should also meet capitation fee, by whatever name known, wherever charged.

(ii) Reservation for backward classes also in education should be introduced. One residential school each for Scheduled Castes and one each for Scheduled Tribes and one for backward classes or boys and one each similarly for girls should be set up in each district on the pattern existing in Andhra Pradesh, with 75 per cent of the seats going to the poor candidates of the specific category of weaker sections and the remaining 25 per cent for the candidates belonging to the other social categories of weaker sections and to the candidates of general categories. In Districts where either Scheduled Castes or Scheduled Tribes or backward classes are too small in number, there may be one residential school jointly for both. This facility should be provided in private residential schools also in view of the large number of private institutions of general as well as specialised education at all levels set up in the past and that may be set up in future and the advantage that the candidates passing out of such institutions have.

A selection grade post of teachers should be created and selection grade teachers should be appointed only in these residential schools and similar residential schools for other weaker sections;

(iii) In addition, in districts where residential schools are not possible, at least one good hostel each for Scheduled Castes, Scheduled Tribes, backward classes boys and one each for Scheduled Castes, Scheduled Tribes and backward classes girls should be set up in each place where a high school/higher secondary school or college exists. These hostels should be designed in such a manner that they may in future become the nucleus for residential schools. Where one hostel each is not adequate for all Scheduled Castes, Scheduled Tribes and backward classes boys and girls, additional hostels should be created in such places to the full extent necessary to accommodate all Scheduled Castes, Scheduled Tribes or backward classes students. No restrictions like distance, rural/urban should be laid down, since the motivation for joining hostels arises not only from considerations of distance but also from considerations of facility for undisturbed studies.

(iv) In view of the fact that a sizeable number of students have qualified and increasing numbers should in future qualify from educational institutions of general as well as specialised/professional education in foreign countries and the career advantage that candidates passing out from foreign institutions have in this country, the Government should send, at its cost fully covering fees and other mandatory payments, maintenance and travel cost, Scheduled Castes, Scheduled Tribes and backward

classes candidates in the same proportion in relation to the general category candidates who go to such institutions on their own or otherwise, as the percentage of reservation in education fixed for them from time to time, to good institutions in each such country in every area of education, every year.

(v) Both the Union Government as well as the State Governments must find the necessary budgetary resources for this purpose. This can be done by avoiding wasteful expenditure of different types. During the transitional phase, shortages should be met by innovative steps existing in other countries like collection of an 'education cess' to be exclusively funded and utilised for this purpose and new mechanisms like collection of a reasonable amount from professionally educated and trained in India, who go abroad for taking jobs. Once this principle is accepted, suitable practical mechanisms can be worked out.

Article 46 of the Constitution obligates the State to provide education to the weaker sections of the people in particular the Scheduled Castes/Scheduled Tribes. The word 'education' has been used in a particular sense while article 45 restricts to elementary education. The State shall, i.e. the Union of India and the State Government concerned shall provide education at all levels to the children belonging to Scheduled Castes and Scheduled Tribes according to the eligibility criteria operating in this regard. The scholarships provided to the children are inadequate and reach the children practically at the end of the academic year. In consequence due to non-payment of scholarships or non-availability of the capacity to pursue the education, drop out rate is higher among the children belonging to the Scheduled Castes and Scheduled Tribes and the most backward classes particularly children from the first generation families. The rate of scholarships should be reviewed well in advance once in two years. Revolving fund should be created and the Director/Commissioner of Scheduled Castes/Scheduled Tribes should be made the authority to disburse the amount. Since the child is admitted in the educational institutions, proper mechanism should be worked out that the educational institutions give information to the concerned district authority and the district authority in consultation with the Director/ Commissioner of Scheduled Castes/Scheduled Tribes disburse the amount of scholarships to the students. At the middle level of the course of education, i.e. under the graduation/post graduation level of education, the scholarship amount remains inadequate to meet the costs of living, therefore, they should also be adequately taken care of. In the post-graduation research fellowships, more scholarships should be created and made available to the eligible and selected candidates for the purpose of pursuing such education. In view of the Preeti Srivastava case, declared by the Supreme Court prohibiting relaxation of the eligibility marks for admission into the post graduation and prohibition of reservation in higher education like Ph.D., etc. without reference to the constitutional obligation under article 46 of the constitution, the children belonging to the Scheduled Castes and Scheduled Tribes are prevented from pursuing the higher education in the professional courses and the seats allotted to them remain unfulfilled and are filled by the general candidates. With a view to providing opportunities and facilities to the Scheduled Castes and Scheduled Tribes for higher education, constitutional amendment is necessary. Therefore, a separate provision in article 15 like article 15(4A) be brought about expressly mentioning "The State shall make special provision for the educational advancement of the Scheduled Castes and Scheduled Tribes providing education to them at all levels of courses of study with relaxed qualifying marks for admission consistent with the percentage of the seats reserved for them in the appropriate courses of study".

Establishment of Residential Talent Schools

6.1 In India, the prospects of talented children achieving their potential depend on the accident of their birth and in particular the social and economic background of the family of birth. Those born in affluent families have opportunities of education and training in elite schools while the talents of those in poorer circumstances merely waste and wither away owing to lack of opportunity. This is the lot of brilliant children with talent and promise, in poor families and it has its chilling effects on the requisite opportunity. It is necessary, therefore, to identify and groom talent amongst the boys and girls of the Scheduled Castes, Scheduled Tribes and Other Backward Classes and train them in special talent schools to enable them to compete with the rest of the society in an equal manner.

6.2 In view of the above, it is suggested that:

(a) residential talent schools should be established for the Scheduled Castes, for the Scheduled Tribes in every district of the country, one each for SC boys, SC girls, ST boys, ST girls as one of the important package of comprehensive measures required for the comprehensive and integrated development and empowerment of SCs, STs and BCs.

(b) In each school the students of the specific of weaker sections should have the bulk of the seats (say 75%) and the remaining should go to the students belonging to other social categories of weaker sections and to poor students of the general category.

(c) Some of these schools for backward classes should be located in districts where BCs belonging to religious minorities are relatively more concentrated so as to facilitate BCs of such minorities getting adequate number of seats.

(d) These schools should necessarily be residential so that they could be devoted to grooming the children for high competitive educational excellence to serve the country as administrators, scientists and in high professions combining excellence with sensitivity of awareness of the plight of the weaker sections and the poor in the country.

(e) These schools should cover Class VI to Class XII.

(f) In order to maintain excellence, the qualification of teachers should be not less than post graduation and a selection grade posts of teachers should be created to be appointed only in these residential talent schools.

(g) While the aim should be to provide at least one such school for each social category mentioned in each district, in case finance is a problem a beginning may be made by setting up such schools in 100 districts which have relatively greater population percentage of Scheduled Castes and 50 districts with relatively greater population percentage of Scheduled Tribes, listed in this Report. Alternatively, in order to ensure that SCs and STs in all States get the benefit of this scheme, the districts could be apportioned among States in accordance with their share of the SC population of the country and ST population of the country respectively (suitably rounded off) and in each state districts be selected in the decreasing order of the population of SCs and STs respectively such that the same total is achieved. In each State the schools should be distributed in such a manner in the selected districts such that about 1/3rd of the schools goes to each of the categories of the SCs & STs.

(h) So far funding is concerned, al provision of Rs.250 crores was provided in 1996-97 for residential schools for girls of SCs, STs and BCs in low literacy districts. No school has come under the scheme because of certain unjustifiable reasons. This amount can be utilised for the scheme and at least the same amount of budgetary provision may be made from year to year until saturation point is reached.

(i) At the level of Central and State Governments these schemes should be in charge of the Ministry/Department entrusted with the welfare of SCs, STs and BCs such as the Ministry of Social Justice and Empowerment and the Ministry of Tribal Welfare at the Centre and the Departments of Social Welfare/SCs, STs and BCs Welfare in the States where two or more Ministries/Departments are concerned with SCs, STs and BCs a suitable coordinative mechanism can be created.

(j) In each State under the concerned State Department's charge, an autonomous registered society could be formed for the management of the residential schools in the State. In the executive committee of the Societies representations should be provided for concerned officials of the Department(s) in charge of SCs, STs and BCs, Finance and Education and also for eminent educationists belonging to SCs, STS and BCs as well as others from self-help groups, educational societies with high reputation and experience particularly in the field of education of weaker sections and voluntary organisations concerned with SCs, STs and BCs. There is adequate base of experience in Andhra Pradesh where such schools have been in existence since about two decades and have produced good results and to some extent in Karnataka also. Their experience can be drawn upon with suitable modifications leaving sufficient initiative with each State to make modifications appropriate to that State. Efforts in this direction started in 1996-97 in the Ministry of Social Justice and Empowerment (then known as Ministry of Welfare) should be resumed and completed without further loss of time. The State Society may also set up units in districts for management of the residential schools in the district in which may be represented the District Collector, District Officers of the Education Department and Department in charge of SCs, STs and BCs and also representatives of voluntary organisations and educational societies of high reputation and experience in the educational development of weaker sections.

(k) In districts where initially such residential schools are not set up, until their turn comes, a residential hostel for SCs, STs and BCs, one each for SC boys, SC girls, ST boys and ST girls and BC boys and BC girls, (75% for the specific categories and 25% for others as recommended in the case of residential schools) should be set up as a nucleus for future residential schools.

(l) Selection of children for admission into the schools can, as in the Andhra Pradesh model, be on the basis of a selection examination after Class V with due weightage for rural residential children, children from families of agricultural labourers, safai karamcharis, bonded labourers and released bonded labourers, nomadic, semi-nomadic communities, vimukta jatis and with provision that if any community of SCs, STs is not able to come in the select list at least one, namely the best of the candidates of that community is selected, so that the object is achieved.

Prohibition of occupations that are degrading and offend human dignity: Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993

7.1 An unfortunate blemish of India's urban sanitization system has been scavenging by members of certain communities of the Scheduled Castes under inhuman conditions. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 was enacted to put to an end to this practice. The Act is said to relate to Entry 6, namely, "Public health and sanitation; hospital and dispensaries" in List II of the Seventh Schedule of the Constitution and the law, therefore, is applicable to the States (other than those at whose instance the Central

law was made) only after such States adopt the law. Many States have not yet adopted the law.

7.2 There appears to be a fundamental lacuna in its approach as to the source of legislative competence, which the statute relies on and invokes. The topic of the legislation, in its pith and substance, falls within Entry 24, List III of the Constitution, respecting which the Union Parliament has concurrent competence to legislate. The encroachment on the topic of entry 6 of List II is merely incidental. Both the Preamble and the provision as to the extent of applicability of the statute need to be amended so as to bring them in accord with the position that the legislation, in pith and substance, falls within concurrent powers of legislation. This would make the law applicable to the entire country without the need for the States to adopt it.

7.3 In implementation of the abolition and eradication of Safai Karmachari (manual scavenger) system in the country, even the State Governments, which adopted the Act, have not taken adequate steps to ensure total abolition of employment of Safai Karmacharis.

(a) Accordingly, it is suggested that the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 be amended along the lines mentioned above so as to bring it within the concurrent powers of the legislation thereby making it automatically applicable to the entire country.

(b) While it is necessary to put an end to scavenging by human agencies at the earliest, it should be done in a manner that the existing safai karamcharis do not suffer loss of employment or income. Therefore all out effort should be concentrated on getting existing safai karamcharis shifted to other occupations. In respect of safai karamcharis who are employees of municipalities and other urban local bodies, these bodies should be required straightaway through executive instructions followed by appropriate legislative enactments to liberate their safai karamchari employees from the occupation of safai (scavenging) and shift them to any other work not connected with safai under the municipal body, providing them with training where necessary and on a salary and remunerations not less than what they draw currently. There are a number of activities needing attention in each municipal area which are now neglected. While liberation and shifting to other occupations are undertaken, the municipality should also place house owners on notice that from a date to be specified safai karamcharis will not be available for scavenging service and therefore they should make alternative arrangements for this in terms of the Act of 1993.

(c) Regarding the other category of safai karamcharis who are privately employed on remuneration directly from house owners, it is suggested that they should be liberated by training every existing safai karamchari or a member of his or her family in an alternative employment not connected with scavenging, providing them, employment/ self-employment on stable basis so that they will not be any more compelled to do safai service.

(d) Every child of the family of the existing safai karamcharis should be admitted to residential schools under the existing scheme of the Government of India providing for residential schools/hostels and scholarships for the children of families engaged in unclean occupation namely safai, flaying and tanning. The scheme should be expanded so that there is adequate number of residential schools/hostels to cover all the children of safai families.

(e) The Central Monitoring Committee for the rehabilitation of Safai Karmcharis and their dependents set up by the Government of India in 1991 should be re-activated in the form as laid down then straightaway and subsequently improvements made in the scheme by providing for larger representation of safai karmcharis in the committees at the national, State, district and municipal levels. The need for this Central and other Monitoring Committees at all these levels has not vanished with the establishment of the National Commission for Safai Karmcharis. In fact, the continued functioning of the Central, State, district and municipal level committees will facilitate the functioning of the National Commission for Safai Karmcharis also in addition to providing active inputs for liberation and rehabilitation at all levels. According to the scheme of these committees, meetings are to be held every month. Presiding Officers of these committees (for example, District Collectors/Deputy Commissioners at district level and Chief secretary at State level) should be required to hold these meetings regularly. Regular and effective functioning of these committees should be a specific item of evaluation of officers in the Annual Confidential Reports to provide inputs for grant or refusal of Social Justice Clearance at the time of their consideration for promotion.

(f) Having made these arrangements, the Act should be further amended to completely prohibit, whether directly or indirectly, employing any person as safai karmchari for scavenging from a date to be specified in the Act and any such employer should be punishable with imprisonment and (not or) fine. This sequence is suggested so that the amendment to the Act may come after arrangements are made to make sure that this will not adversely affect the employment of safai karmcharis, whether employed by the municipal body or privately.

(g) The liberation of people from safai karmchari work and the liberation of specific communities who have been subjected to this occupation by denying them any other avenues should be accepted as a major national goal, the progress and implementation of which should be reviewed by a national committee of which the Prime Minister is the chairperson and the Chief Ministers are members, apart from Minister for Social Justice and other relevant ministers of the Centre that it is possible to secure complete liberation of safai karmcharis without adversely affecting their income or employment is established by the experience of a few States which have already achieved this goal.

(h) Until this goal is achieved, it is necessary to ensure that interests of safai karmcharis are protected in the following respects:-

- stopping the practice of not paying their salary regularly prevalent in a number of municipalities.
- stopping the practice of not paying their retirement benefits promptly on retirement
- providing them satisfactory residential accommodation of their own in a clean locality
- stopping and prohibiting the practice adopted increasingly by Central and State Governments and public sector undertakings of bringing safai work under contract system making these people do the same work for less remuneration and on unfair terms and instead paying the contractor who is usually from a different social and economic class.

- Stopping the practice of giving only safai work and not the safai supervision work to educated children of deceased safai karmcharis given employment on compassionate grounds - an unfortunate practice indulged in by some officers in charge of some municipalities - without giving thought to the serious resentment this causes. They should be given employment under the municipality commensurate with their educational background.

(i) disabilities to which the National Commission for Safai Karmcharis has been subjected to *ab initio* should be removed by the Government of India. It should be given the status comparable with that of National Human Rights Commission and equipped adequately to perform its functions satisfactorily.

Human Dignity - Elimination of Untouchability and Prevention of Atrocities

8.1 Article 17 of the Constitution abolished untouchability but its practice and resultant disabilities remain unabated even after more than 50 years of working of the Constitution. Suppression of human spirit inherent in untouchability has now taken diverse subtle forms for its perpetration (e.g., touching the feet of people of upper castes, etc.). Atrocities are also rampant against the Scheduled Castes, the Scheduled Tribes and other weaker sections.

8.2 In view of the fact that Untouchability continues to rampant in old classic forms as well as in new form in life with modern development and the continuance of atrocities in virulent form, it is suggested that the following measures may be taken.

8.2.1 The following amendment should be carried out in the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989:-

section 14 should be amended as follows:
"Special Court - (1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the official gazette, establish in each district, a Court of Session to be a Special Court exclusively to try the offences under this Act.

Provided that in respect of districts where there are no atrocities against Scheduled Castes and Scheduled Tribes at all, the Government may, with the concurrence of the National Commission for Scheduled Castes and Scheduled Tribes, either exempt such district or districts from this provision or combine such district (s) with any other neighbouring district(s) for the purpose of establishing exclusive special courts;

(2) The special courts set up under this provision shall not be the same as any of the existing court of session;

(3) The exclusive Special Courts shall try offences under this Act on day-to-day basis."

This set of amendment is necessary because the delay in the trial and punishment of atrocities is an invitation to commission of more atrocities with impunity.

8.3 Sub-section (2) of Section 3 of the P.O.A Act should be amended to include the following crimes against Scheduled Casts and Scheduled Tribes as atrocities and to make them punishable with imprisonment for a term of not less than six months but which may extend up to seven years with fine:-

- Social Boycott;
- Economic Boycott;
- Social Blackmail;
- Economic Blackmail;

This amendment is required because these kinds of atrocities actually occur in villages and their continued omission is a serious lacunae.

8.4 (a) Sub-section (2) of Section 3 should be amended to provide for death sentence for murder in addition to imprisonment, as provided in Section 302 of the Indian Penal Code, and for mandatory death sentence for multiple murders, multiple or mass rapes and gang rapes. This amendment is extremely important for the following reasons:-

at the stage of formulation and drafting of the Bill an anomaly has been created whereby for the offence of murder death sentence is possible if the convict is SC/ST and the victim is non-SC/ST while in the reverse instance no death sentence is possible on account of lacunae in the POA Act. While all murders and rapes are heinous and deserve to be punished promptly and appropriately, multiple murders or massacres of SCs and STs and multiple rapes of SC and ST women and gang rapes of SC/ST woman intended to terrorize the whole community whenever they display the temerity to demand slightest improvements in wages or possession of lands they have been allotted by law or allotment of lands they are entitled to or exercise of civil rights they are entitled to under the law. Such terror crimes against the whole community can be curbed only by mandatory death sentence.

(b) Section 15 of the P.O.A Act should amended as follows:
"15. (1) Special Public Prosecutor - For every Special Court, the State Government shall, by notification in the Official Gazette, appoint a Public Prosecutor or appoint an Advocate who has been in practice as an Advocate for not less than seven years, as a Special Public Prosecutor, for the purpose exclusively of conducting cases under this Act in that court;
(2) Special Investigating Officer - For every Special Court, the State Government shall, by notification in the official gazette, appoint a Police Officer as Investigating Officer exclusively for the purpose of investigation in respect of cases of offences under this Act;"

(c) The following new Section should be added in the Act:-
"Section 15 (A)
(1) The Special Investigating officers and Special Public Prosecutors shall be appointed from panels prepared on the basis of their record of and reputation for upholding the Rights of Scheduled Castes and Scheduled Tribes especially their rights to protection from violence.
(2) The Special Courts and the Judges, Special Public Prosecutors and Special Investigating Officers shall be provided with adequate staff and facilities so that the discharge of their duties is not impeded.
(3) The posts of Judges, Special Investigating Officers and Special Public Prosecutors shall never be kept vacant.

(d) In order to make the protection of Section 10 available to Scheduled Castes also, the words "or in any other area of any district" should be added in sub-section (1)- of Section 10 after the following existing words:
"..... in any area included in Scheduled Areas or Tribal Areas as referred to in Article 244 of the Constitution....."

(g) In view of the scope for rigid misinterpretation of Section 3(2)(v) of the Act the words "against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member" should be substituted by the words "against a person or property belonging to a member of a Scheduled Caste or a Scheduled Tribe".

(e) The victims of atrocities and their families should be provided with full financial and other support to become economically self-reliant without their having to seek wage employment from their very oppressors and classes of oppressors and the State shall immediately take over the education of the children of such victims/such families in the best schools and colleges of their choice available in the State/in this country up to the level of the choice of such children/families fully at State cost including the cost of their food and maintenance;

(f) In case of collective attacks on Scheduled Castes or Scheduled Tribes in any village or urban locality, the State should immediately provide full financial and other support and take all steps to make all SC and ST families of that village or urban locality economically self-reliant without any of their members having to seek wage employment from any individual and take over the education of all SC and ST children of such village/urban locality in the same manner and to the same extent as mentioned in para 3 above.

(g) Every SC and ST victim of rape should be forthwith given a permanent government/quasi government job of the highest level appropriate to her educational qualifications in the Ministry/Department/ PSU/Public Financial Institution/other public sector organization of her choice and at least of the Group D/Class-IV level if she has no educational qualification at all. If there is no vacancy, a supernumerary post should be deemed to have been created forthwith for her appointment. The District Collectors/Heads of Departments/Heads of PSU/Heads of Public Financial Institutions/of other Public sector organizations should be authorized and mandatorily required to make such appointments with effect from the date of the atrocity. The State should also take over the responsibility of arranging her marriage if she is unmarried or divorced or widowed at the time of the rape.

(h) Monetary compensation to the victims of atrocities or next of kin should be paid immediately on registration of the FIR in the concerned police station irrespective whether the offence under POA is incorporated therein or not.

(i) A special wing of the Rapid Action Force should be constituted to deal exclusively with Atrocities against SCs and STs and similar wings/forces should be constituted in each state.

(j) POA should be amended incorporating a provision that notwithstanding the provisions in the Evidence Act, the contradictions between the statement and FIR on the one hand and evidence given to the court, the Court shall assume that the evidence in the court is the correct version and be considered accordingly.

(k) The measures at paras (2), (3) and (4) above should be incorporated in statutory rules under clause (iii) of sub-section (2) of Section 21 of the POA Act. But initially, they can and should be implemented without waiting for the issue of such Rules.

(l) A special scheme should be drawn up to effectively prevent any form of disrespect to the statues of Dr. Babasaheb Ambedkar, as aberrent behaviour in this regard has become a form of collective atrocity against SC and ST apart from being an insult to the nation and thereafter this should be suitably incorporated in the POA Act.

(m) Various and elaborate guidelines regarding precautionary and punitive rehabilitation measures to deal effectively with atrocities contained in

the rules under the Act and DO letter of Home Minister, dated 10.3.1980 sent to all Chief Ministers should be reiterated and enforced.

(n) This is one of the few Acts which contains a rare provision placing mandatorily on the State Government the responsibility to take such measures as may be necessary for the effective implementation of the Act and spelling out illustratively some of the possible measures and similarly placing a responsibility on the Central Government to coordinate the measures taken by the State Governments. The implementation of this Act and the rules and the various guidelines and effective curbing of atrocities should be one of the specific items to be taken into account in the context of grant or denial of Social Justice Clearance at the time of promotion of officers.

(o) In view of the fact that in some parts of the country particularly in the south converts to Christianity from specific SCs are subjected to crimes and atrocities as their exact Hindu counterparts are (difference of religion making no difference in this regard) and the fact that trials in such cases get bogged down on the issue whether this is an atrocity since they are not SC on account of conversion. Clause (c) of section 2 of the Act should be amended by adding the following words at the end of it "and converts to Christianity from Scheduled Castes". An explanatory note may be added that this is only for the purpose of this Act and not for any other purpose since the question whether SC converts to Christianity should be included in Scheduled Castes or not by amending the proviso in Presidential Orders is a different issue to be dealt with separately by the appropriate Ministry.

(p) In view of the fact that the main perpetrators of the crime sometimes co-opt a few SCs with them and take advantage of local differences among the SCs and sometimes they promote and engineer crimes but get them executed by some members of Scheduled Castes, the Act should be suitably amended to bring such crimes and atrocities within the purview of the definition of atrocities under the Act.

(q) In view of the fact that in some cases of atrocities while most of the victims are Scheduled Castes or Scheduled Tribes there may also a few non-Scheduled Castes/Scheduled Tribe people as for example in the Belchi case. The Act should be amended to bring such atrocities and crimes within its purview.

8.5 Regarding eradication of untouchability and effective implementation of the Protection of Civil Rights Act, 1955 (PCR Act), multi pronged measures covering human rights education, moral education and punitive action under the Act should be taken, in view of the widespread prevalence of untocuhability.

8.6 As part of this, human rights education, specifically focussing on the evil practice of untouchability, the cruelty inherent in it, irrational concepts on which this is based, the mind set; the harm it does not only to the victims but also to the society as a whole and the nation itself, is one of the measures which will be helpful. The curriculum for this must be prepared very carefully and imaginatively associating educated members, scholars, social workers from the SCs and those who have been fighting against untouchability. A powerful democratic movement covering all levels including villages is also necessary. This should be organized by a combination of political parties, NGOs and members of the public service and also enlightened members of the general civil society. This movement should on the one hand stand shoulder to shoulder with SCs in their assertion of their civil rights and on the other hand educating the non-Scheduled Caste non-Scheduled Tribe public and persuade them to cooperate. This movement will be more successful if the Chief Ministers and leaders of ruling parties at the Centre and States take the initiative as has been

undertaken by the Chief Minister of Andhra Pradesh since November 2000 on the basis of the recommendations of Justice Punnayya Commission.

8.7 In view of reprisals such as social and economic boycott that follow this movement even started by Chief Ministers as experienced in Andhra Pradesh, the State should immediately intervene with adequate rural employment programme which will gainfully employ all the families of the victims and communities of that village. Land reforms and land distribution in that village in favour of the victims and families should be undertaken, full financial and other support provide and such measures taken to make them self-reliant. The State should also suspend arms license and confiscate arms available with any individual.

8.8 On the punitive side, the following steps should be taken:-

(i) The Protection of Civil Rights Act, 1955 (PCR Act) should be implemented sincerely, seriously and honestly.

(ii) Inter-alia a Special Mobile Court should be established in each district exclusively for trying cases under the PCR Act on the spot. The optional provision at clause (iii) of sub-section (2) of section 15(A) of the PCR Act should be made mandatory by an amendment of the Act, but this provision can and should be implemented without waiting for the amendment.

Where there is no practice of "untouchability" at all in any district, the government may, with the concurrence of the National Commission for SC & ST, either exempt such district or districts from this provision or combine such district(s) with other neighboring district(s) for the purpose of establishing special mobile courts under this Act.

(iii) It should be made the personal responsibility of every District Collector and Superintendent of Police to ensure that all measures as may be necessary for ensuring that the rights arising from the abolition of "untouchability", are made available to, and are availed of by, the persons subjected to any disability arising out of "untouchability", as the State Government is mandated to do by Section 15(A) of the PCR Act. The measures taken by them should be one of the specific criteria of Social Justice Clearance for every officer to become eligible for future promotions.

(iv) Provision of a separate cell in every police station for investigation and prosecution under the Act will also be a measure to effectively combat untouchability. Only places where untouchability does not exist, identified in consultation with the National/State Commission for Scheduled Castes and Scheduled Tribes should be exempted from this requirement.

(v) In areas of occurrence of untouchability and the sites of their occurrence like temples, wells, ponds and such places where untouchability is practiced, with open brazenness mobile teams of police and welfare department should go to those places and sites and eliminate the discriminatory practice first by persuasion and if that fails by resorting to punitive action.

(vi) Since such places and sites are well known and untouchability is practiced with open brazenness, if no prompt action is taken by police and other officers, they should be punished as abettors.

Adequacy of representation in Public Services

8.9 Adequate representation of the Scheduled Castes and the Scheduled Tribes at all levels in public services is the mandate of Article 335. There is a widespread dissatisfaction amongst the Scheduled Castes and the Scheduled Tribes over the changes brought since 1996 in Government orders providing reservation in public services in purported implementation of the directives of the courts and a feeling persists amongst them that amendments are detrimental to the Constitutional

objective of achieving adequate representation for them in services. Adequacy of representation has not been achieved in Government services even after 50 years at any level for the Scheduled Tribes and save at lower levels of Group C and D posts for the Scheduled Castes (See Table 9.2 in Chapter 9). In order that the serious apprehensions of the Scheduled Castes and the Scheduled Tribes of denudation of the constitutional rights to reservation in educational institutions and civil posts under the State are allayed, it has been suggested that the position of reservation as it existed prior to 1996 be restored.

8.10 Accordingly, the following suggestions are made:

(i) In view of the fact that an Act passed by the legislature has got greater power than executive instructions and ensures greater transparency and makes it less easy to spring upon the people executive orders like the one which tampered with the pre-1966 roster, downgrading the roster position of SCs and STs from 1 and 3 to 7 and 13, under the pretext of implementing the Supreme Court's judgement in the Sabharwal case, reservations should be immediately brought under the purview of a statute to be named as Scheduled Castes and Scheduled Tribes (Reservation of Appointments or Posts and of Seats in Educational Institutions) Acts. The Bills ascending in the Parliament as Private Member Bills at the instance of individual member of political parties be adopted as official Bills and steps taken to have these passed by both Houses of the Parliament.

(ii) This Act should provide for all aspects of reservations pertaining to the Scheduled Castes and Scheduled Tribes. The constitutional amendments in articles 16 and 15 be suitably brought about. The pending Bill introduced in the Parliament be adopted as official Bill. The constitutional Amendments and the two Acts be brought in 9th Schedule.

(iii) Inter-alia it should provide for the establishment of Aarakashan Naya Adalats (ANA) or Tribunals for Justice in Reservation (TJR) with its main bench at Delhi and other benches in every place where Central Administrative Tribunal has got benches. These Tribunals should have the status of High Courts and appeals therefrom should lie only to the Supreme Court.

(iv) The Chairperson, Vice Chairperson and other members of this Adalat and its benches should be appointed from panels of names of persons who, while possessing the requisite formal qualifications for High Court level Tribunal as in the case of CAT shall in addition necessarily have the qualification of having implemented reservation fully and sincerely in their respective areas of earlier activity.

(v) These Tribunals should have jurisdiction in respect not only of reservation in appointments and posts in the Government but also the public sector, banks and other financial institutions, universities and all other institutions and organizations to which reservation is applicable and is made applicable from time to time.

(vi) Since there are unfortunately persons and authorities who allow their biases based on their own caste origins to subvert the correct implementation of the constitutional provisions regarding reservations, the Act should contain a penal provision including imprisonment for those convicted of willfully or negligently failing to implement reservation in full.

(vii) The Central Government and State Governments should forthwith issue orders restoring the pre-1996 roster so as to undo the harm done to SCs and STs under the pretext of implementing the Sabharwal judgement; this does not require a constitutional amendment, but in order to prevent scope for any such tampering with the roster in future, this should be brought within the purview of the Reservation in Services Act mentioned above.

(viii) While appreciating the enactment of three Constitution Amendment Acts, in order to undo the harm done to the long pre-existing rights of SCs and STs in reservation, these should be put into effect quickly so that on the one hand the negative consequences of the last five years can be

rectified in practice and the benefits of these amendments may begin to flow again the full measure to the SCs and STs.

(ix) The Central Government and State Governments should also forthwith amend the executive order issued in terms of the newly introduced Clause (4A) of article 16 and remove the limitation of reservation promotion only upto the first level of Group/Class I and allow reservation in promotion to any and every level in accordance with the letter and spirit of Clause (4A).

(x) Categories of services excluded from reservation should be reviewed since educated and qualified candidates of SCs and STs have since become available through the process of education and if still the review shows any few categories for which qualified candidates are not available special programmes should be launched to build up qualified manpower of SCs and STs in the relevant disciplines.

(xi) Since it is important from the point of view of social and national integration that the delay in the recommendations of and provision of reservation for BCs should not be compounded by truncation or delay, reservation for backward classes also should be brought under a statute to be named as Backward Classes (Reservation of Appointments and Posts and of Seats of Educational Institutions) Act which, while containing the specificities of reservation for backward classes should also contain provisions for Arakashan Nyay Adalats or Tribunals for providing Justice in Reservation, penal provisions, etc. as in the case of the statute in respect of SCs and STs.

(xii) For the same reason it has to be ensured that on no account should any shortfall in the quantum of reservation for BCs be allowed to occur in any year in any institution at any level, so that unmanageable backlog does not grow in the case of BCs as was allowed to grow in the case of SCs and STs through half-hearted implementation in the past.

(xiii) In order to remove the anomaly of absence of reservation in seats in educational institutions for BC while providing them reservation in jobs, reservation in seats should be immediately introduced for BCs.

(xiv) In view of the wide range of variations in the level of backward classes among different castes and communities included in the list of backward classes, the Government should in the light of the Supreme Court judgement in the Mandal case and also done by many State Governments with experience in the backward classes reservation since long like Karnataka, Andhra Pradesh, Kerala and Tamil Nadu, categorise the backward classes on a rational basis into backward classes/more backward classes/most backward classes/extremely backward classes and apportion the total reservation for BCs among different categories keeping in view the population proportion and weightage for relatively greater degrees of backwardness but also providing that in case of non-availability of adequate number of candidates in any year in any lower category of backward classes the resultant vacancies shall be made available to candidates of the next higher category of backward classes so that no scope is given for transfer of any post reserved for backward classes to the open category and so that there will be no suspicion that non-availability of candidates is being engineered in order to secure transfer of backward classes reserved posts to the open category.

(xv) It is extremely important that categorization as above should be done only through a high power authority of unbiased experts purely on the objective data of indicators of relative backwardness so that there is no scope for suspicion of this mechanism of social engineering being misused for other purposes or with ulterior motives.

(xvi) In the course of the on-going process of privatization of public sector undertakings and other such bodies, in order to avoid any adverse effect on the existing reservation for the SCs, STs and BCs, in these public sector undertakings and other bodies, the provision of reservation for SCs, STs and BCs should continue to be mandatorily applicable even

after privatization or disinvestment and it should be mandatorily stipulated in every Memorandum of Understanding on privatization or disinvestments that the policy of reservation in favour of SCs, STs and BCs shall be continued in that public sector undertaking and other body in the same form as it exists in the Government with such amendments as may be made from time to time.

(xvii) This provision of mandatory continuance of the policy of reservation through MOU should be incorporated in the two Reservation Acts mentioned above. A supplementary MOU in this regard should be executed in respect of PSUs or other public sector bodies already privatized or disinvested/private sectors receiving financial/state assistance by way of loans, etc.

Representation in Higher Judiciary

8.11 In higher judiciary, the representation of judges from Scheduled Castes, Scheduled Tribes and other backward classes is inadequate. Out of 610 judges in the High Courts, there are hardly about 20 judges belonging to the Scheduled Castes and the Scheduled Tribes. In S.P. Gupta's[1] case and Supreme Court Advocates on Record[2] case, popularly known as the First Judges' Case and Second Judges' Case respectively, the Supreme Court upheld the constitutionality of the circular letter addressed by the Union Law Minister requesting the State Governments and the High Courts to recommend the names of competent candidates belonging to the Scheduled Castes, the Scheduled Tribes, women and Other Backward Classes.

8.12 In view of the above and also taking into account the weighty opinion against the formal introduction of reservation in the higher judiciary, it is found that over fifty years, the progress of education, however tardy, has certainly produced adequate number of persons of the SC, ST and BC in every State who possess the required qualifications, having necessary integrity, character and acumen required for Judges of Supreme Court and High Courts for appoint as Judge of the superior judiciary. A way could and should, therefore, be found to bring a reasonable number of SCs, STs and BCs on to the Benches of the Supreme Court and High Courts in the same way in which, in practice, it is found is followed in respect of advocates from different social segments/regions of the country/States or different religious communities so that on the one hand the overwhelming opinion against formal reservation in the Supreme Court and High Courts is respected and on the other hand, the feeling of alienation of the vast majority of Indians comprising SCs, STs and BCs that, in spite of having persons of requisite calibre and character among them, they are being ignored in the selection of appointment of Judges, is resolved.

Allocation and Management of funds – Revitalization of Special Component Plan for the Scheduled Castes and Tribal Sub-plans

9.1 The Schemes for socio-economic empowerment of Scheduled Castes, Scheduled Tribes and other Weaker Sections of the Society mandated by article 46 and other provisions of the Constitution are presently being implemented by different Departments of the Government. For comprehensive development and empowerment of Scheduled Castes and Scheduled Tribes, it has been a policy for last twenty five years or so that a proportion of total plan outlay equivalent to the population proportion of the Scheduled Castes and Scheduled Tribes respectively are constituted as a special component plan for Scheduled Castes (SCP) and Tribal Sub-Plans for Scheduled Tribes (TSP) so that adequate financial outlay for their development are made available. There is, however, no specific constitutional or statutory provision for separate allocation of funds for socio-economic empowerment of the Scheduled Castes, Scheduled Tribes and other Weaker Sections of the Society. This laudable policy, however, has only partially succeeded in achieving its

[1] AIR 1982 SC 149
[2] AIR 1994 SC 268

objectives as in practice full budgetary allocations as required to be made under the policy are hardly made. The share of budgetary allocations for the welfare of the Scheduled Castes and Scheduled Tribes has declined in recent years. Due to lack of coordination amongst various Departments, even budgetary allocations lapse for want of finalization of schemes. Centralisation of schemes under one Body/ Department has been suggested as a remedy. It has also been suggested that funds allocated for the welfare of the Scheduled Castes and the Scheduled Tribes be transferred to this Body. This Body/ Department is to be made responsible for formulation, implementation and accountability of the benefits to the targeted Groups.

9.2 In view of the above and the supreme importance of ensuring that the developmental plans for the country and Special Component Plan for Scheduled Castes (SCP) and sub-Plans for Scheduled Tribes (TsP) are made powerful instruments of social transformation based on the vision of economic liberation, educational equality and social dignity of the Scheduled Castes and Scheduled Tribes to effectuate the existing national policy consensus, and taking into account the failure to follow or adequately ensure this quantum of flow in requisite quality, it is suggested as follows:

(1) There should be a National Development Council for SC and ST consisting of the Prime Minister as its Chairperson, the Deputy Chairperson of the National Scheduled Castes and Scheduled Tribes Development Authority (referred to lower down), Minister(s) in charge of Scheduled Castes and Scheduled Tribes Development and Welfare, Chairperson and Dy. Chairperson of the National Commission for SC and ST, Finance Minister, Ministers of other development sectors, Chief Ministers, Experts and Scholars, which shall perform the same role in respect of Special Component Plans for Scheduled Castes and Tribal sub-Plans for Scheduled Tribes as has been done hitherto by the National Development Council with regard to general plans of development;

(2) There should be a National SC and ST Development Authority having a wing each to respectively concentrate from SCs and STs constituted with members and experts drawn on SCs, STs and others with empathy for SCs and STs, with faith in social justice and experience in the development and empowerment of SCs and STs, representatives of authentic SC and ST voluntary organisation/associations. This authority should be responsible for formulating and approving National and State Plans – Annual, Quinquennial and perspective- based on the developmental needs of SCs and STs and their priorities keeping in view the overall dimension of socio-educational liberation and socio-economic equality.

(3) There should be similarly constituted State Scheduled Castes and Scheduled Tribes Development Authorities.

(4) The population equivalent proportion of the total plan provision of the Centre and each State/UT should be set apart as the Special Component Plan for SCs and STs and placed at the disposal of the National SC and ST Development Authority and State SC and ST Development Authorities. These authorities will then make schemewise, programmewise and sector-wise allocations of outlay based on the developmental needs and priorities of the Scheduled Castes and Scheduled Tribes, sanction appropriate funds to the concerned Ministries/Departments/other organisation and thereafter supervise, monitor and direct the implementation of the developmental plans so as to ensure the achievement of the purpose of the socio-economic liberation of SCs and STs and their socio-educational equality in relation to rest of the society.

(5) There should also be constituted District SCs and STs Development Authorities in each District, consisting of SC and ST Chairpersons and Members of District and Intermediary level Panchayat bodies, SC and

ST Chairpersons and Municipal counsillors in the District, SC and ST MLAs and MPs, District Collectors, Heads of Departments relevant to SCs and STs, experts, representatives of NGOs who have been working sincerely for SCs and STs. These District Authorities should, on the one hand, provide the inputs to the National and State SCs and STs Development Authorities for planning and monitoring purpose and on the other hand be the main implementation authority of the SCPs and TsPs in the District so as to ensure their objective.

(6) The Prime Minister should be the Chairperson of the National SC and ST Development Authority. Its Deputy Chairperson should be full-time and have the rank of a Union Cabinet Minister and invariably attend the Cabinet meetings. Similarly the State/UT Chief Minister should be Chairperson of the State SCs and STs Development Authority and its Deputy Chairperson should be full time and have the rank of a State Cabinet Minister and invariably attend the State Cabinet meetings.

(7) The NDC for the SC and ST and these Authorities should be given constitutional status by making suitable provision in the Constitution.

(8) While releasing funds to village panchayats/local self-government at different levels, Special Component Plan and Tribal sub-Plan should be earmarked in them to be exclusively used for infrastructural work of the SCs and STs so as to build up the economic and social infrastructural assets of the SCs and STs.

(9) This structure, while ensuring that plans are formulated as mentioned above, will ensure that for obvious economic and social reasons the following schemes and programme of actions are undertaken on a massive scale.

(a) A Comprehensive National Programme of Minor Irrigation i.e. irrigation of all irrigable but unirrigated lands, owned and held by SCs and STs through wells, community wells, bore-wells, tubewells and community tubewells, Bandheras, check dams, lifts and other such minor irrigation sources (which will at one strike liberate a substantial proportion of SC and ST families from the compulsion of agricultural wage – labour, bonded labour and child labour and migrant labour);

(b) Endowing every landless, rural family of SCs and STs with at least a minimum extent of land through proper implementation of land ceiling and redistribution legislations; full and sincere implementation of un-implemented Supreme Court judgement which will neutralise the illegal reduction of ceiling-surplus lands, distribution of assessed and un-assessed waste lands/gair mazaruam lands not required for any legitimate public purpose/use and ensuring actual occupation and peaceful and undisturbed possession of land allotted to SCs and STs by the allottees; allotment of Bhoodan lands; long term lease of temples and other such institutions on the basis of the average rentals of past few years; with full financial provisions and facilities for development of such lands through irrigation under the National Programme of Minor Irrigation mentioned at (a) above;

(c) Implementation of Minimum wages Act for wage labourers by identifying the largest employing land owners and ensuring compliance with the Act by them;

(d) Proper implementation of the policy of harmonious protection of Scheduled Tribes and forests;

(e) Total liberation and full rehabilitation of bonded labourers and elimination of child labour practice;

(f) Total liberation and full rehabilitation of Safai Karamcharis ("Scavengers");

(g) Training and education to enable the SCs and STs to secure reasonable presence in every sector of employment;

(h) Strengthening SCs and STs in self-employment through training, education and provision of financial and other facilities;

(i) Preservation and restoration of land ownership and possession of STs in Tribal areas; and

(j) Food for education on national scale.

(10) The tendency to equate the development of SCs and STs with loans and loans alone which, however, are not available or are available in a niggardly measure from banks and financial institutions should be brought to an end. Instead, inputs of a collective nature which provide infrastructure to a number of individual, though on a micro scale, should be on a grant basis, e.g., community tubewells and borewells; common workplace, common facility centres, and so on, on the analogy that the cost of roads, railways, power generation and transmission, major irrigation dams and other macro infrastructural requirements are met not by loans to individual industrialists or large agriculturists but from the public budget. Only that part of the inputs which are to be utilised by a individual like a handloom or the cost of field channels should be met through loans. At the same time, the aversion of banks and financial institutions to SC and ST applicants for loans should be effectively overcome by making performance in this regard a specific qualifying criterion for evaluation of individual bank officers for grant or rejection of Social Justice Clearance for promotions.

(11) Representatives of authentic SC and ST organisations should be given representation on the boards of banks, financial institutions at the national and State levels and also in other important decision making bodies in all sectors. Representation should also be provided in them for non-SC and non-ST experts who have personal experience of developmental work for SCs and STs.

(12) It is desirable to impress upon the Government and all authorities that the desparate situation of the SCs and STs, on account of which there is deep resentment among them, can be remedied only by the above structure and approach to development.

(13) In addition, the Ministry Incharge of SCs and STs (at present named as Ministry of Social Justice and Empowerment and Ministry of Tribal Welfare) should continue to perform the nodal role in relation to the various Ministries and State Governments which has already been entrusted to it long back. This role should be exercised effectively. The new framework of National and State SC and ST Development Authorities, etc. mentioned above, will strengthen the Ministry's nodal role and the two will be mutually complimentary.

10.1. On account of unfortunate delay in recognising social and educational backward classes category other than SC and ST needing the focussed developmental attention, which was done only in 1990, could be put into effect only after the Supreme Court Mondal judgement in 1990 November. On account of this, there has been a serious lacuna in respect of planned development of backward classes and there is no national policy consensus as in the case of SCs and STs. The Working Group on the empowerment of backward classes in the Tenth Plan has given a clear and comprehensive approach to the development of backward classes. The best that can be said is that the Government should immediately implement everyone of the recommendations of the Working Group.

10.2 The backward class include the bulk of the religious minorities of the Muslims, who are 80% of the religious minorities; Muslims are the largest religious minorities constituting 80% of the population of religious minorities. Of the Muslims not less than 90% belong to specified and identifiable castes/communities of backward classes so that the caste of the backward classes which continue extending across the major religious and the main minority religious group. Every backward caste has got its Hindu wing and Muslim wing.

10.3 The Muslim backward caste also include a number of castes which would have been in the Scheduled Castes list if they had been Hindu Sikh or Buddhisht. In view of this, the Commission recommends that special care should be taken that these Muslim backward communities are taken along with their Hindu counterparts in the entire developmental effort for the backward classes. This will, on the one hand, help a substantial section of the religious minorities and also help national integrity. Similarly the bulk of the Christian minority which is second largest includes castes which are classified as backward among Hindus as well as Scheduled Caste converts. Almost the entire buddhisht population in India is of the Scheduled Castes and a small number of the Scheduled Tribes. Amongst the Sikhs also, there are scheduled castes of backward classes. The best approach in respect of the religious minorities would be to ensure that these backward classes among the religious minorities are fully taken along with their Hindu backward classes brethren in the entire gammut of development by means illustrated by the Commission's specific recommendations regarding the allocation of some of the residential talents schools, earmarked for backward classes, to be allocated in areas of concentration of Muslim backward classes.

10.4 While developmental priority and focus is a right of the backward classes of SCs and STs among the religious minorities, they as well as the non-SC, non-ST category of the religious minorities are entitled to the right to freedom of religious, cultural and educational rights enshrined in Article 25 to 30 of the Constitution and this should be fully protected. In addition, religious minorities are entitled to protection of their lives and properties. It is desirable to impress upon the Government and the people in general that the vitiated communal situation of the country will be totally altered if religious minorities population belonging to BC, SC and ST are fully taken along with other BC, SC and ST in the economic, educational and other developmental approach.

Social Responsibilities of the Private Sector

11.1 In the changed economic scenario, private sector is likely to grow rapidly. The Private Sector Enterprises, by and large, draw substantial support from Government bodies and Banks which handle public-funds. Large investments in their enterprises come from the public funds. Private sector has, therefore, social responsibilities to perform. It needs actively to help in the improvement of socio-economic conditions of the people especially those belonging to the weaker sections of the society so as to build a conflict free and caring society without which no enterprise either public or private can hope to flourish. At present, Scheduled Castes and Scheduled Tribes employees in the private sector are believed to be numerically insignificant except at the shop-floor level. There is a increasing apprehension that the employment opportunities of the Scheduled Castes, Scheduled Tribes and the other weaker sections would shrink with the reduction in role of the Government.

11.2 Areas of social obligation of the private sector needs to be identified. Private Sector should contribute in the areas of advancement of education, health and in provision of employment opportunities of weaker sections of the people including the Scheduled Castes, the Scheduled Tribes and other backward classes. Policy frame work for active involvement and participation of private sector for socio-economic development of the people needs to be evolved after a meaningful, purposeful and result oriented debate with the leaders of the Indian Industry, Trade and Commerce.

11.3 In view of the above, it is suggested as follows :-

(1) A special National Workshop should be convened with the Prime Minister presiding and Ministers in charge of economic Ministries and SCs, STs, BCs, Minorities and Women participating along with representatives of organisations of Industry, Trade & Commerce and organisations representing SC, ST, BC, Minorities (of BC) and

Women to idetify the areas of social obligation of the private sector, which will include all those mentioned above and in particular ways of removing the stonewall of traditional bias and deep scented hostile mindset against SCs, STs, BCs and Women, on account of which individuals of these categories possessing necessary qualifications and qualities find their entry into the supervisory, technological, managerial levels of the private sector tightly barred, especially in the case of the SCs, STs, "lower" BCs and Minorities and Women belonging to these categories.

(2) The above Workshop should formulate a practical mechanism of collaboration in order to provide relevant training and orientation for qualified members of the above categories in keeping with the specific requirements of each Industry.

(3) It should be made clear to the private sector that failure on its part to cooperate, under the pretext of efficiency, but really on account of traditional biases, will leave the Government with no alternative but to introduce reservation in the private sector.

(4) At each stage of clearances of any type for any industry in the private sector there should be interaction involving the Ministry concerned and the Ministry/s in charge of SCs, STs, Minorities and Women to ensure the above type of arrangement.

(5) A separate exercise should be undertaken with foreign investors who may not share traditional social biases, and they may be able to provide some useful models of enabling SCs, STs, BCs, Minorities and Women to enter in reasonable numbers into higher levels of the private sector without any dilution of standards of efficiency required and which SCs, STs, BCs, Women and Minorities are indeed capable of fulfilling.

(6) If this experiment does not take off and produce satisfactory results in a reasonable period, say one year, there will be no alternative left but to introduce reservation in the private sector which in fact is one of the strong demands of associations and the representatives of the vast majority of people of India comprised in the above five categories.

Transfer Of Areas Under Fifth Schedule To The Sixth Schedule

12.1 The Fifth Schedule deals with the administration and control of Scheduled Areas and Scheduled Tribes while the Sixth Schedule relates to the Administration of the Tribal Areas in the North-Eastern States. The Sixth Schedule provides for the autonomous districts and autonomous regions and power of constitution of district and regional councils, their respective powers, etc. The Fifth Schedule read with Article 244 empowers the Governor of the State to regulate administration and control of Tribal Areas, Scheduled Areas and Scheduled Tribes with the power to modify, annul any law made by the Parliament or the State Legislature or limiting its application to a particular area.

12.2 During the working of the Constitution in 51 years, anomalies have occurred in the administration and control of the Scheduled Areas and Scheduled Tribes governed by Fifth Schedule. The Scheme under the Sixth Schedule on the other hand has worked reasonably well.

12.3 Some tribal areas in the country have neither come under the Fifth Schedule the Sixth Schedule. It has been suggested that the Scheme envisaged in the

Sixth Schedule for the Administration of the Tribal Areas in the North-Eastern States be extended to the areas covered by the Fifth Schedule with necessary amendments thereto and these areas be brought under the Sixth Schedule. It has further been suggested that the tribal areas which are presently neither under the Fifth nor under the Sixth Schedule should also be brought under the Sixth Schedule directly.

12.4 In the light of the above facts, it is suggested as follows:-

(1) All areas governed by the Fifth Schedule should be forthwith transferred to Sixth Schedule which is now applicable to only tribal areas in the North Eastern Sates.

(2) All tribal areas which are neither in the Fifth Schedule nor in the Sixth Schedule should also be forthwith brought under Sixth Schedule.

(3) In order to secure the full potential of the Sixth Schedule, namely, local developmental and administrative autonomy, which is designed to provide the STs satisfaction of participation in governance and to remove scope for any resultant discontent weakening the national fabric, special programmes of training and orientation for the elected representatives of Sixth Schedule bodies the tribal areas and related officials should be undertaken and conducted regularly.

Transfer Of Tribal Land

13.1 In certain States covered by the Fifth Schedule, such as, Andhra Pradesh, Bihar and Orissa, there are laws prohibiting the transfer of the lands owned or in the possession of the tribals to non-tribals. There have, however, been large-scale complaints, even in areas where such land transfer laws prevail, of transfer of tribal lands to non-tribals through various surreptitious means. Efforts made to reverse the process and restore land to tribal people as laid down in the laws have produced only limited results. Despite deficiencies in implementation, these laws have nonetheless provided protection to the tribals in these areas. In Samatha's Case*, the Supreme Court while construing the word 'land' in Andhra Pradesh Scheduled Area land Transfer Regulation Act held that the 'land ' included both transfer *inter vivos* between a tribal to a non-tribal as well as transfer of Government land in tribal areas in favour of anybody other than tribals. Any transfer, by way of lease or licence, therefore cannot be made in favour of non-tribals. There is a move to amend the existing land transfer laws so as to enable the transfer of lands belonging to Scheduled Tribes or Government land situated in the Tribal Areas in favour of companies and multi-nationals for the purpose of securing more efficient agricultural practices or better exploitation of minerals and forest wealth.

13.2 Keeping in view the sad story of the deprivation of tribals of their lands, which has been going on since long but has got a spurt in recent decades after Independence, in blatant violation of laws, thereby not only causing misery to the tribals but also driving them into arms of those who advocate violent methods of remedy, it is suggested that the following measures need urgent implementation :-

(1) No Government or authority should issue any executive order, as has happened in the past, which will in any way, dilute or delay the process and proceedings of implementation of laws prohibiting the passing of lands owned by or in the possession of tribals to non-tribals.

(2) Special Tribunals of the status of High Courts with appeal only to Supreme Court should be established in order to quickly institute inquiries on applications or *suo moto* and restore to tribals lands which tribals have been deprived of in the past.

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* Samatha's Case, AIR 1997 SC 3297

(3) A presumption should be laid down that lands in tribal areas all in the possession of non-tribals shall be presumed to have belonged to tribals and to have been illegally / wrongfully transferred to non-tribals unless the non-tribals in possession are able to establish that they get the full extent of lands they possess legally and properly.

(4) Government should not allow lands to be taken over by non-tribals and then come up with proposals to find alternative lands for the tribals by means, such as deforestation. Instead, they should take the hard decision of restoring the very land the tribals were deprived of.

(5) No Government should entertain or sponsor proposals of regularising non-tribal occupation of tribal lands and propose rehabilitation of the dispossessed tribals outside the tribal areas. Instead they should take the hard decision of restoring the very lands the tribals were deprived of and rehabilitate the non-tribals, in illegal or wrongful occupation, outside the tribal areas. Criminal cases filed against tribals shall be withdrawn.

(6) Wherever developmental work in industry, mining, hydel power generation, irrigation or township, etc. has to be undertaken, involving displacement of people in the tribal areas, there should be consultation with them to identify whether there is an alternative location or digment whereby tribal displacement could be avoided. If tribal displacment is unavoidable, there should, on the one hand, be a policy of total rehabilitation of the displaced as whole communities without scattering them widely, and providing them all the requirements for starting a new life successfully (including their declaration as STs if in the State of rehabilitation they are not STs) and, on the other hand, securing for them a due share of benefits from the project. Government has already got sufficient material for evolving such a policy which will be acceptable to the STs but this should be given a final shape and put into practice. Those, who have been displaced in the past with only cash compensation and without the right type of safeguards and inuts, should now be properly rehabilitated and given a due share for the benefits of the projects on account of which they were displaced. This policy should protect the interests of non-land holding displaced groups, both of STs and as well as others like agricultural labourers, artisans and traditional fisher-folk. Where dislocation is inevitable, the policy should spell out broadly the conditions in which decisions for or against locating a project can be made so that such dislocation is minimised and such projects are taken up only with the consent of the tribals likely to be displaced thereby and shall lay down rehabiliation measures whereby the STs get their due share of benefits from such projects and they do not suffer in the short or long term.

(7) Displacement of tribal communities from their traditional common property survival resources, through creation of national parks, sanctuaries and bio-sphere reserves should be avoided by integrating the tribal communities and their traditions in the management of reserves and/or effecting their full and proper rehabilitation.

(8) Resettlement plans and costs should be built into the project plans and costs to be fulfilled before / simultaneously with the project constructions.

(9) The children of displaced tribals as well as others should be admitted in talent schools so that they are able to acquire education for diversification of their economy and to enter new occupational areas.

(10) Instead of posing forests and tribals as antagonistic entities, joint management of forests by involvement of tribals and their representative organisations in a transparent manner along with the forest department should be undertaken to protect the forest on the one hand and allowing the tribals to continue to avail themselves of their traditional rights in the forest products.

(11) Exploitation of forest coupes should be entrusted to continuing tribal co-operatives of which there are/were available models in the country, as part of a comprehensive mechanism to eliminate middlemen in all spheres of tribal life and economy. This comprehensive policy should undertake the establishment of different types of organisations of STs, like co-operatives or associations wholly owned and managed by tribals, to undertake or participate in different economic activities undertaken in their area. The tribals and their representatives should be trained and oriented to run these organisations successfully. Successful models of this also are available in the country.

Corporations and Co-operatives formed at the State and National levels to purchase MFP from ST collectors and dispose them in the market should be managed efficiently, involve STs in their management (with training for ST representatives), pay a fair price to the STs (on the basis of end-price in the market, minus, only essential costs like transport and reasonable storage) and should not be allowed to divert their activities to any field which is not directly concerned with STs and MFP or their agricultural or industrial products.

Protection Of Land Ownership/Land Tenures

14. The statistical data available indicate that the majority of the Scheduled Caste and the Scheduled Tribes continue to be agricultural labourers and marginal land-holders, despite various measures taken by the Government to improve their lot in the last fifty years. Under various land reforms schemes land has been made available to landless labourers. These schemes, however, have not altered the lot of landless labourers particularly of those belonging to the Scheduled Caste and the Scheduled Tribes. A number of land reform cases are held up in judicial process and in certain cases judgements are said to have run contrary to the legislative intent. Cultivable Government land and Bhoodan land is still available in some States for distribution to beneficiaries. In many cases, the Scheduled Castes and Scheduled Tribes to whom lands have been allocated/granted have been forcibly evicted and persecuted. True implementation of land reforms legislation and proper allotment/distribution of land under these schemes could have substantially improved the lot of landless labourers and it still has the potential to do so.

(i) A list of all the available Government land not required for genuine public purpose, Bhoodan lands and ceiling surplus lands should be published at the village level, tehsil/taluka/mandal level and district level and a joint programme involving the administration and the SC, ST BC and other landless poor should be undertaken to go to each field identify the occupant in public, evict the occupant if ineligible, allot the land to the occupant if eligible and allot unoccupied lands to eligible landless poor people particularly SC and ST in consultation with the landless poor people of the village. There are models of such successful involvement of people especially SC and ST in the country for correct identification of

lands and occupants and correct recording/distribution as for example the Nijai Bol movement in the Basti district of U.P. in the mid-fifties and the Barga Movement more recently in West Bengal and also in some settlement operations in Andhra Pradesh in the Fifties and early Sixties. This mass programme involving potential eligible persons in groups and the administrative machinery should be undertaken from village to village clearing all work in each village taken up. Performance in this regard should be a specific item for evaluation of officers for grant or denial of Social Justice Clearance for promotion.

(ii) By involving the SC and ST, lands allotted to them but occupied by others should be identified by mobile teams, transparently in public and the wrongful occupants should be promptly tried and punished under the POA Act under an existing provision in that Act. The enforcement of the Act should start with the biggest land owners and the most powerful individuals in each village who are in occupation of land allotted to SCs and STs., in order to have a demonstration effect about the seriousness of the Government and deterrent effect on the offenders.

(iii) Occupation of Government land or Panchayat land or Bhoodan land or ceiling surplus land which are allottable to the SC and ST and other landless poor should be included in the POA Act as an atrocity and those in occupation of such land should be dealt with in the same manner as above.

(iv) Offenders of the above type should be made ineligible to stand for any election at any level for six years after conviction by suitably amending the Representation of People Act and they should also be disqualified to continue to hold any office to which they have already been elected.

(v) The High Court and the Supreme Court should be moved by the respective Governments to set up a separate bench to deal with all matters pertaining to land reform cases along with other matters pertaining to SCs and STs and BCs like reservation in order that they may be disposed of quickly and implementation of land reforms and other benefits may not be delayed by powerful vested interests through the mechanism of institution and prolongation of legal proceedings.

(vi) Bhoomi Sudhar Adalats (Land Reforms Justice Tribunals) should be set up.

Strengthening of constitutional provisions

15. The following measures are suggested:-

(i) In Article 46, the following should be added at the end of it:

"and it shall be the right of the weaker sections of the people and, in particular, of the SC and ST that the State and all institutions of or created by or promoted by or assisted by the State shall at all times function fully and totally in accordance with this right, shall take every measure required to fulfil this right and shall not take any measure the effect of which will be contrary to it."

(ii) In order to remove any scope for misunderstanding, to prevent abuse and to allay the apprehensions of members of Scheduled Castes and Scheduled Tribes to the effect that this clause is used to defeat their rights, the clause "consistently with the maintenance of efficiency of administration", be deleted from article 335.

(iii) The existing Clause 4 of article 16, to be renumbered as Clause 5 which is at present worded permissibly should be made mandatory thus making the renumbered article 16(5) the source of reservation for backward classes who may be termed as Socially and Educationally Backward classes in line with article 15(4) and article 340(1).

(iv) The existing clauses (4A) and (4B) under article 16 should be consequently renumbered as clauses (5A) and (5B).

(v) Clause (4) of article 15 should be made mandatory.

(vi) The following entries should be included in List III of the Constitution.
(a) Development, welfare and protection of the Scheduled Castes and the Scheduled Tribes.
(b) Development, welfare and protection of the Backward Classes.
(c) Development, welfare and protection of women.

Empowerment of Women

16.1 The representation of women at all levels of Government is 7.1% of Government service. The representation of women in the Indian Administrative Service is about 10%. Out of the 500 and odd Judges of the superior courts, there are only 15 women Judges. The number of women Members of Lok Sabha is 49. The full potential of women therefore remains grossly underutilized even after more than 50 years of the working of the Constitution

16.2 The following suggestions are made:

(i) Reservation for women should be provided in State Legislative Assemblies and Lok Sabha. The existing bill should be amended to provide for reservation for backward classes as permissibly provided in the case of Panchayats and Municipalities. However, in order to secure consensus, from the benefit of reservation for backward classes such communities of backward classes as are able to secure seats comparable with their population even now may be excluded by a suitable provision.

(ii) A wide spread programme of Empowerment of Women economically and educationally should be undertaken and the Bill on Domestic Violence passed and implemented so that more and more women may be able to take advantage of reservation in elective bodies and also representation in various levels of Governance and administration and different professions.

(iii) Malnutrition and maternal anaemia widespread among women from SCs, STs, BCs and other weaker sections of the people "Right to Health has been declared by the SC as a fundamental right. NHRC after conducting a workshop recommended to amend the Constitution declaring that Right to Health a fundamental right. Massive programme of actions undertaken by the Central and State Government health care and to prevent maternal anaemia and infant mortality.

Unorganized Labour

17.1 In India, out of 286 million working force in 1991, 259 millions were in unorganized sector. The largest numbers of unorganised labourers are in occupational sectors like agricultural labour, traditional and village industries, primary production in fisheries, etc. There are also sizable number of workers in bidi rolling, match stick making, etc. The unorganized labour continues to be exploited in diverse ways. Practice of employing contract labour even for works of continuing and long term nature which increasingly is being adopted both by Public and Private sector results in their exploitation and is a problem area. They need protection from exploitation. A mechanism under which such unorganized labour can be enabled to form cooperative societies/self-help groups may help in reducing their exploitation and in improving their economic conditions. For instance, rickshaw pullers vegetable vendors, street-vendors, hawkers do not own their rickshaws or carts but take them on rent. The rent paid by them in a year often is sufficient to pay back the cost of rickshaws and interest thereon. A cooperative movement should enable easy loans from banks to be made available to them through cooperative institutions. The

cooperative institution could themselves supply such rickshaws and carts on hire-purchase basis enabling them to be the owners, and thus ending their exploitation. Institutions of civil society too can play an important role in preventing exploitation of unorganized labour.

17.2 The following suggestions are made:

(i) The task of enforcing payment of prescribed statutory wages to agricultural labourers and other categories of unorganized wage labour should be entrusted to the District Collectors and SPs. They should identify the largest wage employers in each district and ensure payment of the prescribed statutory wages by them in a transparent manner so as to secure demonstration effect and emulation effect. This should be a specific item for Social Justice Clearance for them for promotion.

(ii) The Central Act for agricultural workers drafted in 1978-80 and the introduction of which has been continuously postponed in the name of an ever-elusive consensus should be introduced and passed immediately, as it is the evasion of such legislations that gives opportunity, scope and fillip to the advocates of violence.

(iii) Khet Mazdoor Nyay Adalats (Agricultural Labour Justice Tribunals) should be established.

Statutory Protection To Farmers

18.1 Mahatma Gandhi, the Father of the Nation, said that India lives in villages. Agriculture is the main rural economy. The Freedom movement laid emphasis on empowerment of agriculturists and conferment of title to the tiller of the soil. The Constitution enjoins in Article 48 that the State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps to preserve and improve the breeds, etc. Despite the Green Revolution having been achieved over the years, the agricultural economy remains in precarious condition. The agriculturists, due to diverse reasons, like natural calamities, marketing exploitation of their produce, etc. are subjected to recurring losses. In Dalmia Cement (Bharat) Ltd. Case[1], (1996), the Supreme Court declared that agriculture is an industry, the livelihood and sustained economic development of agriculturists depends on the production and return from the agricultural produce. Socio-economic justice to the farmer was declared a Fundamental Right in the said judgment. Like an industrialist, the agriculturist should also be made entitled to all the benefits of Government policy on industry. Farmers also need to be protected from the adverse effects of the WTO and IPR regimes, while at the same time securing the benefits of these regimes for them.

18.2 In view of the above, the following suggestions are made:

(i) The long pending demand of agriculturists that agriculture should be treated as an industry with the benefits of Government policy to industries should be conceded without further delay.

(ii) The remedial steps require to protect agriculturists for incurring losses, to promote sustained growth of agriculture and to protect them and other traditionally producing classes from the adverse effects of the regimes of WTO, IPR, etc. while at the same time helping them to secure the benefits of those regimes should be specifically identified at a national convention involving Ministers in charge of Ministries connected with globalisation and Ministers in charge of Agriculture and other sectors of traditional produce and authentic representatives of the peasant organizations as well as representatives of other producing classes and a consensus arrived at to be implemented quickly. There should be a continuous mechanism involving all these to continuously monitor implementation and corrections and modifications required from time to time to secure the twin results mentioned above.

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[1] 1996 (10) SCC 104

Bonded Labour and Child Labour.

19.1 Despite prohibition of 'begar' and other forms of forced labour, the practice of bonded labour has not ended, Child labour too exist

19.2 The following suggestions are made:

(i) A fully empowered National Authority for the Liberation and Rehabilitation of bonded labourers as recommended by the Commission for Rural Labour in 1990-91 should be set up immediately and similar authorities at State level.

(ii) In order to offset the influence of powerful people who maintain bonded labourers and also dominate many fields of Governance, the sections of population from which bonded labourers are drawn namely SC (about 2/3rd), ST (about 1/5th) and BC (about 1/7th) should be mobilized through their representative organizations, SC, ST and BC wings of all political parties, SC, ST and BC holders of elective offices in panchayats and municipalities of all levels, NGOs and social activists who have been sincerely working for the bonded labourers along with the administration should be mobilized. Rehabilitation programme should simultaneously be implemented so as to avoid relapse.

(iii) The mandatory provision in the Bonded Labour System (Abolition) Act which places the responsibility on the State as in the PCR Act and the POA Act should not be allowed any more to remain merely on paper.

(iv) The monthly and other periodical meetings required by the Act to be held by the District Collectors, Chief Secretaries, etc., which is more honoured in the breach than in the observance should be held regularly by all those officers hereafter and this and other aspects of the liberation and rehabilitation of bonded labourers should be made a specific item for the evaluation of each of these officers for the grant or denial of Social Justice Clearance for promotion.

(v) Bandhua Mazdoor, Bal Mazdoor evam Pravasi Mazdoor Nyay Adalats (Bonded Labour, Child Labour & Migrant Labour Justice Tribunals) should be established,

(vi) Chairperson, Members of the National and State Authorities referred to above and other Authorities, Commissions and other bodies for SCs, STs, BCs, Minorities, Women, Safai Karmacharis and any other weaker section should be appointed not as at present but in keeping with the qualifications and qualities specified in the respective Acts or in the Constitution or in Rules thereunder and under a transparent procedure similar to that provided for the appointment of Chairperson and Members of the National Human Rights Commission, *mutatis mutandis*.

Immoral Trafficking in Women – Rescue & Rehabilitation

20.1 In Gaurav Jain's Case[1], the Supreme Court of India on 9th July, 1997 directed the Union of India to constitute a committee to make an 'in depth study' of the problems relating to prostitution, child prostitutes and children of prostitutes and to evolve suitable schemes for rescue and rehabilitation of the victims of prostitution. The court directed that the report should be circulated to all the State Governments eliciting their views thereon. Thereafter, the Prime Minister was to convene a conference of all the Ministers dealing with women and child, consider the recommendations and the responses, evolve policies and plans of action. A permanent committee of three Secretaries was directed to be constituted for implementation and continued monitoring of the implementation. Government of India in the Ministry of Human Resource Development (Department of Women and Child Development) had, accordingly, constituted a committee on Prostitution, Child Prostitutes and Children of Prostitutes on 21st August, 1997. The Committee in its

[1] Gaurav Jain Vs Union of India , AIR 1997 SC 3021

Report[1] has *inter alia* recommended certain Plan of Action[2] to combat trafficking and commercial sexual exploitation of women and children. These include action points on (i) Prevention, (ii) Trafficking, (iii) Awareness Generation and social mobilization, (iv) Health Care Services, (v) Education and Child Care, (vi) Housing, Shelter and Civic Amenities, (vii) Economic Empowerment, (viii) Legal Reforms and Law Enforcement, (ix) Rescue and Rehabilitation, (x) Institutional Machinery and (xi) Methodology.

20.2 The Centre of Concern for Child Labour has identified certain child prostitution prone areas in India as is indicated in Appendix XIX.

20.3 The following suggestions are made:

(i) The recommendations of the Secretary's Committee should straightaway be implemented without further loss of time.

(ii) The process of complying with the Supreme Court's directions should be completed without further loss of time:

(iii) Since the present recommendations deal with the symptoms, it is necessary to go to the root identifying the sources from which prostitutes and child prostitutes are recruited usually by force or by the operation of economic forces or traditional exploitative customs, like the Devadasi System (known by different names).

(iv) Since the bulk of prostitutes and child prostitutes recruited in all the above ways are from the Scheduled Castes, Scheduled Tribes, Backward Class artisans who have lost their occupation on account of being suddenly exposed without any preparation of support to unfair and hopelessly unequal competition from technologically and financially superior categories, this root of the problem has to be tackled by empowering these communities and these categories by economic development, economic protection educational development and other measures recommended earlier, failing which the release of some prostitutes and child prostitutes will result in either relapse of the same persons or substitution by other individuals who share the same miserable social and economic plight.

(v) Child prostitutes and children of prostitutes should be admitted to the residential schools mentioned earlier for SC, ST and BC in the 25% quota meant for others.

21. It is observed as follows:

(i) There is absolutely no room for difference of opinion that the socio-economic change since independence is far below par, potential and need.

(ii) The pace of change is not commensurate with financial outlays and expenses because on the one hand the schemes have not been drawn up in consultation with the people and in accordance with the full requirements of development in a comprehensive and integrated manner and the people are not associated with the implementation of the schemes.

(iii) The pace of change is also not commensurate with the potential of the country.

(iv) At the core of the failure is the refusal to see that the bulk of the people, not less than 75% belong to SCs, STs and BCs who also contribute almost all the physical labour in production and services and the fact that most of those occupying the commanding heights of the economy, of governance, of administration, and of all institutions have their origin in the remaining 25% of the society whose interests are either opposed to

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[1] See the Report of the Committee on Prostitution, Child Prostitutes and Children of Prostitutes & Plan of Action published by Department of Women & Child Development, Ministry of Human Resource Development, Govt.of India, 1998.

[2] ibid

the interests of the full economic and educational development of the above bulk of the population or who are indifferent to and oblivious to their plight and their interests.

(v) There has been similar neglect of the Minorities most of whom belong to SC or ST or BC and of women, belonging to SC, ST and BC and also other women.

(vi) The various measures of Constitutional amendment and creation of institutions and systems recommended by this Commission are a beginning to reverse this trend, secure the economic liberation of the SC, ST and BC and other poor, and their educational development, and enable the nation to better achieve its potential. Delay or neglect in this regard will make a nearly unmanageable situation totally unmanageably and come in the way of the various projects of economic growth of the country being planned and desired.

LIST OF ORGANISATIONS/ INDIVIDUALS WHO SENT REPRESENTATIONS TO THE COMMISSION

LIST OF ORGANISATIONS/INDIVIDUALS WHO SENT REPRESENTATIONS TO THE COMMISSION

A. ORGANISATIONS (Alphabetical Order)

1. A.J.K.K.S. Polytechnic, Thoomanaick-empalayam, Erode
2. Aazadi Bachao Andolan, Rajkot
3. Abhiyan – Rural Development Society, Samastipur, Bihar
4. Adarsh Chetna Samiti, Patna
5. Adhivakta Parishad, Prayag, Uttar Pradesh
6. Adhivakta Sangh, Aligarh, U.P.
7. Adhunik Manav Jan Chetna Path Darshak, New Delhi
8. Adibasi Mahasabha, Midnapore
9. Adi-Dravidar Peravai, Tamil Nadu
10. Adirampattinam Rural Development Association, Thanjavur
11. Adivasi Gowari Samaj Sangatak Committee Maharashtra, Nagpur
12. Ajay Memorial Charitable Trust, Bhopal
13. Akanksha Jankalyan Parishad, Navi Mumbai
14. Akhand Bharat Sabha (Hind), Lucknow
15. Akhil Bharat Hindu Mahasabha, New Delhi
16. Akhil Bharatiya Adivasi Vikas Parishad, New Delhi
17. Akhil Bharatiya Baba Saheb Dr. Ambedkar Samaj Sudhar Samiti, Basti, Uttar Pradesh
18. Akhil Bharatiya Baba Saheb Dr. Ambedkar Samaj Sudhar Samiti, [illegible]
19. Akhil Bharatiya [illegible] Bhil Samaj, Ratlam District, Madhya Pradesh
20. Akhil Bharatiya Bhrastachar Unmulan Avam Samaj Sewak Sangh, Unna, Himachal Pradesh
21. Akhil Bharatiya Dhan Utpadak Kisan Mazdoor Nagrik Bachao Samiti, Godia, Maharashtra
22. Akhil Bharatiya Gwal Sewa Sansthan, Allahabad.
23. Akhil Bharatiya Kayasth Mahasabha, Amroh, U.P.
24. Akhil Bharatiya Ladhi Lohana Sindhi Panchayat, Mandsaur, Madhya Pradesh
25. Akhil Bharatiya Meena Sangh, Jaipur
26. Akhil Bharatiya Pracharya Mahasabha, Baghpat,U.P.
27. Akhil Bharatiya Prajapati (Kumbhkar) Sangh, New Delhi
28. Akhil Bharatiya Rashtrawadi Hindu Manch, Patna
29. Akhil Bharatiya Rashtriya Brahmin Mahasangh, Unnao
30. Akhil Bharatiya Rashtriya Congress Alap Sankyak Prakosht, Lakheri, Rajasthan
31. Akhil Bharatiya Safai Mazdoor Congress, Jhunjhunu, Rajasthan
32. Akhil Bharatiya Safai Mazdoor Congress, Mumbai
33. Akhil Bharatiya Sahitya Parishad, New Delhi
34. Akhil Bharatiya Sarvdaliya Gorakshak Maha Abhian Samiti, Delhi
35. Akhil Bharatiya Sewa Dal, Ahmedabad
36. Akhil Bharatiya Swatantra Sangram Senani Avam Uttaradhakari Sangathan, Raipur, M.P.
37. Akhil Bharatiya Vishwakarma Parivar, Ahmedabad
38. Akhil Bhartiya Vishwakarma Mahasabha (U.P.), Lucknow
39. Akhil Rajasthan SC/ST/Other Backward Classes Officers' Joint Mahasangh, Sri Ganganagar, Rajasthan
40. Al-Kabir Polytechnic, Jamshedpur
41. All Bharat Confederation of Senior Citizens and Pensioners, Chennai
42. All India Association For The Handicapped (Regd), Himachal Zone, Nahan
43. All India Backward Muslim Morcha, New Delhi
44. All India Banjara Seva Sangh (AIBSS), Indore
45. All India Banjara Seva Sangh (AIBSS), Mumbai
46. All India Banjara Seva Sangh (AIBSS), Orissa
47. All India Banjara Seva Sangh, Aurangabad [illegible] Sangha, Karnataka
48. All India Boudha [illegible]
49. All India Confederation of Goods [illegible] Owners' Associations, New Delhi
50. All India Confederation of Scheduled Castes/Scheduled Tribes Organisations, Udaipur
51. All India Confederation of the Blind, Delhi
52. All India Denotified Nomadic Tribes and Special Backward Class Kranti Dal, Mumbai
53. All India Dhangar Samaj Mahasangh, Nanded
54. All India Dr. Babasaheb Ambedkar Advocates' Association, Mumbai
55. All India Equality Forum, Bikaner
56. All India Federation of Scheduled Castes/Tribes, Backwards and Minorities Employees Welfare Associations (SCEWASTAMB), New Delhi

57. All India Federation of State Civil/Administrative Service Associations, Kolkata
58. All India Freedom Fighters' Successor's Association, Namakkal, Tamil Nadu
59. All India Islamic Foundation, Chennai
60. All India Muslim Educational Co-ordination Committee, Bangalore
61. All India Poor People Munnetra Kazhagam, Madurai
62. All India Prayer and Appeal Fellowship, Kakinada, Andhra Pradesh
63. All India Research Institute of Indian Medicine, Nagpur
64. All India Samata Sainik Dal, Nagpur
65. All India SC and ST Railway Employees Association, Yamuna Nagar, Haryana
66. All India Scheduled Castes Yuvjan Samaj (Regd), Delhi
67. All India Scheduled Castes Yuvjan Samaj (Regd), Delhi
68. All India Scheduled Castes, Scheduled Tribes and Buddhists L.I.C. Employees' Welfare Association, Parbhani, Maharashtra
69. All India Scheduled Castes, Scheduled Tribes and Buddhists L.I.C. Employees' Welfare Association, Calcutta
70. All India Services Pensioners' Cell, Guwahati
71. All India Soofi Academy, Hyderabad
72. All India Tax Payers Association, New Delhi
73. All India Telecom Employees Union, Parbhani, Maharashtra
74. All Orissa Brahmana Mahasava, Nayagarh, Orissa
75. All Sonowal Kachari Jatiya parisad, Dibrugarh
76. Amar Shaheed Hemu Kalani Yadgar Mandal, Mumbai
77. Amarajeevi Potti Sreeramulu Smaraka Committee, Karimnagar, Andhra Pradesh
78. Andhra Pradesh Backward Classes Welfare Association, Hyderabad
79. Andhra Pradesh Buddhist Trust, Hyderabad
80. Anterrashtriya Sansadiya Adhyayan Sansthan, Patna
81. Antrarashtriya Krishi-Gau Pariyavaran Sanrakshan Parishad, New Delhi
82. Antrashtriya Abhimanyu Vichaar Manch, Patna
83. Antyoday Chalwal, Raigarh
84. Anumandaliya Nagrik Manch, Sahibganj, Bihar
85. Anusuchit Jati-Jan Jati Karamchari Sangh Bihar, Patna
86. Anusuchut Jati Jan Jati Sangathano Ka Akhil Bharatiya Parisangh, Uttar Kashi
87. Appellate Tribunal for Forfeited Property, Ministry of Finance, New Delhi.
88. Arakshan Samapti Abhiyan (Sanyukata Manch) Manch, New Delhi
89. Arjak Sangh Uttar Pradesh, Lucknow
90. Arsha Bharath Bhahujana Bhodhavalkarana Grama Vikasana Samithy, Waynad, Kerala
91. Arunthathiyar Sangham, Mumbai
92. Arunthathiyar Thalamai Eyakkam, Mumbai
93. Arya Samaj Birla Lines, Delhi
94. Arya Samaj Indri, Karnal, Haryana
95. Ashok Magasavargya Sahakari iha Nirman Sansthan, Parbanhi, Maharashtra
96. Association for Promotion Sustainable Development Haryana, Hisar, Haryana
97. Association of Indian Minorities, Delhi
98. Association of Managements of Hindu Educational Institutions, Tamil Nadu
99. Association of Medical Consultants (Mumbai), Mumbai
100. Association of Senior Citizen's Organisations of Pune (ASCOP), Pune
101. B & L Foundation of India, Ranchi
102. Baba Ramdev Mandir Trust, Bikaner
103. Baba Saheb Bhim Rao Ambedkar Dalit Seva Samiti, Koraput, Orissa
104. Baba Saheb Dr. Bhim Rao Ambedkar Sewa Sansthan, Patna
105. Backward and Most Backward Class Association, Chennai
106. Backward Classes and Other Classes Joint Action Committee, Srikakulam, Andhra Pradesh
107. Bahna Samaj Kalyan Mandal, Nagpur
108. Bahujan Hitaya Nayalayeen Karamachari Mahasang, Hingoli, Maharashtra
109. Bahujan Samaj Party, Saharanpur
110. Baiswara Adhivakta Sangh, Rai Bareilly
111. Baitulmal Tamilnadu, Chennai
112. Balaji Exim, Mumbai
113. Bangiya Sabitri Samity, Kolkata
114. Bangiya Yadav Mahasabha, Kolkata
115. Banjara Kanti Dal, Mumbai
116. Bar Association Sikanderabad (Regd), U.P.
117. Bar Association, Hasanpur, U.P.
118. Barabazar Library, Kolkata
119. Basant Lok Jagriti Association (Regd), New Delhi
120. Bediapara ambedkar Mission, Kolkata
121. Belgaum Diocesan Catholic Association, Hubli, Karnataka
122. Bhagwan Mahaveer Ahimsa Prachar Sangh, Chennai
123. Bharat Akem, Rashtriya Sansthan, Jabalpur
124. Bharat Awareness Forum, Atlanta, USA

125. Bharat Ratna Dr. Baba Saheb Ambedkar 'Dalit Mitra' Samiti Maharashtra Rajya, Pune
126. Bharatheeya Restricted Democratic Party (BRDP), Trivandrum
127. Bharatiya Depressed Classes League, 24, Parganas, West Bengal
128. Bharatiya Janta Party Buddhijivi Manch Bihar Pradesh, Patna
129. Bharatiya Manikpuri Panika Samaj Sarguja, Raipur
130. Bharatiya Matdata Manch, Banda
131. Bharatiya Rashtriya Adivasi Vikas Sanstha, Nagpur
132. Bharatiya Sanskriti Sansad, Kolkata
133. Bharatiya Sarwabhaumik Party, Sitapur
134. Bharatiya Shikshan Mandal, Assam State Unit, Guwahati
135. Bharatiya Shikshan Mandal, Tamil Nadu
136. Bharatiya Shikshan Mandal, Visakhapatnam
137. Bharatiya Sindhu Sabha, Dabra
138. Bharatiya Sindhu Sabha, Vadodara
139. Bhartia Vidhan Shodh Samiti, Jalandhar
140. Bhatakya Vimukta Jati-Jamati Samanvya Samit, Pune
141. Bhubaneswar Citizens and Consumers Association, Bhubaneswar
142. Bihar Marwari Sammelan Shiksha Samiti, Patna
143. Bihar Pradesh Janata Dal (United), Patna
144. Bihar Rajya Mukhiya Sammelan, Nalanda, Bihar
145. Birsa Educational and Social Development Trust, Jamshedpur
146. Birsa Public School, Dhanbad
147. Biswanath Club, Jagatsinghpur, Orissa
148. Block Tughlakabad Congress Committee (I), Baderpur, New Delhi
149. Bombay Natural History Society, Mumbai
150. Brahmana Seva Sangham, Kakinada
151. Brahmana Sewa Sangam, Gandhinagar
152. Brahmin Baniya Araakshan Morcha, Roorkee
153. Brashtachar Virodhi Vyaspith, Thane, Maharashtra
154. Breastfeeding Promotion Network of India, Delhi
155. Buddha Mahan Educational and Trust, Erode, Tamil Nadu
156. Catholic Association of Satna, Satna, M.P.
157. Central Administrative Tribunal (CAT), Principal Bench, New Delhi
158. Central for Consumer Education and Environment Protection, Mysore
159. Centre for Communication Studies, Pune
160. Centre for Federal Studies, Jamia Hamdard, New Delhi
161. Centre For Peace and Progress, Kolkata
162. Centre for Research in Rural and Industrial Development (CRRID), Chandigarh
163. Centre for Social Reconstruction and Development, Vadodra
164. Centre for Water Policy, Delhi
165. Chakma Autonomous District Council, Kamalanagar, Mizoram
166. Chamba Welfare Association, Chamba
167. Charan Pragati Mandal, Ahmedabad
168. Charitra Nirman, Patna
169. Chhattisgarh Nishad (Kewat) Samaj, Bhilai, Madhya Pradesh
170. Chhattisgarh Satnami Jan Kalyan Parishad, Bilaspur, M.P.
171. Chhattisgarh Vidhan Sabha, Raipur
172. Chhattisgarh Wildlife Society, Raipur
173. Chief Commissioner for Persons with Disabilities, Ministry of Social Justice and Empowerment, Noida
174. Chittorgarh Marble Laghu Udyog Sansthan, Chittorgarh
175. Christian Community Welfare Council of India, Jamshedpur.
176. Citizens' Alliance For Democratic Reforms, New Delhi
177. Citizens' Commission for National Issues, New Delhi
178. Citizens' Forum, Hubli
179. College for leadership and Human Resource Development, Mangalore
180. Common Cause, New Delhi
181. Commonwealth Human Rights Initiative, New Delhi
182. Confederation of Other Backward Classes, SC/ST and Minorities of West Bengal, Kolkata
183. Consumer – Protection Association, Sabarkantha, Gujarat
184. Consumer Protection Council and Human Rights of India, Chennai
185. Coorg National Council [Kodagu Rajya Mukthi Morcha (KRMM)], Coorg
186. Coorg Voters' Association, Mercara
187. Council of Nokmas: Garo Hills District, Tura, Meghalaya
188. Dalit Christian Liberation Movement, Chennai
189. Dalit Joint Action Committee-Save Panchama Land Movement, Chennai
190. Dalit Lekhak Sangh, Delhi
191. Dalit Muslim Front, Patna
192. Dalit People Front, Arakkonam
193. Dalit Sena, Sirohi District
194. Dalit Thinkers Forum, Vijayawada
195. Dalith Christian Young Wing of Scheduled Castes (Dalith) Christian Association, Thiruvananthapuram, Kerala
196. Deepak Dhanak Sudhar Sabha, Ferozpur, Punjab

197. Delhi Naitik Nagrik Parishad, Delhi
198. Delhi Pradesh Sindhi Samaj (Regd), Delhi
199. Delhi Rajya Vyapar Sangathan, Connaught Place, New Delhi
200. Democratic Forum, Patna
201. Dena Bank SC/ST/OBC Employees Welfare Council, Kolkata
202. De-notified and Nomadic Tribals Rights Action Group (DN & NTRAG), Mumbai
203. Deprived Classes Co-ordination Parishad Orissa, Bhubaneswar
204. Desai Pathukappu Kazhagam, Chennai
205. Deshbhakt Krantikari Azad Hind Sena, Maharajganj, Uttar Pradesh
206. Deshratna Dr. Rajendra Prasad Sewa Samiti, Lucknow
207. Development Association of the Blind, Nalgonda Distt., Andhra Pradesh
208. Dhobi Samaj Mahasangh, Mandala
209. District Brahmin Federation, Balangir, Orissa
210. District Council Affairs Department, Government of Meghalaya, Shillong
211. Dorbar Hima Mylliem, Shillong
212. Dorbar of the Rulers of Khasi States, Ka Dorbar Ki Nongsynshar Ki Hima Khasi, Shillong.
213. Dr. Ambedkar Samaj Kalyan Sangthan, New Delhi
214. Dr. B.R. Ambedkar Vichar Manch, Delhi
215. Dr. Babasaheb Ambedkar Mission, Nagpur
216. Dr. BabaSaheb Ambedkar National Association of Engineers, Nagpur
217. Dr. Bhimrao Ambedkar Anusuchit Jati Parishad, Assam
218. Dr. Surat Singh and Associates, New Delhi
219. Dum Dum, Nongthymmai, Shillong
220. Eclectic Sociopolitical Thinktank, Mysore
221. Eka Matha Sabha, Thiruvananthapuram
222. Eklavya Aadivasi Yuva Sanstha, Dhule District, Maharashtra
223. Ekta Manch, Raigarh, Chhatisgarh
224. Ekta Parishad M.P., Bhopal
225. Electronic and Press Media Association, Panipat
226. Elgar Pratishthan, Chandrapur
227. Employees (Audit) Association AG (Audit) UP, Allahabad
228. Environment and Human Rights Law Initiative (EHRLI), New Delhi
229. Equality of All Before Law, Mumbai
230. ESIC Scheduled Castes/Scheduled Tribes Employees' Welfare Association, Ahmedabad
231. Ex-Servicemen Association Garur, Almora
232. Farmers Development Agency, Chikballapur City, Karnataka
233. Federation for Upliftment of Depressed Classes, Secunderabad
234. Federation for Welfare and Rights of Mumbai Tamils, Mumbai
235. Federation of the Indian Backward Class College Teachers Association, Aurangabad
236. Forum for a Better Democratic Alternative, Mumbai
237. Forum for Empowerment of the People, Pune
238. Forum For Equality, Madras
239. Forum For Justice, Mumbai
240. Forum For Right to Work, Hyderabad
241. Forum of Minority Institutions and Associations, Chennai
242. Forum of Senior Citizen, Kolkata
243. Forum of Voters, New Delhi
244. Foundation for Ecological Security, New Delhi
245. Foundation for Indo-Turkic Studies, New Delhi
246. Freedom Fighters Thyagigal Association, Tamil Nadu
247. Gadhia Lohar Yuva Chetak Samiti, Bikaner, Rajasthan
248. Gadhia Lohar Yuva Chetak Samiti, Hisar, Haryana
249. Gandhi Forum, Hyderabad
250. Gandhinagar Shaher Jagrut Nagrik Parishad, Gandhinagar, Gujarat
251. Gau Sewa Ayog (Gujarat State), Gandhinagar
252. Gayatri Paribar Development Trust, Ganjam, Orissa.
253. Gayatri Vidyapeeth, Shantikunj, Haridwar
254. Gene Campaign, New Delhi
255. Giants International, Muradabad
256. Global Employees Welfare Association, Bhilai
257. Goa Su-raj Party, Goa
258. Goplani Charitable Trust, Ahmedabad
259. Government of Haryana, Chandigarh
260. Government Pensioners' Association, Assam, Guwahati
261. Gram Panchayat, Pilkha, Almorah
262. Gram Swaraj Education Centre, Rajkot, Gujarat
263. Gram Vikas Sabha, Sidhbari, Kangra
264. Gram Vikas Samiti, Mohammedpur, Distt: Siwan, Bihar
265. Greater Shillong Non-Tribal Welfare Co-ordination committee, Shillong
266. Gurmat Mission, Surdwara Sri Guru Singh Sabha, Lucknow
267. Guru Gobind Singh Foundation, Chandigarh
268. Gyan Prachar Kendra, Bikaner

269. Haryana Samaj Sewa Kendra, Ambala
270. Himachal Pradesh Krishi Vishva Vidyalaya, Kangra, H.P.
271. Himalaya Consortium for Himalayan Conservation, New Delhi
272. Himalayan Institute of Needs, Pithoragarh, Uttaranchal
273. Hindu Mitra Mandal Regd., Nagpur
274. Hindu Refugee Foundation, 24, Parganas, West Bengal
275. Hindu Swabhiman Pratishthan, Pune
276. Hindu Writers' Forum, New Delhi
277. Hindustan Inqalab Party, Aligarh
278. Hmar People's Convention General Headquarters Sakawrdai, Mizoram
279. Human Rights Foundation of India, New Delhi
280. Hyderabad and Ranga Reddy Districts General Social Welfare Association, Ranga Reddy District, A.P.
281. India Citizens Forum, Pala, Kerala
282. India Country Office of UNICEF, New Delhi
283. India Watch Foundation, Mumbai
284. Indian Academy of Social Sciences, Karnataka Centre, Bangalore
285. Indian Association, Kolkata
286. Indian Council of Acupressure Yoga International Acupressure Parishad, Gopalganj, Bihar
287. Indian Forest Service Association, New Delhi
288. Indian Institute of Public Administration, Ahmedabad
289. Indian Liberal Group, Mumbai
290. Indian Muslim Congress, Delhi
291. Indian Muslim Rights and Reservation Movement (IMRRM), Warangal
292. Indian National Christian league, Chennai
293. Indian Rationalist Association, Kottayam
294. Indian Scheduled Castes Tribes Council, Kolkata
295. Indian Social Institute, New Delhi
296. Indian Union Muslim League, Mumbai
297. Institute of Agricultural Marketing, Management & Administration, Hyderabad
298. Institute of Management Studies, Ghaziabad
299. Institute of Public Auditors of India, New Delhi
300. Intellectual Society of Swadhin Bharat
301. International Blue-Cross Organisation, Lucknow
302. International Centre for Entrepreneurship and Career Development (ICECD), Ahmedabad
303. International Human Rights Protection Council (Regd), Jammu, Jammu and Kashmir
304. International Sindhi Forum[1], Mumbai
305. Islamic Jamaath of Parangipettai, Cuddalore, Tamil Nadu
306. J&K Lok Sewa Samaj, Doda District, Jammu and Kashmir
307. J.C. Seth and Company, New Delhi
308. Jagruk Nagrik Manch, Bhopal
309. JAGRUTI, Mumbai
310. Jagurat Nagrik Parishad, Gandhinagar
311. Jaisalmer Mahila Bal Kalyan Samiti, Jaisalmer
312. Jan Jagran Manch, Fatehpur, U.P.
313. Janpad Bar Association Sant Kabir Nagar, U.P.
314. Jharkhandis Organisation for Human Rights (JOHAR), Jharkhand
315. Jodhpur Hospital & Research Centre Pvt. Ltd., Jodhpur, Rajasthan
316. Journalist Council of India, New Delhi
317. Justice and Peace Commission, Mumbai
318. Ka Synjuk Ki Rangbah Shnong (Sor & Khapsor), Shillong
319. Kahar Samaj Sangh (Maharashtra Rajya), Nasik
320. Kalpavriksh Environmental Action Group, Pune
321. Kannada Development Authority, Bangalore
322. Kanooni Jagrook Avam Sahayata Sangathan U.P., Lucknow
323. Karbi Anglong-North Cachar Hills Autonomous State Demand Committee (KANCHASDCOM), Diphu, Assam
324. Karnataka Badavara Party (K.B.P.), Bellary
325. Karnataka Public Service Commission, Bangalore
326. Kerala Dalit Federation State Committee, Kollam
327. Kerala Desiya Federation, Thiruvananthapuram
328. Kerala Legislative Assembly, Thiruvananthapuram
329. Kerala Pulayam Youth Movement (K.P.Y.M.), Ernakulam Distt, Kerala
330. Khammam District Consumers Care Society, Khammam, A.P.
331. Kodagu Prajavedike, Kodagu.
332. Kottayam Social Action Council, Kottayam, Kerala
333. Krantikari Adivasi Vikas Parishad, Jabalpur
334. Krishnagiri Kurumans S.T. Nala Sangam, Krishnagiri, Tamil Nadu

[1]About 6,700 memoranda received.

335. Kshatriya Kshema Sabha, Thiruvananthapuram
336. Kudremukh Wildlife Foundation, Udupi
337. Kushawaha Mahasabha, Lucknow
338. L.I.C. Ex-Servicemen Employees' Association, Vellore
339. L.I.C. Scheduled Castes/Scheduled Tribes Employees' Welfare Association Vellore, Tamil Nadu
340. Ladies' International Club, Bhagalpur
341. Lai Autonomous District Council, Lawngtlai, Mizoram.
342. Langat Singh College, Muzaffarpur
343. League in Friendship Endeavour, Itanagar
344. Legal Aid Co-operation centre, Kolkata
345. Linguistic Minorities' Guild, Buland Shahr, U.P.
346. Lok Chetana Samiti, Varanasi
347. Lok Satta, Hyderabad, Andhra Pradesh
348. Lok Shikshak, Jaipur, Rajasthan
349. M.K.N. Madhurasa, Khadir MohideenGirls Hr. Sec. School Campus, Adirampattinam
350. M.P. Gau Sewa Ayog, Bhopal, M.P.
351. M.P. Sindhu Bhawan Trust, Bhopal, M.P.
352. M.P. Welfare Association for the Blind, Indore, Madhya Pradesh
353. Madras High Court Advocates Association, Chennai
354. Magadh Shikshan Shansthan, Gaya
355. Magasabarya Karamchari Samanvya Samiti, Distt Parbhani, Maharashtra
356. Mahabharath Mahajan Sabha, Chennai
357. Mahangar Chitransh Samanvya Samiti, Gorakhpur
358. Maharajganj Sports Association, Siwan, Bihar
359. Maharashtra Litigants' Association, Mumbai
360. Maharashtra Rajya Dhangar Samaj Mahasangh, Thane
361. Maharashtriya Charmkar Sangh, Mumbai
362. Mahasindhu Ambedkar Mission, Mumbai
363. Mahila Utkarsh Samiti, Kanpur
364. Mahratta Chamber of Commerce, Industries and Agriculture, Pune
365. Manav Kalyan Avam Vikas Sansthan, Hatras
366. Manavta Manch, Chittorgarh, Rajasthan
367. Mara Autonomous District Council, Siaha, Mizoram
368. Mara Students' Organisation General Headquarters, Siaha, Mizoram
369. Mara Thyutlia Py Headquarters, siaha, Mizoram
370. Maraland Democratic Front (MDF) General Headquarters, Siaha, Mizoram
371. Marwari Mahila Samiti, Bolangir, Orissa
372. Ministry of Social Justice and Empowerment, New Delhi
373. Minorities Council, New Delhi
374. Moral Education Foundation, New Delhi
375. Movement for People's Rights, Ahmedabad
376. Movement For Regeneration of India, Chennai
377. MOVEMENT, Social and Non-Governmental Organisation, Kolkata
378. MUBAHISA, New Delhi.
379. Mukteswar Axiomatic : Organisation, Cuttack
380. Mumbai Freedom Fighters' Sabha, Mumbai
381. Muslim Action Committee, Hazaribagh
382. Muslim Orphanage Committee, Tirunelveli
383. Mysore City and District Freedom Fighters' association, Mysore
384. N.E.F.A. Indigenous Human Rights Organisation Itanagar
385. N.M. Senior Secondary School and College, Hamirpur, Himachal Pradesh
386. Nagar Sudhar Parishad, Hamirpur, Himachal Pradesh
387. Nagarsekar's Laxmi Hospital & Clinic, Mumbai
388. Nagpur Shahar Yuwak Social Sanghtan, Nagpur
389. Nagrik Chetna Manch, Pune
390. National Alliance For the Fundamental Right to Education (NAFRE), New Delhi
391. National Amnesty and Redemption Organisation (International) Trust, New Delhi
392. National Blind Youth Association, Delhi
393. National Democratic Voters Forum, New Delhi
394. National Disabled Rights Association, Indore
395. National Federation for Constitutional and Human Rights Scheduled Castes, Ludhiana
396. National Federation of the Blind, Indore
397. National Forum of Anglo-Indian Association, Nagpur
398. National Forum of Dalit Employees' Associations, Kolkata
399. National Gandhi Forum, Jodhpur
400. National Human Rights Council, Thissur
401. National Integrated Dalit Forum, Pondicherry
402. National Law School of India University, Bangalaore
403. National Liberal Party, J.P. Nagar, Uttar Pradesh
404. National Non-Reservation Communities' Front, Thiruvananthapuram
405. National Organisation for Consumer Education & Consumer and Research, (NOCER-India) Payam, Kerala

406. National Struggle Group of India, Buland Shahr, U.P.
407. Navyuga Trust, Mehsana
408. Nayayik Kranti Dal, Khagaria Distict, Bihar
409. Netaji Yuvak Sangh, Jajpur, Orissa
410. Nirbhayananda Sanskrutika Sangha, Jajpur, Orissa
411. Nomadic and Denotified Tribes Communities Mahasangh, Ahmedabad
412. Northern India Manufacturers Association, New Delhi
413. Organisation of Muslim educational Institutions and Associations of Tamilnadu (OMEIAT), Chennai
414. Orissa Dalit-Shoshit Vikash Parishad, Bolangir, Orissa
415. Orissa Ex-MLA's Council, Bhubaneswar.
416. Orissa Scheduled Castes/Scheduled Tribes Officers' Welfare Council, Bhubaneswar
417. Paite Students Union (Siamsin Pawlpi), Aizawl, Mizoram
418. Panchayat Samiti Bhadra, Hanumangarh, Rajasthan
419. Panel for Legal and Educational Aid (PLEA), Chennai
420. Panun Kashmir Movement (PKM), Jammu
421. Pardesh Ravi Dass Naujwan Santokh Sabha, Jalandhar
422. Parivartan Academy, Parbhani, Maharashtra
423. Pariyavaran Sewak Dal
424. Parvatiya Anusuchit Jati Jan Jati Pichhada, Jati Avam Alapsankyak Sanyukta Kalyan Samiti, Pauri Garhwal
425. Parvatiya Jana Adhikar Manch, Dehradun
426. Paschimbanga Rajya Bhumijibi Sangha, Murshidabad, West Bengal
427. Pensioners Association, Chennai
428. People First, New Delhi
429. Pichhada Varg Vikas Parishad, Uttar Pradesh Jal Nigam, Lucknow
430. Planning Commission Officers' Association, New Delhi
431. Planning Commission SC/ST and Backward Classes Employees Welfare Association, New Delhi
432. Political Research Institute for Mass Education(P.R.I.M.E.), Thiruvananthapur, Kerala
433. Political Science Association of Kerala, Kottayam
434. Prabhat Sewa Sansthan, Lucknow
435. Pradeshik Kharwar Sabha Uttar Pradesh, Lucknow
436. Pragna Bharati, Andhra Pradesh, Hyderabad
437. Prantiya Adivasi Gowari Samaj Sangathan, Chindawara, M.P.
438. Pratik Sevabhavi Sanstha, Parbhani, Maharashtra
439. Primary Avam Junior Higher Secondary School Shikshak Samiti, Farukhabad, U.P.
440. Public Expenditure Round Table Trust (PERT), Chennai
441. Public grievances Committee, Rohtak, Rohtak
442. Public Welfare Association, Thanjavur
443. Punjab and Haryana High Court Advocates (Dr. Ambedkar) Welfare Association, Chandigarh
444. Quit Corruption Organisation, Kurnool, Andhra Pradesh
445. R.L. Maheshwari Memorial Centre for Legal Research, Jodhpur
446. Raghunandan Pandey Higher Secondary School, Patna
447. Railway Passengers Association, Chennai
448. Rajasthan Arakshit Varg Mahasangh, Jaipur
449. Rajasthan Banjara Seva Samaj, Ajmer
450. Rajasthan Mirasi (Manganyar) Samaj Sudhar Samiti, Barmer, Rajasthan.
451. Rajbhasha Sangarsh Samiti Shetra Mahidpur Road, Ujjain
452. Rajiv Gandhi Foundation, New Delhi
453. Ram Rajya, Koraput, Orissa
454. Rashtrawadi Congress Party, Surat
455. Rashtreeya Swayamsevak Sangh, Bangalore
456. Rashtriya Asmita Manch, Chandigarh
457. Rashtriya Bhrashtachar Unmoolan Samiti, Fatehpur, U.P.
458. Rashtriya Chetna Parishad, Patna
459. Rashtriya Chetnashakti Foundation, Faridabad, Haryana
460. Rashtriya Chintak Manch, Patna
461. Rashtriya Drushtihin shikshan and Punarvasan Sanstha, Nagpur
462. Rashtriya Hind Rachna Mahasangh, Itawa, Madhya Pradesh
463. Rashtriya Khushali Sansthan, Tajsar, Rajasthan
464. Rashtriya Party, Lucknow
465. Rashtriya Sanyojani Samiti–Arjak Sangh, Uttar Pradesh, Lucknow
466. Rashtriya Sarva Dharam Vikas Sangathan, Sonipat
467. Rashtriya Shoshit Parishad, New Delhi
468. Reddy Seva Samithi, Cuddapah
469. Republican Party of India (B) for Babawadi
470. Republican Party of India, Katpadi, Tamil Nadu

1209 LJ&CA/2002—15A

471. Retired Government Employees Association, Nimapara
472. Retired Officials' Association, Chennai
473. Rotary International, Pune
474. Rural Litigation & Entitlement Kendra, Dehradun
475. Sacred Heart College, Vellore
476. Sadbhavana Gaon Sudhar Samiti, Darjeeling
477. Sadharan Jati Bikash Parisad, Asom, Lakhimpur District, Assam
478. Sadhu Vaswani Mission, Pune
479. Sagar Aggarbatti Nirmata Sangh, Sagar, Madhya Pradesh
480. Sakthi Group of Companies, Chennai
481. Salim Ali Centre for Ornithology and Natural History (SACON), Coimbatore
482. Samaj Sudhar Samiti, Agra
483. Samajik Heetrakshan Manch, Mumbai
484. Sanjay Gandhi National Congress, Chennai
485. Sanskritik Gaurav Sansthan, Bhopal
486. Sanskritik Gaurav Sansthan, New Delhi
487. Sanskritik Gaurav Sansthan, Palakkad, Kerala
488. Sant Sai Socio-Economic Organisation (Regd), Bijapur, Karnataka
489. Sarab Hind Shiromani Akali Dal, Patiala
490. Saral Marketing Private Limited, Lucknow
491. Sarv Hitkari Shikshit Sabha, Delhi
492. Savarna Vikas Samiti, Buland Shehr, U.P.
493. SCEWASTAMB Customs and Central Excise Employees' Unit, Bihar, Patna
494. Secular Forum Kerala, Manjeri
495. Senior Citizen Welfare Association, Delhi
496. Sewa Mandir, Udaipur
497. Shekhawati Mahila Parishad, Sikar
498. Shiksha Vikas Sabha, Aligarh
499. Shiromani Akali Dal, Punjab
500. Shri Guru Ravidas Mandir Sabha, Yamuna Nagar
501. Shri Jain Swetamber Terapanthi Sabha, Churu
502. Shri Sant Ravidas Mandir, Jawahar Nagar, Maharashtra
503. Shri Sarvajnendra Saraswati Prathistan, Sirsi
504. Shri Sindhi Samaj, Jagdalpur, M.P.
505. Shri Sonda Swarnavalli Mahasamsthanam, Sirsi, Kannada
506. Sikh Core Group, Chandigarh
507. Sikh League, Ludhiana
508. Sindhi Association (DDA Flats Munirka), New Delhi
509. Sindhi Association, Shivalik, N. Delhi
510. Sindhi Council of India, Jaipur
511. Sindhi Navjeevan Sabha, Delhi
512. Sindhu Bharatiya Samta Sangthan, Akola
513. Sindhu Cultural Forum, New Delhi
514. Sindhu Kala Sangam, New Delhi
515. Sindhu Samaj, Delhi
516. Sindhuri Sewa Samiti, Durg, Madhya Pradesh
517. Sirdar Kapur Singh Memorial Trust, Ludhiana
518. Sixth Schedule Demand Committee Manipur (SDCM), New Delhi
519. Social Action for People's Rights, Lucknow
520. Social Centre, Ahmednagar
521. Social Security Association of India, New Delhi
522. Social Service Society of India, Mittupalayam
523. Social Workers' Brotherhood, Bangalore
524. Society for Fair Laws and Justice, New Delhi
525. Society for Interior Development Ministries, Warangal, Andhra Pradesh
526. Society for Promotion of Wastelands Development (SPWD), New Delhi
527. Society for Social Justice, Agra
528. Society of Intellectuals, Visakhapatnam
529. South Asia Human Rights Documentation Centre (SAHRDC), New Delhi
530. Sri Aurobindo Society Karimnagar Centre, Karimnagar
531. Sri Sringeri Math, Sringeri
532. Sri Suriya Vanshi Kshatriya (Khatik) Samaj, Bangalore
533. Sri Surya Vanshi Kshatriya (Khatik) Samaj, Raichur, Karnataka
534. State Employee's Joint Council, Uttar Pradesh
535. Subarnarekha Irrigation Workers Union, Mayurbhanj
536. SUCHARU, Ghaziabad
537. Surya Foundation, New Delhi
538. Swami Sahejanand Kisan Mazdoor Morcha, Sheetal Pur, Bihar
539. Swayatta Maharashtra Prachar Samiti, Pune
540. Syiem of Mylliem in Durbar, Shillong
541. Tamilnadu Muslim Graduates Association, Chennai
542. Tamilnadu Thaniarpalli Asiriar Aluvalar Khazhaham, Tiruchirappalli
543. Technical Employees Association of Railways, Ludhiana
544. Thankappan's Priya Dharshini Welfare Trust, Thane
545. The Ambala Cantonment Bungalow Owners' Association, Ambala
546. The Association for the Deaf, Chennai
547. The Buddhist Society of India, Dadar
548. The Christian Cultural Forum, Kollam, Kerala
549. The Co-ordinating Committee for Changes in Constitution, Chennai

550. The Dawn, Chennai
551. The Gandhi Peace Foundation, Kottayam
552. The Gandhidham Chamber of Commerce and Industry, Gandhidham
553. The Hindupur General Merchants Association, Hindupur, Andhra Pradesh
554. The Indian Law Institute, New Delhi
555. The Institute of Advanced Legal Studies (IALS), Pune
556. The League of Intellectuals, Kolkata
557. The Minorities and Social Welfare Parishad, Shimla
558. The North India Scheduled Castes and Scheduled Tribes Welfare Association (Regd), Chandigarh
559. The Pernambut Muslim Educational Society, Pernambut, Tamil Nadu
560. The Seethakathi Trust, Chennai
561. The Shivajee Cultural Association, Bhubaneswar
562. Thiruvalluvar Sangam, Bangalore
563. Thudiyalur Co-operative Agricultural Services Ltd., Coimbatore
564. Tourism and Wildlife Society of India, Jaipur
565. Tridhara Human Resource Development Trust, Guwahati
566. Tulsi Sansthan, Allahabad, U.P.
567. U.P. Parents' Association, Lucknow
568. Uday Welfare Society, West Champaran
569. United Indian Democratic Council, (UIDC) Bangalore
570. Upbhokta Jagrook Samiti Bharat, Gaziabad
571. Uttar Pradesh Gau Sewa Ayog, Lucknow
572. Uttar Pradesh Jan Chetna Parishad, Kumaon Kshetra
573. Uttar Pradesh Pasi Mahasabha, Allahabad
574. Uttar Pradesh Voluntary Action Network (UPVAN), Lucknow
575. Vadkar Kalyan Sangh, Kumaon Kshetra
576. Vaghari Adhikar Suriksha Mandal, Gandhinagar
577. VANARAI, Pune, Maharashtra
578. Vanchit Jammat Jharkhand, Chatra, Jharkhand
579. VARUNA (Movement for Protection of Water Bodies and Natural Environment), Chennai
580. Vayovridha Sangh, Kanpur
581. Vellore Citizens Welfare Forum, Vellore
582. Vidya Bharati Akhil Bharatiya Shiksha Sansthan, New Delhi
583. Vidya Bharati, Panaji, Goa
584. Virangana Jhalkari Bai Sewa Samiti (Regd), Jaloon, U.P.
585. Virangana Jhalkari Pratibha Khoj Manch, Gwalior
586. Visakha District Rajaka (Dhobi) Sangham, Visakhapatnam
587. Vishwakarma Educational Organisation, Thiruvananthapuram
588. Vivekandanda Palli-Agragami Seva Pratisthan, Sambalpur, Orissa
589. Voters' Forum Foundation of India, New Delhi
590. Western India Forum for Panchayati Raj, Ahmedabad
591. Wildlife Preservation Society of India, Uttaranchal
592. World Hindu Federation, Secunderabad
593. World Human Religion Society, Jajpur, Orissa
594. World Sikh Intellectual Council, Chandigarh
595. World Sindhi Congress, Mumbai
596. World Social Welfare Service, Kolkata
597. Worldwide Horticulture Limited, New Delhi
598. Yashavantrao Chavan Pratishthan, Mumbai
599. Yavatmal Zilla Chhatri Samaj, Yavatmal
600. Yug Nirman Yogana, Mathura
601. Yug Nirman Yojana, Lucknow
602. Zilla Adhivakta Sangh, Sagar, M.P.
603. Zilla Pichhada Varg Sangathan, Rajnad Gaon, Madhya Pradesh
604. Zomi Council, Churachandpur, Manipur

B. LIST OF INDIVIDUALS (Alphabetical Order)

1. A. Abdul Jabbar
2. A. Dhanraj
3. A. Gupta
4. A. Jayaraman
5. A. Jegedisan
6. A. Kannan
7. A. Kumar
8. A. Laxminarsu
9. A. Murugan
10. A. Narayanan
11. A. Ramakishtiah
12. A. Ramasamy
13. A. Srinivasan
14. A. Sultan Areef
15. A.A. Bapat
16. A.A. Gupte
17. A.B. Eappen
18. A.D. Jeyapaul
19. A.G. Acharya
20. A.H. Srikanta Aiyar
21. A.K. Chakrabarty
22. A.K. Chatterjee
23. A.K. Das Gupta
24. A.K. Hom
25. A.K. Roy Choudhury
26. A.K. Sharma
27. A.M. Sudhakara
28. A.N. Bharadwaj
29. A.P. Lulla
30. A.R. Bhattacharya
31. A.T Patil
32. A.T. Rao
33. A.V. Iyengar
34. A.V. Suresh
35. Abani Kumar Saha
36. Abdul Gani Ibrahim
37. Abhay Kumar
38. Abraham Joseph
39. Abul Hasnat
40. Acharya Pandit Adhyacharan Jha
41. Adari Venkata Krishna
42. Adarsh Jamgadhe
43. Adiseshan Jayaraman
44. Air Vice Marshal Surenji Goyal (Retd)
45. Ajay Bhatia
46. Ajay Kumar
47. Ajay Kumar Tewari
48. Ajay Phalnikar
49. Ajit Chandra Puredu
50. Ajit Mahadeo Kshirsagar
51. Akhileshwar Prasad
52. Akhileshwar Prasad Singh
53. Akhtar Hussain Aftab
54. Alok Pathak
55. Amar Kumar Singh
56. Amar Nath Nagar
57. Amaresan Pattusamy
58. Amarnath Jha
59. Ameet Kumar Gedam
60. Amit Kishore
61. Amit Kumar
62. Amit Mehgela
63. Amitabh Agarwal
64. Amrik Singh
65. Anand Kumar
66. Anand Prakash
67. Anand V. Mandloi
68. Ananda Tirpude
69. Anant Ram Sharma
70. Ananta Barua
71. Andhe Sathyanarayana
72. Anil Garg
73. Anil Gupta
74. Anil J. Mudalgi
75. Anil Kumar
76 Anil Kumar Goyal
77. Anil Kumar Moitra
78. Anil Kumar Pandey
79. Anil Kumar Singh
80. Anil Kumr Shukla
81. Anindita Ray
82. Anirudha Khilar
83. Antony Marattukulam
84. Antriksh Dasot
85. Anupam Kumar Jaiswal
86. Apurba Kumar Choudhury
87. Arjun Bagul
88 Arunkumar R. Kate
89. Arvind Kumar
90. Arvind Lavakare
91. Arvind Patnavi
92. Arvind Singh Rajput
93. Arvind Verma
94. Ashirvadam Edward Alexander
95. Ashish Deshpande
96. Ashish Kumar
97 Ashish Kumar Dube
98. Ashish Kumar Sharma
99. Ashith Madhu
100. Ashok Babu
101. Ashok Chug
102. Ashok Kumar Lenka
103. Ashok Kumar Rasik
104. Ashok Raghunath Sarodae
105. Ashutosh Kumar Agarwal
106. Ashutosh Shukla
107. Asit Kumar Bhaduri
108. Ather Farouqui
109. Atul Krishna Kundu
110. Atul Shah
111. Austin Denis Desilva,
112 Avinash Bhakhri
113. Avtar Singh
114. Ayama Sunder Naik

115. Ayan Nandy
116. Aziz Mansoori
117. B. Bhalshankar
118. B. Jeyakumar
119. B. Narasinga Rao
120. B. Natarajan
121. B. Swami
122. B. Vishwanathan Pillai
123. B.A. Manjunatha
124. B.B. Lal Sud
125. B.B. Sinha
126. B.C. Paramashivaiah
127. B.C. Rajasekar
128. B.D. Pandey
129. B.D. Pradhan
130. B.D. Sharma
131. B.J. Bhambhani
132. B.K. Gautam
133. B.K. Mital
134. B.K. Natrajan
135. B.K. Paiu
136. B.K. Roy Chowdhury
137. B.K. Shukla
138. B.K. Singh
139. B.K. Sridhar
140. B.K. Srivastava, IAS
141. B.K.D. Bangar Raju
142. B.L. Ahuja
143. B.L. Raina
144. B.L. Varma
145. B.M. Aggarwal
146. B.M. Patnaik
147. B.N. Bhattacharyya
148. B.N. Dhar
149. B.N. Saksena
150. B.P. Pandya
151. B.R. Anantha Rao
152. B.R. Ranade
153. B.S.P. Roy
154. B.S.R. Anjaneyulu
155. B.T. Umrethe
156. B.V. Chahande
157. B.V. Govindarajz
158. Baba Atmya Brahmachaitanya
159. Babu Lal Rajoria
160. Babu Lal Ram
161. Babu Lal Sharma
162. Babu Reddy
163. Babulal Pradhan
164. Baburao B. Taware
165. Bachan Ram Shastri
166. Badari Narayan Singh
167. Badri Lal Meena
168. Badrinarayan
169. Badrinarayan Singh
170. Badrinath Rao
171. Bah John F. Kharshiing
172. Bal Krishna Malpani
173. Bal Yogi
174. Balai Chandra Das
175. Balbir Singh Verma
176. Balbir Talwar
177. Balbir Uppal
178. Baldev Munda
179. Baldev Prasad Sinha
180. Baldev Raj Ilwadhi
181. Balraj Puri
182. Balwant Rai Garg
183. Balwinder Singh
184. Banshi Lal Rathi
185. Bansidhar Agrawal
186. Basukinath Ram
187. Belide Veera Shanakaru
188. Belmount S. Swamy
189. Bhabatosh Shaha
190. Bhagat Swaroop Agarwal
191. Bhagmal Singh
192. Bhagwan Prasad Kesari
193. Bhagwan Singh Bhaduria
194. Bhante Jeevantdhamma
195. Bharat Adhyapak
196. Bharat Bhushan Sachdeva
197. Bharat Deshbhakta
198. Bhaskar Banerji
199. Bhaskarbhai Mehta
200. Bhijaji Kavatji Bhosale
201. Bhubaneshwar Prasad
202. Bibin A. Chalissery
203. Bijan Kumar Das
204. Binda Prasad
205. Bindeshwari Singh
206. Bipin Shah
207. Bishan Lal Gupta
208. Bishwanath Agarwala
209. Brahmandam Anjaneyulu
210. Brahmdeo Mahato
211. Brij Kishore Sinha
212. Brij Mohan Chaturvedi
213. Brijesh Gupta
214. Budheshwar Lal Singh
215. Bulusu G. Prakash
216. C. Anil Kumar
217. C. Baskaran
218. C. Lahu
219. C. Marthandan
220. C. Sethumadhavan
221. C. Somu
222. C. Stanley Scott
223. C. Suresh
224. C. Venkata Ratnam
225. C.A. Abraham
226. C.A. Reddi
227. C.A. Srikantaiah
228. C.B. Kulkarni
229. C.B. Muthamma
230. C.B.L. Bhatnagar

231. C.G. Jose
232. C.K. Aditya
233. C.K. Jain
234. C.K. Mehrotra
235. C.K. Sankaran
236. C.M. Jeendgar
237. C.N. Gopinathan
238. C.N. Krishna Swamy
239. C.N. Viswanathan
240. C.P. Velayudhan Nair
241. C.R. Annapurna
242. C.R. Bhattacharjee
243. C.R.N. Thampi
244. C.S.N. Raju
245. C.T. Muthanna
246. C.V. Nair
247. C.V. Purushotham
248. C.V. Ramana Rao
249. C.V. Santhosh
250. Capt. Jai Narain Prasad Nishad, M.P.
251. Capt. S.P. Kutty
252. Capt. U.P.S. Mann
253. Cdr. A.J. D'Cruz (Retd)
254. Chaggan Lal Soni
255. Chaitanya Shukla
256. Chander Dev
257. Chandershekhar
258. Chandeshwar Prasad
259. Chandra Kumar Bajaj
260. Chandra Madhav Singh
261. Chandra Prakash
262. Chandresh Dave
263. Charan Dass Pareenja
264. Charanjit Singh
265. Charu K. Mody
266. Chavan
267. Chet Ram Indaliya
268. Chhagan Lal
269. Chimanbhai Mehta, ex-M.P.
270. Chimanlal Amritlal Shah
271. Chiranji Lal
272. Choudhury Ram Karan Shastri
273. Col. S.P. Singhal (Retd)
274. D. Bhargav
275. D. Chaitanya
276. D. David
277. D. Jayanand B
278. D. Singarayan
279. D. Tulasi Rao
280. D. Venkatachalam
281. D.B. Gupta
282. D.B. Irudayaraj
283. D.C. Agarwal
284. D.C. Jain
285. D.D. Ojha
286. D.K. Bhatt
287. D.K. Pandya
288. D.K. Sinha
289. D.P. Jain
290. D.P. Sanghi
291. D.P. Sharma
292. D.R. Nakaa
293. D.R. Shad
294. D.V.N. Sharma
295. Dalip Kumar Aggarwal
296. Dalip Singh Pandhi
297. Dalip Singh Wasan
298. Damodar Mohanty
299. Damodar Prasad Deo
300. Damodar Prasad Gupta
301. Dara P. Sopariwala
302. Darshan Lal Raina
303. Daya Kishan Pandey
304. Daya Krishna Sharma
305. Dayal Singh Sodhi
306. Debasish Mukherjee
307. Debojyoti Chakraborty
308. Deena Nath Nayak
309. Deepak Chugh
310. Deepak Das
311. Deepak Kumar
312. Deepak Nagesh
313. Devendra Kumar Srivastava
314. Devendra Nath Saikia
315. Devendra Singh Guleria
316. Devendra Singh Yadav
317. Devesh Verma
318. Devi Prasad Pandey
319. Devi Saran
320. Dhanesh K. Nair
321. Dhanraj Jain
322. Dharam Vir Singh Rawal
323. Dharamvir Singh
324. Dharamvir Singh Bhaskar
325. Dharani Kanta Bhattacharyya
326. Dharmendra Kumar
327. Dharmpal Vaikha
328. Dhirendra Kumar Pattnaik
329. Dilip Kumar Bhattacharyya
330. Dilip Kumar Jha
331. Dinendra Mark
332. Dinesh Dutt Shukla
333. Dinesh Kumar Sharma
334. Dinesh Pal Kaushik
335. Dinesh Upadhyaya
336. Dipak Chatterjee
337. Divyesh B. Kotecha
338. Doke Prabhakar Rao
339. Dr. (Col) H.N. Shukla (Retd)
340. Dr. (Miss) Santosh Aggarwal
341. Dr. (Smt) Anand Mathur
342. Dr. (Smt) Nirmal Garg
343. Dr. (Smt) S. Nagalakshmi
344. Dr. (Smt.) Kamla Jain
345. Dr. A. Chakrapani
346. Dr. A. Manian

347. Dr. A.J. George Kodumutti Nadar
348. Dr. A.K. Biswas
349. Dr. Abhay Kumar Ashok
350. Dr. Aditya Tewari
351. Dr. Amarendra Mohanty
352. Dr. Anirban Majumder
353. Dr. Aniruddha Samanta
354. Dr. Arvind Arora
355. Dr. Atma Das Gupta
356. Dr. B. Chakraborty
357. Dr. B. Khar
358. Dr. B. Narayanaswamy
359. Dr. B.B. Prasad
360. Dr. B.L. Tekriwal
361. Dr. B.L. Wadehra
362. Dr. B.S. Nirwan
363. Dr. Bebdas Bondyopadhyay
364. Dr. Bhupinder Singh, IAS (Retd)
365. Dr. Boyi Bhimanna
366. Dr. Budhnath Prasad
367. Dr. C. Balasundaram
368. Dr. C. Gangadharan
369. Dr. C.P. Vibhute
370. Dr. C.S.K. Jain
371. Dr. Chandra Prakash Dixit
372. Dr. D.N. Gadhok
373. Dr. D.R. Bagalkoti
374. Dr. Debiprasad Mukhopadhyay
375. Dr. Dharam Singh
376. Dr. Dibakar Ch. Das
377. Dr. Ekram Ilahi
378. Dr. G. Srinivasan
379. Dr. G. Venkataraman
380. Dr. G.C. Srivastava
381. Dr. G.D. Sharma
382. Dr. G.G. Nayar
383. Dr. G.K. Dongargaonker
384. Dr. G.M. Bhatia
385. Dr. G.N. Thakur
386. Dr. G.S. Duggal
387. Dr. Gangadhar Krishan Potey
388. Dr. H.V. Deshpande
389. Dr. Hari K. Nagarajan
390. Dr. Hyder Nayab
391. Dr. Indra Pal Singh
392. Dr. Indu P. Aron, IAS
393. Dr. Jag Pal Singh
394. Dr. Jagindar Nath Gadhok
395. Dr. Janak Raj Jai
396. Dr. Javed Akhtar
397. Dr. Jayesh Sheth
398. Dr. K.C. Mishra
399. Dr. K.C. Singhal
400. Dr. K.D. Manjaramkar
401. Dr. K.K. Ghosh
402. Dr. K.N.V. Srivastava
403. Dr. K.T. Shivaiah
404. Dr. K.V. Sundaram
405. Dr. Kanayiha Singh
406. Dr. Kashmir Singh
407. Dr. Keshab Chandra Samantray
408. Dr. Ketan Parikh
409. Dr. Kireet Shukla
410. Dr. Kirit C. Patel
411. Dr. Kris K. Murthy
412. Dr. L.K. Gatne
413. Dr. L.S. Madhava Rao
414. Dr. Laxmi Narain
415. Dr. M. Umapathy
416. Dr. M.M. Murtuza
417. Dr. M.P. Agrawal
418. Dr. M.P. Wagle
419. Dr. M.S. Dhingra
420. Dr. M.S. Rahi
421. Dr. Madan Dubey
422. Dr. Mahesh Tulpule
423. Dr. Mohan Kewalram Kalani
424. Dr. Mukulita Vijaywargiya
425. Dr. N. Mukerjee
426. Dr. N. Subramanyan
427. Dr. N.K. Patni
428. Dr. N.L. Mitra
429. Dr. N.N. Panicker
430. Dr. Nathu Lal
431. Dr. Neeraj Srivastava
432. Dr. Nihal Chand Jain
433. Dr. Nirmal Kumar Sarkar
434. Dr. Nitish K. Sengupta, IAS(Retd), M.P.
435. Dr. Nitish Sengupta
436. Dr. P. Anantha Krishna Bhat
437. Dr. P.B. Parashar
438. Dr. P.K. Agrawal, IAS
439. Dr. P.N. Deshpande
440. Dr. P.R. Dubhashi
441. Dr. P.S. Subramaniam
442. Dr. P.U. Gajbhiye
443. Dr. Paresh Nath Mukherjee
444. Dr. Pradip Kumar Dutta
445. Dr. Pranab Kumar De
446. Dr. Prem Chand Jain
447. Dr. Priya Davidar
448. Dr. Purnendu Nath Nath
449. Dr. R. Venkat Rama Rao
450. Dr. R. Venkata Rao
451. Dr. R.K. Lal Das
452. Dr. R.N. Vyas
453. Dr. R.P. Sikdar
454. Dr. Ram Swaroop Shankdhar
455. Dr. S. Ignacimuthu, S.J.
456. Dr. S. Selvanathan
457. Dr. S.A. Virani
458. Dr. S.G. Malwatkar
459. Dr. S.K. Agrawal
460. Dr. S.K. Majumdar
461. Dr. S.K. Nizammuddin
462. Dr. S.K. Srivatsa

463. Dr. S.M. Jayakar
464. Dr. S.N. Agrawal
465. Dr. S.N. Gupta
466. Dr. S.P. Gosai
467. Dr. S.S. Gadkari
468. Dr. Sarbasish Choudhury
469. Dr. Shailesh Upadhaya
470. Dr. Shree Govind Mishra
471. Dr. Shyam Sunder Prasad Yadav
472. Dr. Sr.M. Mary Josephine Agnes
473. Dr. Sukhwinder Singh
474. Dr. Surendra
475. Dr. Surendra Kataria
476. Dr. Surendra Lal Das
477. Dr. T. Balachandran
478. Dr. Tahali Charan Mohanty
479. Dr. Tushar Kanti Saha
480. Dr. U.N. Bora
481. Dr. Upendra Vinayak
482. Dr. V.L. Lokre
483. Dr. V.M.I. Nambissan
484. Dr. V.N. Arora
485. Dr. V.P. Varma
486. Dr. Vishwa Nath Sahay Bhatnagar
487. Dr. Vivek K. Agnihotri, IAS
488. Dungar Singh
489. Durga Prasad Poddar
490. Durga Rama Rao
491. E. Balanandan
492. E. Sadasiva Reddy
493. Fareed Khan
494. Fateh Lal Bansal
495. Fg. Offr. Joginder Singh, (Retd)
496. G. Balakrishnan
497. G. Desikathatham
498. G. Gandhi
499. G. Giridhar Prabhu
500. G. Harish
501. G. Ismail Saeb
502. G. Kondala Rao
503. G. Masilamani
504. G. Muralidhar Rao
505. G. Prabhakar Sastry
506. G. Ravi Kumar
507. G.A. Narayana Swamy
508. G.B. Gajabe
509. G.C. Choudhury
510. G.C. Das
511. G.G.K. Murty
512. G.J. Motwani
513. G.K. Das
514. G.K. Menon
515. G.K. Srivastava
516. G.K. Verma
517. G.L. Tandon
518. G.M. Bongade
519. G.M. Patil
520. G.M.S. Rao
521. G.N. Dubey
522. G.N. Sarwade
523. G.P. Gupta
524. G.P. Srivastava
525. G.R. Panegatti
526. G.S. Arora
527. G.S. Hiranyappa
528. G.S. Sampath
529. G.V. Krishna Rao
530. G.V. Ramamurthy
531. G.V. Ramana Reddi
532. G.V. Subba Rao
533. G.Y. Bhandare
534. Gabbar Singh Chauhan
535. Gabbar Singh Rawat
536. Gadigeppa Rudrappa Panegatti
537. Ganesh Chandra Haldar
538. Ganesh Dutt Vyas
539. Ganesh Kutum
540. Ganesh Lal Sharma
541. Gangadhar
542. Gaurav Chowdhary
543. Gaurav Mahajan
544. Gauri Shankar Lohvanshi
545. Gen. K.V. Krishna Rao (Retd)
546. George Konikara
547. Girdhari Lal Agrawal
548. Giri Raj Saini
549. Girish Chandra Srivastava
550. Glenn Lawrence
551. Gopal Kansara
552. Gopal Mody
553. Gopinath Mishra
554. Gopinath Munde, MLA
555. Govardhan Binnani
556. Guddu Brahmchari
557. Gulab Singh Rana
558. Gulam Mohammed
559. Gulam Rasool Wathar
560. Gurdev Singh
561. Gyan Chandra Jinwal
562. H. Mari Gowda
563. H.B. Chhatbar
564. H.D. Kainthla
565. H.G. Ghose
566. H.J. Joshi
567. H.L. Chandra Mouly
568. H.N. Agrawal
569. H.R. Srinivasan
570. H.V. Ramaswamy
571. Har Prasad Srivastava
572. Harbinder Pal Singh
573. Haresh N. Mehta
574. Hari Bhallab Purolia
575. Hari Lal Sahani
576. Hari Om
577. Hari Ram Bhayia
578. Hari Shankar Chaturvedi

579. Haridarshan Seghal
580. Hariram Chetan Kumar
581. Harish Chandra Balmiki
582. Harish Chandra Bharadwaj
583. Harish Kumar
584. Harivadan R. Shah
585. Harkhu Pradhan
586. Harshadbhai Vyas
587. Harshkumar P. Bamb
588. Harshman Sharma
589. Harswarn Singh Bains
590. Harvinder Singh
591. Hasmukh Patel
592. Heera Ballabh Phuloria
593. Heera Lal Arya
594. Heera Mani Singh
595. Hemant N. Rawal
596. Himanshu Kapoor
597. Holkhomang Haokip, M.P.
598. Hon. Lieut A.S.R. Pathania
599. Hrusikesh Mishra
600. Hukam Ram Meghwal
601. Hukum Singh Parihar
602. I.D. Gulati
603. I.D. Kaushik
604. I.G. Mehta
605. I.G. Shikari
606. I.S. Bharathan
607. I.V.N.S. Raju
608. Ila Rani Jhunjhunwala
609. Imtiaz Bharati
610. Inder Paul Mahendru
611. Inderdevpati
612. Indra Dev
613. Indra Devyati
614. Indra Narayan Das
615. Indra Prakash
616. Indra Singh
617. Indubhai C. Patel
618. Iqbal Singh Brar
619. Irfan U. Huda
620. J. Devendraiah
621. J. Krishna Murthy
622. J. Norbert
623. J. Shaji Paul
624. J.D. Singh
625. J.F. Sabhachandani
626. J.J. Vaishnav
627. J.K. Mazumder
628. J.N. Bhadra
629. J.N. Ray
630. J.P. Jain
631. J.R. Saldanha
632. J.S. Patel
633. J.S. Rawat
634. J.S. Sodhi
635. Jag Deva Singh
636. Jagadish Chandra Mridha
637. Jagdish Chand
638. Jagdish Kumar
639. Jagdish Lal Das
640. Jagdish Prasad Gupta
641. Jagdish Prasad Mishra
642. Jagdish Rai Singhal
643. Jagdish Shah
644. Jagmohan Soy
645. Jagram Singh Ravi
646. Jai Kumar Mishra
647. Jai Prakash Chandra
648. Jai Prakash Garg
649. Jai Prakash Jaiswal
650. Jai Ram Singh
651. Jai Singh Atil
652. Jaipal Rawat
653. Jaiprakash Mishra
654. Jaishi Ram, IFS (Retd)
655. Jamuna Prasad
656. Janab Mohd. Habibur Rehman
657. Janesh Chandra Garg
658. Jaswant Rai Jain
659. Jaswant Rao Kalyankary
660. Javaharlal Motilal Sanghvi
661. Jaware Nishikant Soma
662. Jayadev Srinivasan
663. Jayananendra Kumar
664. Jayant Shitoot
665. Jayant Verma
666. Jayanta Sen
667. Jeevach
668. Jhasketan Pradhan
669. Jhunni Lal Shrivastava
670. Jiten Bhardwaj
671. Jitendra Chaturvedi
672. Jitendra Maheshwari
673. Jiwan Mal Kochar, IAS (Retd)
674. Joginder Singh, IPS (Retd)
675. John Kattakkayam
676. Justice Asok Kumar Ganguly
677. Justice G.P. Srivastava (Retd)
678. Justice K.L. Issrani
679. Justice K.L. Sharma
680. Justice Kamal M. Mehta
681. Justice Kamleshwar Nath (Retd)
682. Justice M. Rama Jois
683. Justice M.C. Jain
684. Justice R.K. Shukla (Retd)
685. Justice T.G. Krishna Murthi, (Retd)
686. Jyoti Jagaria
687. Jyotsnamay Chaudhuri
688. K. Amrutham
689. K. Balasubramanium
690. K. Chandra Mohan Rao
691. K. Chandramouli
692. K. Devanathan
693. K. Devarajulu
694. K. Fakir Mohan Patno

695. K. Gajendra Singh
696. K. Gangadhara Rao
697. K. Gopalakrishnan Nair
698. K. Jagannathan
699. K. Kanmani Raja
700. K. Kesavan
701. K. Masilamani
702. K. Naganathathever
703. K. Pradeep Kumar
704. K. Raghavendran
705. K. Ranga Raghavan
706. K. Sanjeiva Bhandary
707. K. Seeni Raj
708. K. Sham
709. K. Shrinivas
710. K. Shunmugam
711. K. Sitharam Rao
712. K. Sri Rama Murthy
713. K. Srivasthva
714. K. Sugunakar Rao
715. K. Venkatesan
716. K. Venkateswara Rao
717. K.A. Satheeshbabu
718. K.B. Asthana
719. K.B. Chaugule
720. K.B. Sadha Shivappa
721. K.C. Bhattacharyya
722. K.C. Mathew
723. K.C. Ramadudh
724. K.C. Ramamurthi
725. K.C. Sethi
726. K.D. Hanwatkar
727. K.D. Manjaramkar
728. K.G. Acharya
729. K.G. Dudhane
730. K.G. Naganur
731. K.G. Puramkar
732. K.G.M. Chitpawan
733. K.K. Pandey
734. K.K. Somani
735. K.L. Sachdev
736. K.L. Sharma
737. K.L. Simha
738. K.M. Pillai
739. K.M. Sant, IAS (Retd)
740. K.M. Vijaya Kumar
741. K.P. Bhatia
742. K.P. Gangadharan
743. K.P. Sinha Mahapatra
744. K.R. Kansal
745. K.R. Krishnamoorthy
746. K.R. Madhyastha
747. K.R. Malkani
748. K.R.S. Sadhashivan
749. K.S. Chandrasekhar
750. K.S. Chavada
751. K.S. Saxena
752. K.V. Sadashiviah
753. Kailash Nath Agrawal
754. Kailesh
755. Kamini Bhatija
756. Kamlesh Kumar Diwan
757. Kanchan Pandey
758. Kanhaiya Lal Agarwal
759. Kanhaiya Lal Sharma
760. Karam Chand Kainth
761. Kartar Singh Hothi
762. Kedar Singh Negi
763. Kej Ram Patil
764. Keshav Dayal
765. Khem Raj Thuwal
766. Khemchandbhai S. Chavda, Ex-M.P.
767. Khubchand Agarwal
768. Kiran Kumar
769. Kiran Kumar Gogoi
770. Kiran Lal Mukhopadhyay
771. Kirit G. Chauhan
772. Kishan Kishor Diwan
773. Kishan Kumar
774. Kishan Lal Jalan
775. Kishan Sharma
776. Kishanrao Kulkarni
777. Kishor Purushottam Narkar
778. Kishore Srivastava
779. Konda Lakshman Bapuji
780. Kondekar Vijayprakash
781. Koshy George
782. Kovvali Hanumantha Rao
783. Kranti Deo, ILS
784. Krishan Chandra Garg
785. Krishan Chandra Tandon
786. Krishan Garg
787. Krishna Gopal Sharma
788. Krishna Kumar Bagga
789. Krishna Rao
790. Krishnamurthy Vasamsetty
791. Kulamani Mishra
792. Kulvinder Singh
793. Kumar B. Bhatia
794. Kumaranand
795. Kunal Kanti Barua
796. L. Sunder
797. L.A. Pires
798. L.A. Pramod
799. L.M. Nagarkar
800. L.M. Pasricha
801. L.R. Sharma
802. L.V. Kumar
803. Lalchand Bhatia
804. Lalit Bhai Vyas
805. Lalit Mohan Gautam
806. Lalita Prasad
807. Lalji Pal
808. Lancelot Fernandes
809. Laskhmikant Yadav
810. Laxman Prasad

811. Laxman Prasad Yadav
812. Lisa Boje
813. Lt. Col E.P. Balachandran (Retd)
814. Lt. Col Nihal Singh (Retd)
815. Lt. Col. J.L. Atal (Retd)
816. Lt. Col. Jaswant Singh (Retd)
817. Lt. Col. Lakhi Ram (Retd)
818. Lt. Gen. Baljit Singh (Retd)
819. Luis G. Coutinho
820. Lutbaran Mahto
821. M. Anandam
822. M. Durga Bhavani
823. M. Govindaswamy
824. M. Muralikrishnan
825. M. Noelline
826. M. Rajendran
827. M. Ramaswamy
828. M. Rathina Sabapathy
829. M. Samuel
830. M. Shafiullah Khan
831. M. Siraj Ahmed
832. M. Venugopal
833. M. Vetrivel
834. M. Viswanathan
835. M.A. Patil
836. M.A. Rane
837. M.A. Srinivasan
838. M.A. Toke
839. M.C. Misra
840. M.C. Sarangi
841. M.C.R.A.J. Pragasam
842. M.D. Lele
843. M.G. Chitrangadan
844. M.G. Memon
845. M.G. Merchant
846. M.G. Prabhakar
847. M.J. Lavakare
848. M.K. Bhanu
849. M.K. Jain
850. M.K. Manoj Kumar
851. M.K. Pande
852. M.K. Sablok
853. M.K. Satisha
854. M.K. Sinha
855. M.K.M. Ghani
856. M.L. Khetarpal
857. M.L. Malhotra
858. M.L. Sureka, IAS (Retd)
859. M.M. Agarwal
860. M.M. Bhalla
861. M.M. De
862. M.M. Kothari
863. M.N. Prasad
864. M.N. Singh
865. M.N.V.V.S. Prabhakar
866. M.P. Acharya
867. M.P. Bendre
868. M.P.R. Nambiar
869. M.S. Dayal
870. M.S. Puri
871. M.S. Ramamurthy
872. M.S. Subramanya
873. M.S.M. Ismail
874. M.S.R. Ayyangar
875. M.T. Praveen
876. M.V. Padmanabhan
877. M.V. Ramakrishnan
878. Madan Lal Agarwal
879. Madan Mehta
880. Madhav Gopal Sharma
881. Madhav Govind Vaidya
882. Madhu Agrawal
883. Madhu Kishwar
884. Madhusudan Nair
885. Mahabaleshwar N. Morje
886. Mahabir Singh Sindhu
887. Maharaj Krishen Kaw, IAS
888. Mahaveer Singh
889. Mahavir Prasad Singh
890. Mahavir Prashad
891. Mahavir Tarsaulia
892. Mahendra Kanskar
893. Mahendra Kantilak Dugad
894. Mahendra Kumar Sharma
895. Mahendra Narain Singh
896. Mahesh G. Jani
897. Mahesh Jaini
898. Maheshwar Pathak
899. Mahraj Narain Singh
900. Maj P.M. Ravindran
901. Maj. Gen. C.K. Karumbaya (Retd)
902. Maj. Gen. Vinod Saighal (Retd)
903. Maj. S. Dhawan (Retd)
904. Maj. Saroj Kumar Rath (Retd)
905. Man Mohan Krishna Sarawagi
906. Manak Tiwari 'Bandhu'
907. Manas Mukherjee
908. Mangu Singh
909. Manish Kumar
910. Manoj Joshi
911. Manoj Kumar
912. Manoj Kumar Srivastava
913. Manorath Sharma
914. Manubhai K. Patel
915. Mayank Jha
916. Meghraj Aggrawal
917. Menino Mario Araujo
918. Menion M. Araujo
919. Mewaram Nirbal
920. Mihir Ranjan Biswas
921. Milap Chand Choraria
922. Mir Mumtaz Ali
923. Mohan Chandra
924. Mohan Dharia
925. Mohan Lal
926. Mohan Lal Gola

927. Mohan Lal Sharma
928. Mohan Mukul
929. Mohan R. Nilekani
930. Mohan Singh Nayay
931. Mohanlal Ramkisan Shivhare
932. Mohd. Abusaleh
933. Mohd. Amjadullah Siddiqui
934. Mohd. Habibur Rehman
935. Mohd. Israil Khan
936. Mohd. Niamat Ali
937. Mohd. Rashid
938. Mohd. Sadullah Khan
939. Mohd. Samad Rahaman
940. Mohd. Shafee
941. Mohit Kumar Chakraborty
942. Moulana Syed Taraq Quadri
943. Mrinmoy Pathak Choudhury
944. Ms. Anupama Chowdhury
945. Ms. Babita
946. Ms. Basanti Chatterjee
947. Ms. Bindu
948. Ms. Hemlata Jain
949. Ms. Kiran Vora
950. Ms. Mandeep Kaur
951. Ms. Manju Rani Pandit
952. Ms. Nalini Kanta Ray
953. Ms. Nutan
954. Ms. S.H. Butani
955. Ms. Sugyani Sahu
956. Ms. Sumangala Neelakantan
957. Mukesh Kumar
958. Mukesh Kumar Sahani
959. Mukesh Kumar Sharma
960. Mukesh Suman
961. Muneshwar Kumar Jha
962. Munish Lal
963. Munshi Ram Swaroop Buddh
964. Muppidi Appalaraju
965. N. Arul Dhas
966. N. Ashok
967. N. Haridas
968. N. Kutumba Rao
969. N. Murugheshan
970. N. Nachappa
971. N. Sailapathi
972. N. Srinivasacharyulu
973. N. Sundararajan
974. N. Venkaiya
975. N.B. Nair
976. N.C. Dhariwal
977. N.C. Seth
978. N.D. Dhingra
979. N.D. Khurody
980. N.K. Acharya
981. N.K. Das
982. N.K. Kate
983. N.K. Ravindran
984. N.M. Gopal Ratnam
985. N.R. Mohan
986. N.R. Ramakrishnan
987. N.R. Saiya
988. N.R. Thomas
989. N.S. Hanspal
990. N.S. Kapur
991. N.S. Kokate
992. N.S. Parasuraman
993. N.S. Ranganathan
994. N.T. Shanmugam
995. N.V. Marathe
996. Na. Peruuazhuthi
997. Naba Kishore Mohapatra
998. Nadim Uddin
999. Nagan Ivri Hebbal
1000. Nagendra Kumar Singh
1001. Nageshwar Prasad Singh
1002. Nagmani Kumar
1003. Nambiar Ramesh Narayan
1004. Nanda Kishore Negi
1005. Nandan Lal Kejariwal
1006. Nani Gopal Paul
1007. Nanubhai Naik
1008. Narayan Chandra Nag
1009. Narayan Prasad Charimali
1010. Narayan S. Pai
1011. Naren M. Mehta
1012. Narendra Kumar Tewari
1013. Narendra Mishra
1014. Narsingh Singh
1015. Natharam Rasik
1016. Natvarlal Kripashank Jani
1017. Navin Chandra Pant
1018. Nawab Md. Baharul Isahaque
1019. Nazeer Ahmed
1020. Neela Shukla
1021. Nikhail Jain
1022. Nikus Kumar Sarkar
1023. Niladrinath Mohanty
1024. Nimain Charan Biswal
1025. Nirad Baran Ray
1026. Nirmal Chandra Jain
1027. Nishikant Govind Paranjpye
1028. Nitin Dayal
1029. Nitya Nanda Joshi
1030. Nrapati Nandini Sharan
1031. O. Dayakara Reddy
1032. O.K. Ghosh
1033. O.P. Gupta
1034. O.P. Pabbi
1035. O.P. Pathak
1036. O.P. Sharma
1037. O.P.R. Mishra
1038. Om Prakash
1039. Om Prakash Gupta
1040. Om Prakash Singh
1041. Om Prakash Tadia
1042. P. Achutha Menon

1043. P. Anu Chengappa
1044. P. Chand Bee Khadeer
1045. P. Gopa Kishore
1046. P. Guru Prasad
1047. P. Kannan
1048. P. Madhava Rao
1049. P. Manickavasagam
1050. P. Mukhopadhyay
1051. P. Muthuramanuja Thevar
1052. P. Narayanasamy
1053. P. Prabhakara Rao
1054. P. Raju
1055. P. Ramdas
1056. P. Sai Babu
1057. P. Subramaniam
1058. P. Suresh
1059. P. Thangavelu
1060. P. Venkata Rao
1061. P. Viswambharan, Ex-MP
1062. P.A. Choudary
1063. P.A. Pouran
1064. P.C. Banerjee
1065. P.C. George
1066. P.C. Gupta
1067. P.C. Jain
1068. P.C. Mishra
1069. P.C. Pande
1070. P.D. Jhunjhunwala
1071. P.D. Sharma
1072. P.D. Thakur
1073. P.G. Narayana Panikar
1074. P.G. Premlal
1075. P.H. Singh
1076. P.K. Balachandran Nair
1077. P.K. Bhat
1078. P.K. Jamindar
1079. P.K. Kundu
1080. P.K. Majumdar
1081. P.K. Mohanty
1082. P.K. Roy
1083. P.K. Sahoo
1084. P.K. Sharma
1085. P.K. Valera
1086. P.M. Deshpande
1087. P.M. Kamath
1088. P.M. Mahadevan
1089. P.M. Pranjape
1090. P.N. Bhosle
1091. P.N. Kothari
1092. P.N. Rajoria
1093. P.N. Saran
1094. P.O.R. Nambiar
1095. P.P. Madhava Kaimal
1096. P.P.G. Nair
1097. P.R. Chakarobarty
1098. P.R. Nachiappan
1099. P.R. Ramavarma Raja
1100. P.S. Joshi
1101. P.S. Ramu
1102. P.S. Subrahmanian
1103. P.S. Vaidya
1104. P.S. Yog
1105. P.S.N. Murty
1106. P.S.N. Rao
1107. P.T. Thomas
1108. P.T. Varghese
1109. P.V. Chandy
1110. P.V. Krishnan
1111. P.V. Ramana Rao
1112. Padamnath Ragae
1113. Pancham Singh Kamal
1114. Panchanan S. Sinha
1115. Pandit Chandrabhan Pathak
1116. Pandit Sita Ram Das
1117. Pandit Sitaram Prajapati
1118. Pankaj Kumar Chatrya
1119. Param Kirti Rao Gautam
1120. Parimal Kanti Dasgupta
1121. Parma K. Modgil
1122. Parshuram Sharma
1123. Pawan Kumar
1124. Pawan Kumar Jha
1125. Pawan Kumar Singhal
1126. Peston Padamji Ginwala
1127. Peter P. Jacob
1128. Phiroze Bomanji Javeri
1129. Prabhat Kumar
1130. Prabhu Dayal Pahuja
1131. Prabir Kumar Laha
1132. Prabodh Kumar Patnaik
1133. Prachet Bhuyan
1134. Pradeep Kumar Agarwal
1135. Pradeep Nambiar
1136. Pradeep Ram Hingolkar
1137. Pradip N. Khandwalla
1138. Prahladrai L. Avasatthi
1139. Prakash Ambedkar, M.P.
1140. Prakash Chand Soni
1141. Prakash Chandra Seth
1142. Prakash Chandra Suri
1143. Prakash Hemawat
1144. Prakash Palandi
1145. Prakash Raghunath Shinghate
1146. Pralaysaran Chakrabarty
1147. Pramod Kumar
1148. Pramod Kumar Sahay
1149. Pramod Kumar Vatsalya
1150. Pranab Kumar Das
1151. Prasejit Banerjee
1152. Prashant Kumar Das
1153. Prashant Srivastava
1154. Pratap Keshari Naik
1155. Pratap Singh
1156. Pratap Singh Bairagi
1157. Preet Pal Singh Gambhir
1158. Prem Chandra Gupta

1159. Prem Kumar
1160. Prem Kumar Aggarwal
1161. Prem Kumar Khosla
1162. Prem Shankar Jha
1163. Prem Singh
1164. Prem Singh Gehlot
1165. Prem Singh Vohra
1166. Premgiri Goswami
1167. Prit Pal Singh Gambhir
1168. Prof. (Smt) Kapila Chaterji
1169. Prof. A. Lakshminath
1170. Prof. Amar Singh Dhaliwal
1171. Prof. H.M. Jain
1172. Prof. Indravadan K. Chhaya
1173. Prof. J.N. Antani
1174. Prof. J.P. Vyas
1175. Prof. K.V. Narayana Rao
1176. Prof. M. Ramaswamy
1177. Prof. M.P. Singh
1178. Prof. Madan M. Sankhdher
1179. Prof. N.K. Jain
1180. Prof. P.B. Mohod
1181. Prof. Pola Koteswar Rao
1182. Prof. Pravin Rathod
1183. Prof. R. Deb
1184. Prof. R.N. Thakur
1185. Prof. Ramakrishnan
1186. Prof. Ravindra Nath Pal
1187. Prof. S.G. Kashikar
1188. Prof. S.K. Bose
1189. Prof. S.V. Raman
1190. Prof. Shanker Krishanswami
1191. Prof. Sreepada Das
1192. Prof. Tilak Kumar Sharma
1193. Prof. Tushar Kanti Dey
1194. Prof. V. Selvarajan
1195. Prokash Chandra Dutta
1196. Prosenjit Das Gupta
1197. Pukhraj Megwal
1198. Puneet Pushbar Mishra
1199. Purshottam M. Kumbhar
1200. Purushottam Nivas
1201. Puttu Lal Patel
1202. Pyar Chand Das
1203. R. Dass
1204. R. Ganesan
1205. R. Krishna Murthy
1206. R. Mandal
1207. R. Muthupalaniapan
1208. R. Padmanabhan
1209. R. Ramachandran
1210. R. Sangeetha Rao
1211. R. Sreekumar
1212. R. Sugathan
1213. R. Venkataseshaiah
1214. R. Vijayan
1215. R.A. Jalan
1216. R.A. Kantak
1217. R.B. Guttal
1218. R.B. Singh
1219. R.C. Kureel
1220. R.C. Pal
1221. R.C. Waswani
1222. R.D. Bhardwaj
1223. R.D. Rao
1224. R.D. Shivsharan
1225. R.G. Goel
1226. R.H. Pandy
1227. R.J. Nair
1228. R.K. Aggarwal
1229. R.K. Bhatt
1230. R.K. Kutty
1231. R.K. Madhyastha
1232. R.K. Mahavar
1233. R.K. Makharia
1234. R.K. Malkani
1235. R.K. Murty
1236. R.K. Padhi
1237. R.K. Pandey
1238. R.K. Sachdeva
1239. R.K. Seth
1240. R.K. Sharma
1241. R.K. Soodh
1242. R.K. Udeshi
1243. R.K. Upadhyaya
1244. R.K. Vasishtha
1245. R.K. Waghmare
1246. R.K.D. Chowdhury
1247. R.L. Vishnu
1248. R.M. Deb Nath
1249. R.N. Mohanty
1250. R.N. Vyas
1251. R.P. Chockalingam
1252. R.P. Nigam
1253. R.R. Dhawan
1254. R.R. Hingole
1255. R.S. Choudhury
1256. R.S. Dhobole
1257. R.S. Khanna, IAS (Retd)
1258. R.S. Moorthy
1259. R.S. Narayanaswami
1260. R.S. Patel
1261. R.S. Saksena
1262. R.S. Sawdekar
1263. R.S. Sharma
1264. R.V. Bhasin
1265. R.V. Subramanian
1266. Rabi Narayan Purohit
1267. Rabinankar Jena
1268. Rabindranath
1269. Rafat Jafri
1270. Raghubir Sharan Sharma
1271. Raghubir Singh Kohal
1272. Raghunath Mohapatra
1273. Rahul
1274. Raj Kapoor

1275. Raj Kishore Sahoo
1276. Raj Varma
1277. Raja Ram
1278. Rajalakshmi Mandiram
1279. Rajaram
1280. Rajbir Singh Ahlawat
1281. Rajdeo Tiwari
1282. Rajedra Prasad
1283. Rajeev Dwivedi
1284. Rajeev Kumar Sinha
1285. Rajeev Saraswat
1286. Rajendra Guru
1287. Rajendra M. Jagdale
1288. Rajendra Prasad
1289. Rajendra Prasad Goswami
1290. Rajendra Prasad Sharma
1291. Rajendra Shankar Bhatt
1292. Rajendra Sidhanti
1293. Rajendran Kullam
1294. Rajesh Krishnath Ramnathkar
1295. Rajesh Kumar
1296. Rajgopal Sharma
1297. Rajinder Puri
1298. Rajinder S. Rawat
1299. Rajiv Lal
1300. Rajiva Bhushan Sahay
1301. Rajju Prasad
1302. Rajkumar
1303. Rajkumar Mishra
1304. Rakesh B. Kumar
1305. Rakesh Bhrany
1306. Rakesh Gupta
1307. Rakesh Kumar
1308. Rakesh Ranjan Kumar
1309. Rakesh Sharma
1310. Ram Adhar Singh
1311. Ram Avtar Sharma
1312. Ram Chandra Sahoo
1313. Ram Chandra Singh
1314. Ram Datt Gupta
1315. Ram Daya Chauhan
1316. Ram Deva Ram
1317. Ram Gopal Sharma
1318. Ram Govind Prasad
1319. Ram Jiwan Pandit Vidyarthy
1320. Ram Karan Shastri
1321. Ram Kishan Rathi
1322. Ram Kishore Singh
1323. Ram Kumar Jha
1324. Ram Lakhan Singh Chauhan
1325. Ram Lal Gehlot
1326. Ram Murid Singh
1327. Ram Raj Ram
1328. Ram Rishi Bhardwaj
1329. Ram Sagar Mishra
1330. Ram Shankar Prasad Singh
1331. Ram Tolani
1332. Rama Rao
1333. Rama Shankar Jaiswal
1334. Ramakanth Inani
1335. Ramakrishnan
1336. Raman Kumar
1337. Ramanjuam
1338. Ramapati Mishra
1339. Ramaswamy R. Iyer
1340. Ramdas Kalia
1341. Ramesh
1342. Ramesh Chandra
1343. Ramesh Kumar
1344. Ramesh Kumar Parvatiya
1345. Ramesh Kumar Sethy
1346. Ramesh R. Patel
1347. Ramesh Shukla
1348. Rameshkumar Gandhie
1349. Rameshwar Maharaj
1350. Rampal Verma
1351. Rampravesh Tiwari
1352. Ramrao V. Wavall
1353. Rana Devendra Singh
1354. Rana Rajeev Singh
1355. Rasha Ranjan Biswas
1356. Rasikbhai Shukla
1357. Ratan Chandra Gupta
1358. Ratheesh P.
1359. Ratnaker Bhengra Johar
1360. Rattan Chandra Gupta
1361. Ravi Chandra Sahoo
1362. Ravi K. Maheshwari
1363. Ravi Kumar
1364. Ravi Kumar Kohli
1365. Ravi S. Surjuse
1366. Ravi Verma
1367. Ravinder Nath Sharma
1368. Ravinder Raj
1369. Ravindra Valmikrao Kalaskar
1370. Renu Chopra
1371. Robert Aranha
1372. Robindranath Bora
1373. Rohit J. Patel
1374. Romulus Whitaker
1375. Roshan Lal Avasthi
1376. Roshan Lal Gaur
1377. Roshan Sonkar
1378. S Harun Murta Rao
1379. S. Anandakumar
1380. S. Apponoo
1381. S. Chakkravarthy Mariappan
1382. S. Fadhu Mohamed Naseer
1383. S. Ganesh
1384. S. Ganeshan
1385. S. Gautama
1386. S. Hajee Zaiuddeen Ahmed
1387. S. Hanumanta Rao
1388. S. Jayachandran Nair
1389. S. Karthikeyan
1390. S. Krishnan

1391. S. Mahalingappa
1392. S. Mondal
1393. S. Muniramaiah
1394. S. Narasimha Prasad
1395. S. Natarajan
1396. S. Parameswara Iyer
1397. S. Pattabiraman
1398. S. Raghavendran
1399. S. Ranganatha Rao
1400. S. Reginald
1401. S. Sankaran
1402. S. Sanyasi Naidu
1403. S. Srinivasan
1404. S. Sriramulu Gupta
1405. S. Subramanian
1406. S. Uday Kumar
1407. S. Uppili
1408. S. Varatha Rajan
1409. S. Vasudevan
1410. S. Viswanathan
1411. S.A. Rao
1412. S.B. Choubey
1413. S.B. Thanga Thiruppathy Nadar
1414. S.B. Vijayakumaran
1415. S.C. Aggarwal
1416. S.C. Bhowmick
1417. S.C. Garg
1418. S.C. Gupta
1419. S.C. Nandwana
1420. S.G. Anandan
1421. S.G. Doshi
1422. S.G. Kashikar
1423. S.G. Ranade
1424. S.G. Sharma
1425. S.H. Sheth
1426. S.I. Biwalkar
1427. S.J. Lucy
1428. S.K. Arora
1429. S.K. Baruah
1430. S.K. Dohre
1431. S.K. Garg
1432. S.K. Jain
1433. S.K. Kedar
1434. S.K. Raman
1435. S.K. Singh
1436. S.K. Trivedi
1437. S.M. Dhepe
1438. S.M. Krishnatry
1439. S.M. Sundaram
1440. S.M. Thacker
1441. S.N. Deshmukh
1442. S.N. Kaul
1443. S.N. Mukherji
1444. S.N. Rama Raju
1445. S.N. Sabnis
1446. S.N. Saran
1447. S.N. Shukla, IAS
1448. S.P. Anand
1449. S.P. Godrej
1450. S.P. Govil
1451. S.P. Paramashivaiah
1452. S.P. Singh
1453. S.R. Deodhar
1454. S.R. Kaushal
1455. S.R. Rajput
1456. S.S. Ambalakan
1457. S.S. Apte
1458. S.S. Deshmukh
1459. S.S. Dhawan
1460. S.S. Khandalekar
1461. S.S. Saha
1462. S.T. Balamurugan
1463. S.V. Raju
1464. Sachida Nand Nautiyal
1465. Sachidananda
1466. Sachin S. Dalwai
1467. Sachindra Nath Chakraborty
1468. Sadashiv V. Jogelkar
1469. Sahdev Prasad Yadav
1470. Sajni Lal Tamta
1471. Sakti Kumar Dasgupta
1472. Samir Kumar Sinha
1473. Sanat Kumar Chakrabarty
1474. Sandeep Sinha
1475. Sandip S. Raibhole
1476. Sanjay
1477. Sanjay Bhagat
1478. Sanjay Goyal
1479. Sanjay Kumar
1480. Sanjay Kumar Marathi
1481. Sanjay L. Nandanwar
1482. Sanjay Narayan Sinha Chaudhuri
1483. Sanjeev Kumar Jha
1484. Sanjiv Kumar
1485. Sankara Sastry
1486. Santhanam Kasthuri
1487. Santi Kumar Chakrabarti
1488. Santimoy Banerji
1489. Sarajit Kumar Chatterjee
1490. Sardar Azad Patel
1491. Saroj Kumar Paul
1492. Sarojendra Nath Sarbadhikari
1493. Sarsij Nayanam
1494. Satish Chandra Mishra
1495. Satrughna Jha
1496. Satya Nana Garg
1497. Satya Narain Choudhury
1498. Satya Narayan Bhimsaria
1499. Satya Pal Singh
1500. Satya Prakash
1501. Satya Shiva Sunder
1502. Satyanarayan Choudhury
1503. Satyanarayan Saha
1504. Satyanarayan Sharma
1505. Satyanarayan Singh
1506. Satyapal Singh Somvanshi

1507. Satyavir Bhardwaj
1508. Satyendra Kumar Choudhury
1509. Saumen Sekhar Ghosh
1510. Saurabh Srivastava
1511. Sayyad Karam Ali Naqvi
1512. Sekhar Moturi
1513. Shabbudin Abbasi
1514. Shahid Anwar
1515. Shailendra Kumar Jha
1516. Shailesh Gandhi
1517. Shaleen Rakesh
1518. Shamsher Singh Bedi
1519. Shamsher Singh Narula
1520. Shankar Lal Kasar
1521. Shankar Prasad
1522. Shankarrao D. Gedam, ex-MLA
1523. Shanker Dev
1524. Shanti Lal Sharma
1525. Shantibhai Akhani
1526. Sharad Kumar Verma
1527. Sharda Prasad Pandey
1528. Sheo Nandan Raut
1529. Sher Singh
1530. Shirish D. Joshi
1531. Shish Pal Singh
1532. Shishir Kumar Bakshi
1533. Shishu Pallav Maurya
1534. Shiv Dhyan Singh
1535. Shiv Kumar Pandey
1536. Shiv Pal Singh
1537. Shivanand
1538. Shivdani Prasad
1539. Shivendra K. Sinha
1540. Shivendra Singh Tomar
1541. Shivnandan Singh Bains
1542. Shobh Nath Patel
1543. Shrikant Choudhury
1544. Shripad Nayak
1545. Shripad S. Bolashetty
1546. Shruti Kant Pal
1547. Shyam Singh Parihar
1548. Shyamal Choudhury
1549. Shyamal Kumar Dutta
1550. Shyamlha Pappu
1551. Sidheswar Mishra
1552. Sishan Kanwar
1553. Sitaram Jindal
1554. Smt. Arti Shrivastava
1555. Smt. Asha Mishra
1556. Smt. Asha Singh
1557. Smt. B. Hemalatha
1558. Smt. Baidehi Kumbhar
1559. Smt. Bhamati Satyendra Kulkarni
1560. Smt. Girija Narayanan
1561. Smt. I.I. War
1562. Smt. Jogeshwari Sadhir
1563. Smt. M. Padmaja
1564. Smt. Maheshi Devi
1565. Smt. Maneka Gandhi, M.P.
1566. Smt. Nandini Menon
1567. Smt. Pooja Jha
1568. Smt. R. Chitra
1569. Smt. Rajni
1570. Smt. S. Meena
1571. Smt. S. Padmaja V. Reddy
1572. Smt. Savtri Devi
1573. Smt. Sunam Kansal
1574. Smt. Sushma Kumari
1575. Sohan Lal Prajapati
1576. Sothi Pragasam
1577. Sri Sudhakar Rout
1578. Sri Vaani Maruthi Krishnageetaarjuna
1579. Srihina Samal
1580. Srikrishan Garg
1581. Sriram
1582. Sub. Maj. Mukhtar Singh (Retd)
1583. Subhas Chandra Saha
1584. Subhash
1585. Subhash Chandra Agrawal
1586. Subhash Chandra Sarkar
1587. Subhash M Pradhan
1588. Subhash Sharma
1589. Subhendu Bhattacharjee
1590. Subodh Kumar
1591. Subodh Kumar Singh
1592. Subodh Markandeya
1593. Subramanya Kumaran Nambiar
1594. Sudhakar Awasthi
1595. Sudhir Chopra
1596. Sudhir Kumar
1597. Sudipto Das
1598. Sugopal Ghosh
1599. Sugriv Singh
1600. Suhrid Kumar Mazumdar
1601. Sujit Sanyal
1602. Sukhdev Singh
1603. Sukumar Ranjan Datta
1604. Suman Das
1605. Suman Kumar Tiwari
1606. Sumanta Chakrabarty
1607. Sunil Chandak
1608. Sunil Kumari
1609. Suraj Narain Sharma
1610. Suraj Prasad Jaiswal
1611. Surender Kumar Singh
1612. Surendra Bhandari
1613. Surendra Narain Sinha
1614. Surendra Singh Katiyar
1615. Surendra Singh Tomar
1616. Suresh Kumar
1617. Suresh Mangrulkar
1618. Suryanaranayana Mantha
1619. Sushil Kachewar
1620. Susil Kumar Gangopadhyay
1621. Swami Anandevanand Saraswati
1622. Swami Asheshananda Saraswati

1209 LJ&CA/2002—16A

1623. Swami Govardhan Bharati
1624. Swami Manavatavadi
1625. Swaminath Mishra
1626. Swapan Kumar Banerjee
1627. Swapan Seth
1628. Syed Ahmed
1629. T. Albert Abraham
1630. T. Karunakaran
1631. T. Krishnan Kutty
1632. T. Rajendran
1633. T. Soundar Rajan
1634. T. Thanaraj
1635. T.A. Naresh
1636. T.B. Viswanathan
1637. T.K. Sukumaran
1638. T.N. Srinivasan
1639. T.S. Prasada Rao
1640. T.S. Ramakrishnan
1641. T.S. Rangamannar
1642. T.S. Venkatesha Murthy
1643. T.V. Jose
1644. T.V. Ramadikshit
1645. T.V. Ramamurthy
1646. T.V. Singh
1647. Tapan Kumar Maity
1648. Tara Chand Gaur
1649. Taradutt Pandey "Adheer"
1650. Tarkeshwar Sahu
1651. Tarlochan Singh, IAS
1652. Tarunabh Khaitan
1653. Teg Singh Rana
1654. Thakur Praveen Dattatreya
1655. Thoban C. Lodaya
1656. Thomas Mathew
1657. Tokong Pertin
1658. Tribank Adelwar
1659. Trilok Narayan
1660. Trimurthy
1661. Trinath Maharana
1662. Triveni Sahai Srivastava
1663. Tukaram Tayappa Kamble
1664. Tushar Kanti Ghosh
1665. Tushar Mohan
1666. U.K. Sharma
1667. U.L. Kamath
1668. U.S. Pawar
1669. Uday Ram
1670. Udayakumar H. Buye
1671. Udit Narayana Dewedi
1672. Umapada Sarkar
1673. Umesh Chandra Misra
1674. Umesh Kumar
1675. Umesh Kumar Sharma
1676. Umesh Poddar
1677. Umesh Rashmi Rohatgi
1678. Upendra Prasad Singh
1679. Uttamchand Issrani
1680. V. Chidambaram
1681. V. Giriraj
1682. V. Prasanna Kumar
1683. V. Raghu
1684. V. Rajendra Hebbar
1685. V. Ramachandra Rao
1686. V. Ramanathan
1687. V. Ramanujam
1688. V. Sabarimuthu
1689. V. Sekhar
1690. V. Sreenivasa Prasad, M.P.
1691. V. Subba Rao
1692. V. Vijayamohan
1693. V.C. Pandey
1694. V.D. Govilkar
1695. V.G. Ramesh Kumar
1696. V.G. Shetty
1697. V.H. Dalmia
1698. V.K. Bhaskaran
1699. V.K. Gautam
1700. V.K. Kalatheswaran,
1701. V.K. Sarma, IRSS (Retd)
1702. V.K. Tiwari
1703. V.K.S. Chaudhary
1704. V.N. Sathe
1705. V.P. Vaze
1706. V.R. Vaze
1707. V.S. Sankaran
1708. V.S. Sastry
1709. V.V. Kunjhu Kuttan
1710. Vallabhdas
1711. Vanshidhar Jha
1712. Varri Dehudu
1713. Vas Dev
1714. Vasudev Prasad
1715. Vasudevarao R. Peshwe
1716. Vasuki Nath Rai
1717. Ved Prakash Sharma
1718. Venkatanarayanan
1719. Vidya R. Oruganty
1720. Vijay Gupta
1721. Vijay Kalra
1722. Vijay Keshav Bhagwat
1723. Vijay Kumar
1724. Vijay Kumar Mishra
1725. Vijay Panjwani
1726. Vijay Prakash Vipalvi
1727. Vijay Singh Kushwaha
1728. Vijay Tiwari
1729. Vikas Bhaldhare
1730. Vikas Dambhare
1731. Vikram Singh Tawar
1732. Vilas T. Tipnis
1733. Vimal Jhanjari
1734. Vimal Malik
1735. Vimal Mittal
1736. Vinayak Govind Godbole
1737. Vinod Nemani
1738. Virchand Jivraj Khona

1209 LJ&CA/2002—16B

1739. Virendra Singh Parihar
1740. Vishal Gupta
1741. Visheshwar Dayal Mathur
1742. Vishnu Dev Prasad
1743. Vishvas Keshav Raravikar
1744. Vishwanath Kaup
1745. W. Santosh Singh
1746. Wg. Cdr. A.K. Dutta (Retd)
1747. Wg. Cdr. B.V.R. Rao (Retd)
1748. Wilubou Newmai
1749. Y. Govind Rao
1750. Y.D. Vaishnava
1751. Y.K. Suman
1752. Y.S. Jain
1753. Y.S. Murty
1754. Yeshwant Herwatt
1755. Yogender Nath Singh
1756. Yogesh Kumar
1757. Yogesh Kumar Saxena
1758. Yudhvir Singh Chauhan

LIST OF ORGANISATIONS/ INDIVIDUALS WHO RESPONDED TO THE CONSULTATION PAPERS/ QUESTIONNAIRES ISSUED BY THE COMMISSION

LIST OF ORGANISATIONS/INDIVIDUALS WHO RESPONDED TO THE CONSULTATION PAPERS/QUESTIONNAIRES ISSUED BY THE COMMISSION

A. ORGANISATIONS [In Alphabetical Order]

1. **Adhivakta Parishad Prayag,** Allahabad, Uttar Pradesh.
2. **Administration of Dadra & Nagar Haveli,** Silvassa.
3. **Administration of Daman and Diu,** Office of the Law Secretary, Secretariat, Moti Daman.
4. **Administration of Union Territory of Chandigarh,** Chandigarh
5. **Administration of Union Territory of Lakshadweep,** Secretariat, Kavaratti.
6. **AG's Office Employees Union,** Accountants General's Offices, Kerala. Thiruvananthapuram-695039.
7. **Akhil Bharatiya Kanyakubj Brahmin Mahasabha,** 2/346-B, Azad Nagar, Kanpur.
8. **Akhil Bharatiya Kushwaha Mahasabha,** 278, Birhana, Lucknow, Uttar Pradesh.
9. **Akhil Bharatvarshiya Digamber Jain Parishad,** 10, Darya Ganj, New Delhi-110 002.
10. **Akhil Bharitya Kayasth Mahasabha (Regd),** Jabalpur Branch, 1388. Sarswati Colony. Cherital, Jabalpur, Madhya Pradesh.
11. **Akhil Bharitya Kshetra Mahasabha Unnao, U.P.,** Sagar House Pili Kothi, Civil Lines Unnao-209 801.
12. **Aligarh Muslim University,** Aligarh. Uttar Pradesh-202 002.
13. **All India Anna Dravida Munnetra Kazhagam (A.I.A.D.M.K.),** Head Office:226/275. Avvai Shanmugam Salai, Royapettah, Chennai-600 014.
14. **All India Brahman Mahasabha (Regd),** "Shree Hari", 198, Sector-5, Urban Estate, Gurgaon-122 001, Haryana
15. **All India Equality Forum,** IV/N-20, Double Storey, Lajpat Nagar, New Delhi.
16. **All India Federation of Scheduled Castes/Tribes, Backwards and Minorities Employees Welfare Associations (Regd) (SCEWASTAMB),** SCEWASTAMB Bhawan, Sat Nagar, Guru Ravi Dass Marg, Karol Bagh, New Delhi-110005.
17. **All India Muslim Majlis-e-Mushawarat,** N-44, Abul Fazal Enclave, Jamia Nagar, New Delhi-110 025.
18. **All India SAS Association-Audit Branch,** Office of the Accountant General (Audit), Kerala, Thiruvananthapuram.
19. **All India Services Pensioners Cell,** Pensioners' Bhawan, Chandmari Guwahati-781003.
20. **All India Trinamool Congress,** C-4, M.S. Flat, Baba Kharag Singh Marg, New Delhi-110 001.
21. **Ambedkar Samaj,** 1217, A/A Vasant Kunj, New Delhi.

22. Andhra Pradesh High Court Advocates' Association, Hyderabad, High Court Buildings, Hyderabad-500 266.

23. Arakshan Samapti Abhiyan (Sanyukta Sanstha) Manch, R-10A, Green park Extension, New Delhi-110 016.

24. Arya Samaj, Model Town, Sonipat-131 001, Haryana.

25. Association of Assistant Engineers, (Road and Building, Narmada, Water Resources and Water Supply Department, Gujarat), Gandhinagar, Gujarat.

26. Association of Voluntary Agencies for Rural Development, 5 (FF), Institutional Area, Deen Dayal Upadhyay Marg, New Delhi-110 002.

27. Bar Council of India, 21, Rouse Avenue Institutional Area, New Delhi.

28. Bhartiya Dalit Sahitya Academy Varanasi, Jagriti Nagar, Manduadeeh, Varanasi-221 103.

29. Central Law College[1], Salem, Chennai.

30. Central Young Lai Association, Lawngtlai, Mizoram.

31. Centre of Concern for Child Labour, 201, Pankaj Tower, Mayur Vihar-1, New Delhi-110 091.

32. Chakma Autonomous District Council, Mizoram.

33. Chandravanshi Chetna Manch (Bihar), 34, Officers' Hostel, Virchand Patel Path, Patna-800 001.

34. Citizens' Movement for Transparency, Sreejam, KP IX/684, Dalava Road, Kumarapuram, MC PO Thiruvananthapuram-695 011

35. CIVIC Bangalore, 14, IInd Floor, 4th Main Road, 12th Cross Road, Vasanthanagar, Bangalore-560 052.

36. Communist Party of India (Marxist), Central Committee, A.K. Gopalan Bhavan, 27-29, Bhai Vir Singh Marg, New Delhi-110 001.

37. Communist Party of India, Central Office, Ajoy Bhavan, 15, Kotla Marg, New Delhi-110002.

38. Department of Disinvestment, Government of India, Room No.407, Block No.14, CGO Complex, Lodi Road, New Delhi-110 003.

39. Department of Ocean Development, 'Mahasagar Bhavan', Block-12, C.G.O. Complex, Lodhi Road, New Delhi-110 003.

40. Department of Scientific & Industrial Research, Government of India, Anusandhan Bhawan, 2 Rafi Marg, New Delhi-110 001.

41. Department of Space, Government of India, Antariksh Bhavan, New BEL Road, Bangalore-560094.

42. Digamber Jain Mahasamiti (Rajasthan), D-127, Savitri Path, Bapu Nagar, Jaipur.

---

[1] 334 responses received.

43. **Dorbar Hima Mylliem,** Mawkhar Main Road, Shillong, Mehalaya.

44. **Dravida Munnetra Kazhagam (DMK),** "ANNA ARIVLAYAM", 367-369, Snna Salai, Teynampet, Chennai-600 018.

45. **Election Commission of India,** Nirvachan Sadan, New Delhi

46. **Faridabad Industries Association,** Bata Chowk, Faridabad-121 001, Haryana.

47. **Federation of Senior Citizens,** 31/12, East Patel Nagar, New Delhi-110 008.

48. **Forum for A Better Democratic Alternative,** Office: B-145/146, Mittal Tower, Nariman Point, Mumbai-400 021.

49. **Gandhinagar Shaher Jagrut Nagrik Parisad,** 'Nakul', Plot No.282/1, Sector-7/A, Gandhinagar-382007, Gujarat.

50. **Government of Arunachal Pradesh:** Home Department, Itanagar.

51. **Government of Chhattisgarh,** Raipur-492 001, Chattisgarh.

52. **Government of Haryana,** Chandigarh

53. **Government of Jammu and Kashmir,** Jammu.

54. **Government of Madhya Pradesh,** Bhopal.

55. **Government of Mizoram,** Aizawl.

56. **Government of Orissa,** Law Department, Bhubaneswar.

57. **Government of Pondicherry,** Pondicherry.

58. **Government of Punjab,** Department of General Administration, Chandigarh.

59. **Government of Sikkim,** Gangtok.

60. **Government of Uttar Pradesh,** Secretariat Annexe Bhawan, Lucknow-226 001.

61. **Government of Uttaranchal,** Secretariat, Rajpur Road, Dehradun.

62. **Government of West Bengal,** Writers' Building, Kolkata.

63. **Gram Vikas Samiti Saraswatipur, Allahabad (Regd.),** Office: 976/522, Rajapur, "Anand Niwas", Stanley Road, Allahabad-211002.

64. **Gunijan Bhakti Trust,** 4, Vandan Park, Near Rly. Station, Maninagar (East), Ahmedabad-380 008.

65. **High Court Bar Association,** Kohima, Nagaland.

66. **High Court of Gujarat,** at Sola, Ahmedabad.

67. **High Court of Jammu and Kashmir,** Jammu.

68. **High Court of Madras,** Chennai.

69. **Indian Audit and Accounts Service (IAAS) Officers Association,** Office of the C&AG of India, 10, Bahadur Shah Zafar Marg, New Delhi-110 002.

70. **Indian Audit and Accounts Service (IAAS) Retired Officers' Association,** Chennai, No.57 (306/2), Velachery Main Road, Madipakkam, Chennai-600 091.

71. **Indian National Congress,** 24, Akbar Road, New Delhi-110 011.

72. **Institute of Public Auditors of India,** Room No.223, 2nd Floor, 'C' Wing, A.G.C.R. Building, I.P. Estate, New Delhi-110 002.

73. **Jabalpur Kayastha Sabha Jabalpur,** 290, Napier Town, Jabalpur.

74. **Jamia Millia Islamia, Jamia Nagar,** New Delhi-110 025.

75. **Kerala Consumer Service Society,** "Prathibha", Ashoka Road, Kochi-682 017, Kerala.

76. **Lai Autonomous District Council,** Lawngtlai, Mizoram.

77. **Lai Students' Association,** Lawngtlai District, Mizoram.

78. **Lai Women Association,** Lawngtlai District, Mizoram.

79. **Lairam People Party,** Lawngtlai, Mizoram.

80. **Legal Aid Co-operation Centre,** Head Office: 2/24A, Vidyasagar Colony, Raja S.C. Mullick Road, Kolkata-700 047.

81. **Mahakoshal Chamber of Commerce and Industry,** "Chamber Bhawan", Civic Centre Marhatal, Jabalpur-482 002, Madhya Pradesh.

82. **Maheshwari Sabha Delhi (Regd).** C/0 M-8, Green Park (Main), New Delhi-110 016.

83. **Malwa Chamber of Commerce & Industries,** 182, (67-A), Tagore Complex, 2nd Floor (Dawa Bazar), M.Y.H. Road,13-14, RNT Marg, Indore-452 001.

84. **Mara Autonomous District Council,** Mizoram.

85. **Milan Photographic Society of Jabalpur,** Roop Photographers, Near 4th Bridge, Napier Town, Jabalpur-482 001, Madhya Pradesh.

86. **Ministry of Agriculture, Department of Agricultural Research and Education,** Government of India, Krishi Bhawan, New Delhi-110 001.

87. **Ministry of Chemicals and Fertilizers, Department of Chemicals and Petrochemicals,** Government of India, Shastri Bhawan, New Delhi.

88. **Ministry of Civil Aviation,** Governemnt of India, B-Block, Room No.253, Rajiv Gandhi Bhawan, Safdarjung Air Port, New Delhi-110 003

89. **Ministry of Coal and Mines, Department of Mines,** Government of India, Shastri Bhavan, New Delhi-110001.

90. **Ministry of Commerce and Industry, Department of Industrial Policy and Promotion,** Government of India, Udyog Bhawan, New Delhi-110 011.

91. **Ministry of Consumer Affair & Public Distribution, Department of Consumer Affairs,** Government of India, Krishi Bhawan, New Delhi-110 001.

92. **Ministry of Defence, Defence Research and Development Organisation,** Government of India, 'B' Wing, Sena Bhawan, New Delhi-110 011.

93. **Ministry of Defence, Department of Defence Production and Supplies,** Government of India, New Delhi.

94. **Ministry of Defence, Department of Defence,** Government of India, New Delhi.

95. **Ministry of Finance, Department of Economic Affairs,** Government of India, North Block, New Delhi-110 011.

96. **Ministry of Finance, Department of Revenue,** Government of India, North Block, New Delhi.

97. **Ministry of Health & Family Welfare, Department of Family Welfare,** Government of India, Nirman Bhawan, New Delhi-110 001.

98. **Ministry of Health & Family Welfare, Department of ISM and Homoeopathy,** Government of India, Red Cross Road, New Delhi-110 001.

99. **Ministry of Home Affairs,** Government of India, New Delhi

100. **Ministry of Human Resource Development, Department of Elementary Education & Literacy,** Government of India, New Delhi-110 001.

101. **Ministry of Human Resource Development, Department of Women and Child Development.** Government of India, New Delhi.

102. **Ministry of Information Technology,** Government of India, Electronics Niketan, 6, C.G.O. Complex, New Delhi-110 003.

103. **Ministry of Labour,** Government of India, Shram Shakti Bhawan, Rafi Marg, New Delhi-110 001.

104. **Ministry of Law, Justice and Company Affairs, Department of Justice,** Government of India, Jaisalmer House, Mansingh Road, New Delhi.

105. **Ministry of Parliamentary Affairs,** Government of India, Parliament House, New Delhi-110001.

106. **Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training,** Government of India, North Block, New Delhi-110 001.

107. **Ministry of Petroleum and Natural Gas,** Government of India, Shastri Bhawan, New Delhi-110001.

108. **Ministry of Power,** Government of India, Shram Shakti Bhawan, Rafi Marg, New Delhi-110 001.

109. **Ministry of Railways, Railway Board,** Government of India, Rail Bhawan, New Delhi-110 001.

110. **Ministry of Road Transport and Highways,** Government of India, 1, Parliament Street, Parivahan Bhawan, New Delhi-110 001.

111. **Ministry of Rural Development, Department of Drinking Water Supply,** Government of India, 8th Floor, Paryavaran Bhavan, CGO Complex, Lodi Road, New Delhi-110 003.

112. **Ministry of Science & Technology, Department of Bio-technology,** Government of India, Block No.2, 7th Floor, CGO Complex, Lodi Road, New Delhi-110 003.

113. **Ministry of Shipping,** Government of India, Parivahan Bhawan, 1, Parliament Street, New Delhi-110 001.

114. **Ministry of Small Scales Industries,** Government of India, Udyog Bhavan, New Delhi.

115. **Ministry of Social Justice and Empowerment,** Government of India, Shastri Bhavan, New Delhi-110 001.

116. **Ministry of Steel,** Government of India, Udyog Bhavan, New Delhi-110 011.

117. **Ministry of Textiles,** Government of India, Udyog Bhavan, New Delhi-110 011

118. **Ministry of Tourism and Culture, Department of Culture,** Government of India, New Delhi-110 001.

119. **Ministry of Water Resources,** Government of India, Shram Shakti Bhavan, New Delhi-110 001.

120. **Ministry of Youth Affairs and Sports,** Government of India, Shastri Bhavan, New Delhi-110 001.

121. **Mysore Lok Swaraj Andolan and Mysore Education (Reform) Forum,** Mysore.

122. **Nagaland University,** Kohima-797 001.

123. **National Commission for Backward Classes,** Government of Idia, Trikoot-1, Bhikaiji Cama Place, New Delhi-110 066.

124. **National Commission for Safai Karamcharis,** 'B' Wing, 4th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110 003.

125. **National Commission for Scheduled Castes and Scheduled Tribes,** 5th Floor, Loknayak Bhawan, Khan Market, New Delhi-110 003.

126. **National Commission for Women,** 4, Deen Dayal Upadhyaya Marg, New Delhi-110 002.

127. **Office of the Comptroller and Auditor General of India,** 10, Bahadur Shah Zafar Marg, New Delhi-110 002.

128. **Rajasthan Jain Sabha,** Chaksu Ka Mandir, Jawahari Bazar, Jaipur-302 2003.

129. **Rashtriya Chintak Manch,** Lakshmi Bhavan, Dakshini Patliputra Colony, Patna-800 013.

130. **Resources Development Institute,** Hitkarni Nagar, Bhopal-462 016.

131. **Rotary Club of Jabalpur South,** C/o Rtn. Rakesh Trivedi, Manmohan Nagar, Damoh-road, Jabalpur 482 002.

132. **Samaj Kranti Aghadi**[2], Central Office: Bhimnagar, Mutizapur, Distt: Akola **(received 2920 responses)**

133. **Shoshit Samaj Party,** Head Office: 327, Krishi Apartments, D-Block, Vikaspuri, New Delhi-110 018.

[2] 2920 responses received.

134. **Shri Guru Ravidas Satsang Sabha**, Saloh District, Una, Himachal Pradesh.

135. **Shri Rajput Sabha**, C-22A-C22B, Bhagwandas Road, Jaipur-302 001.

136. **Shrivastava Samaj (Malaviya Kayasth)**, Jabalpur, 1384, Sarswati Colony, Cherital, Jabalpur-482 002, Madhya Pradesh.

137. **Surya Foundation**, B-3/330, Paschim Vihar, New Delhi-110 063.

138. **Swasashan-Lao-Abhiyan**, Indore.

139. **Tata Institute of Social Sciences**, Post Box No.8313, Deonar, Mumbai-400 088.

140. **United Democratic Party**, Mawlai Nonglum, Shillong-9, Meghlaya.

141. **University Law College**[3], Dharwad-580 008.

[3] 24 responses received.

B. INDIVIDUALS [In Alphabetical Order]

S/Shri

1. **A.N. Karia,**
Principal, Law College, Godhra-389 001, Gujarat.

2. **A. Dutta,** [E-Mail Address: abhisuchi_dutta@hotmail.com]

3. **A.P. Ghosh,**
9182/C-9, Vasant Kunj, New Delhi-110 070.

4. **Adhikaranathaiar,**
'Lavanya', KRRA-276, Thrivikramangalam, Thiruvananthapuram-12, Kerala.

5. **Arun Hampiholi,**
[E-Mail Address: ahampiholi@fchn.com]

6. **Arvind Verma,**
P.O. and Distt: Dumka Court, Dumka, Jharkhand-814 101.

7. **Bhagirathi Mahasuar,**
Iswar Ashram, Jameswar Patana Sahi, Bhubaneswar-751 002.

8. **C. Kanagaraj,**
No.8A, Ammaiappa Mudali Street, Royapettah, Chennai-600 014.

9. **C. Venkata Ratnam,**
HIG-35, Tanasha Nagar, HUDA Colony, Hyderabad-500 075.

10. **Chaturanan Mishra,** Former Agriculture Minister,
23, Meena Bagh, New Delhi-110 011.

11. **D.B. Patil,** Ex-MP,
"Sangram", Panvale Sahakari Griha Nirman Sanstha, Panvale-410 206, Distt: Raigarh.

12. **Devendra Singh Guleria,**
Vill: Langhana, P.O.-Tatwani, Via - Rait, Distt: Kangra, Himachal Pradesh-176 208.

13. **Dhanraj Yadav,**
Minister of Forest and Food Processing, Govt of Uttar Pradesh, Vidhan Bhawan, Lucknow, Uttar Pradesh.

14. **Dharm Pal,**
Village: Ladoli, Tehsil - Amb, Distt.: Unna, Himachal Pradesh.

15. **Dr. A.K. Awasthi,**
Reader, Faculty of Law, University of Lucknow, Lucknow.

16. **Dr. A.R. Biswas,**
'GAIRICK', 18, Co-operative Road, Calcutta-700 070.

17. **Dr. G. Sundaram,** IAS (Retd),
'BURMA HOUSE', 33/18, 9th Street, Dr. Radhakrishnan Road, Madras.

18. **Dr. J.J. Bennett,**
JOBITHAM, No.9, VGP, Murphy Square, GST Road, St. Thomas Mount, Chennai-600 016.

19. **Dr. Lekh Raj Khanna,**
Vill and P.O.: Pandoga, Tehsil and Distt: Una, Himachal Pradesh.

20. **Dr. Neeraj Srivastava,**
117/N/531 (c), Saketpuri, Kaka Deo, Kanpur-208 025, UP.

21. **Dr. P.D. Shenoy, Secretary, Department of Development of North Eastern Region,** Government of India, New Delhi.

22. **Dr. S. Bhaskaran,**
183, Auta Nagar, Annamalai Nagar-608 002, Tamil Nadu.

23. **Dr. Uday Narayan Singh,** Patel Colony, Cokar Chowk, Ranchi-834 001, Jharkhand.

24. **E.M. Reade Syiem,** Retd Head of Khasi Department, St. Edmunds College, Shillong

25. **G.C. Das,**
Arunodaya Nagar. Cuttack-12, Orissa.

26. **G.N. Karalay,**
1509, B/1, Vasant Kunj, New Delhi-110 070.

27. **Granville Austin,**
131, 11th Street, S.E., Washington, D.C.-20003.

28. **Gulab Singh Rana,**
S/o Gyasi Ram Rana. Village & P.O.: Bijwasan, New Delhi-110 061.

29. **H. Mari Gowda,**
Dor No.456. 6th Main. I Cross. H.A.L. III Stage. Indiranagara, Bangalaore-560075.

30. **H.S. Shah,**
4. Vandan Park. Near Railway Station and Jain Temple. Mani Nagar (East), Ahmedabad-380008

31. **H.S. Shrivastava,**
Advocate, 290-D, Napier Town. Jabalpur-482 001.

32. **Hemanta Naik,**
Chartered Engineer & Freelance Journalist, Opp. CMC Township, Dandeli-581 325, Uttara Kannada, Karnataka.

33. **Hrudananda Panda,**
Advocate, Village - Derunia, Kakatpur, District-Puri, Orissa-752 119.

34. **I. Mallikarjuna Sharma,**
Advocate, H.No.6-3-1243/116, D. Sanjeevaiah Nagar, Hyderabad-500 082.

35. **Justice Ajoy Nath Ray,** 15, Panditia Place, Kolkata-700 029.

36. **Justice D.K. Seth,** High Court of Calcutta, Kolkata.

37. **Justice Kamleshwar Nath,**
"GUNJAN", C-105, Nirala Nagar, Lucknow-226 020.

38. **Kamal Kumar Basu,** 13/1A, Balaram Ghosh Street, Kolkatta-700 004.

39. **Kulamani Mishra,**
14/10, LIC Colony, P.O. Kansbahal, Distt.: Sundargarh, Orissa, Pin-770 034.

40. **L.N. Kaul,**
F-201, Kirti-II, Opposite P.O. - Nandanwan, Nagpur-440 009.

41. **Lt. Gen. Dr. M.L. Chibber,** (Retd)
'SAI SANJELA', B-29, Ground Floor, Defence Colony, New Delhi-110 024.

42. **M.K. Jain,** ICAS (Retd),
108, Godavari Apartments, Alaknanda, New Delhi-110 019.

43. **M.L. Malhotra,** IA&AS (Retd),
8, Sreshtha Vihar, I.P. Extension-II, Delhi-110 092.

44. **M.P. Premkumar,**
13/1, South Mada Street, Mylapore, Chennai-600 004.

45. **M.V. Joshi,**
3, Meena Bagh, New Delhi-110 011.

46. **Ms. C.B. Muthamma,**
No.117, Indiranagar I Stage. 10th Cross Road, Bangalaore-560 038.

47. **N.P. Singh,** IAS (Retd).
Former Secretary to Govt. of India. C-II/45, Shahjahan Road, New Delhi-110 011.

48. **N.S. Hanspal,**
K-6, Industrial Area-1. Sultanpur Road. Rae Bareli-229 010. U.P.

49. **Nanjundiah,**
Senior Operations Adviser (Retd). World Bank [E-Mail address - nanju@eth.net]

50. **Neeraj Vegad,**
1836, Wright Town, Jabalpur-482 002.

51. **P.K. Dave,** IAS (Retd),
14, Paschimi Marg, Vasant Vihar, New Delhi-110 057.

52. **P.M. Vasudev,**
6, Lakeside Residency, 4, Annaswamy Mudaliar Road, Bangalore-560 042.

53. **P.R.V. Raja,**
'Jyotis', Mavelikkara Road, Pandalam-689 501

54. **P.V. Maiya,**
702, Siddhachal III, Pokharan Road-2, Thane West-400 607.

55. **Prof. Madan M. Sankhdher,**
89, Vaishali, Pitampura, Delhi-110 034.

56. **Prof. R.R. Singh,**
Director Tata Institute of Social Sciences, P. Box No.8313, Deonar, Mumbai-400 088.

57. **Prof. S.K. Bhatnagar,**
Dean, School for Legal Studies & HoD Human Rights, Babasaheb Bhimrao Ambedkar University, Vidya Vihar, Rae Bareli Road, Lucknow-226 025.

58. **R.B. Guttal,**
Advocate, High Court of Karnataka, No.148, 11th 'C' Cross, Behind G.D. Naidu hall, West of Chord Road, Bangalaore-560 086.

59. **R.K. Udeshi,**
54, Shankar Kutir, 19, T.V. Chidambaran Marg, SION (E), Mumbai-400 022.

60. **R.K.A. Subrahmanya,**
[E-Mail Address: ssanantha@yahoo.com]

61. **R.S. Khanna,** IAS (Retd),
4/9, Arera Colony, Bhopal-462 016.

62. **Ramapati Mishra,**
"Kapil Niwas", Park Road Dakshin, Kadamkuan, Patna-800 003.

63. **Ramesh Kumar Gandhie,**
Legal Adviser, 'JASODA', 156/B-2, Hadapsar, Pune-411 028, Maharashtra.

64. **S. Jayachandran Nair,**
T.C.15/1844, Behind Centre Plaza, Vazhuthacaud, Trivandrum-695 014.

65. **S. Rajagopalan,**
MF4/320, Vrindhavan Colony, Pattom, Trivandrum-695 004.

66. **S.A. Chari,**
Advocate, High Court Buildings, Hyderabad-500 266.

67. **S.B. Ram,**
Advocate, High Court of Allahabad, Baudhayan 60-C/3A, Jaundhval, Taelierganj, Allahabad U.P.

68. **S.D. Verma,**
Advocte, 1966, Type-III, N.H.IV, N.I.T., Faridabad.

69. **S.M. Krishnatry,** IAS (Retd),
146, Mandakini Enclave, New Delhi-110 019.

70. **S.S. Chattopadhyay,**
Secretary, Ministry of Urban Development and Poverty Alleviation, Department of Urban Employment and Poverty Alleviation, Nirman Bhawan, New Delhi-110011.

71. **Satya Prakash Malaviya,** Former Union Minister,
D-503, Anand Lok Housing Society, Purvasha, Mayur Vihar Phase-I, Delhi-110 091.

72. **Sudhir Chopra,** Joint Director, Defence Estates, Ministry of Defence, North East, Bunglow Cantt N0.33, Shillong Cantt., Shillong-1.

73. **Syed Shahabuddin,** Ex-MP,
President, N-44, Abul Fazal Enclave, Jamia Nagar, New Delhi-110 025.

74. **T. Sethumadhavan,**
Budget Advisor, Budget Directorate, Ministry of Finance & National Economy, P.O. Box No.333, Manama, Bahrain.

75. **Tapan K. Banerjee,**
26-A, Maharaja Tagore Road, Kolkata-700 031.

76. **Thatchema Chinzah,** IA&AS (Retd), Shillong

77. **Uday Krishna Narayana Tetarway,**
Sheopur, Mahendru, Patna-800 006.

78. **Uday Singh,**
Teacher, A-111/1, West Vinod Nagar, Delhi-110 092.

79. **Umesh Kumar,**
Former Joint Secretary, Vishwa Hindu Parishad, Mahanagar, Muzaffarpur, Bihar.

80. **V. Ramanathan,**
"Thiruvengadam", 47, Kasturi Ranga Road, Alwarpet, Chennai-600 018

81. **V. Ramanathan,**
DENTALITES, T.D. Road, Ernakulam-682011.

82. **V.S. Srinivasan,**
4A, IIIrd Cross Street, Ganesh Nagar, Madipakkam, Chennai-91.

83. **Yudhvir Singh Chauhan,**
Advocate, Bar Libaray No.1, Supreme Court of India, New Delhi-110 001.

LIST OF ORGANISATIONS/ DELEGATIONS/INDIVIDUALS WHO INTERACTED WITH THE COMMISSION

LIST OF ORGANISATIONS/ DELEGATIONS/ INDIVIDUALS WHO INTERACTED WITH THE COMMISSION

S.No.	NAME OF THE ORGANISATION/ DELEGATION/ INDIVIDUAL	DATE OF INTERACTION
1.	South African Delegation led by Shri Hassan Ebrahim	28.06.2000
2.	Shri Ashok Mehta with five persons from Allahabad	27.09.2000
3.	Shri Andrew, Secretary, 6th Schedule Committee, Manipur	05.10.2000
4.	Lt. General Surinder Nath (Retd.), Chairman, UPSC	13.10.2000
5.	Prof. Salar M. Khan, Director, Institute of Objective Studies, New Delhi.	25.10.2000
6.	Shri M.K. Sharma, Director-General, Min. of Environment and Forest	06.11.2000
7.	Shri N.U. Nachappa, Coorg National Council	21.11.2000
8.	Air Vice Marshal J.N. Goel	01.12.2000
9.	Shri C.P. Srivastava, IAS (Retd.)	11.12.2000
10.	Dr. G.N. Karna, President, Society for Disability and Rehabilitation Studies, JNU, New Delhi.	12.12.2000
11.	H.E. Mr. Mohd. Ahmed Salim, Registrar of Political Parties and Organizations of Sudan	09.01.2001
12.	Dr. Vijay Melnick, Einstien Institute, USA	15.01.2001
13.	Prof. M.M. Shankhdhar, Head of Political Science, Delhi University.	29.01.2001
14.	Shri K.P. Geethakrishnan, Chairman, Expenditure Reforms Commission	16.02.2001
15.	Shri Mukund Padmanabhan, Deputy Editor, The Hindu	19.02.2001
16.	Delegation of Sindhi Rights Committee led by Justice I.S. Israni	05.03.2001
17.	Shri N.R. Madhava Menon, Vice-Chancellor, West Bengal National University of Juridical Sciences, Kolkata	10.05.2001
18.	Delegation of UPSC Civil Services Examination Review Committee led by Shri Y.V. Alagh	11.05.2001
19.	All India Tax Payers Association, New Delhi represented by Shri Ram Prakash Gupta & Ajay Kumar Sharma	04.06.2001
20.	Uttar Pradesh Parents Federation, Lucknow represented by Shri Ratan Chandra Gupta	04.06.2001
21.	Shri P.V. Narasimha Rao, former Prime Minister of India	09.06.2001
22.	Delegation of the Social Revolution Front, Akola (Maharashtra) led by Prof. Mukund Khaire.	02.07.2001

23.	Shri Harish Chandra Bharadwaj, C-1/311 Yamuna Vihar, Delhi – 110053	05.07.2001
24.	Forum of Voters, House No.12, Pashchim Vihar Extension, New Delhi, led by Shri K.C. Nahata, Coordinator.	13.07.2001
25.	Shri I.K. Gujral, former Prime Minister of India	22.07.2001
26.	Prof. Iqbal Ansari, Secretary General, Minority Council, Aligarh	22.07.2001
27.	Shri B.G. Verghese, Journalist	22.07.2001
28.	Planning Commission Officers' Association led by its Secretary, Shri V.P. Garg	09.08.2001
29.	Indian Forest Service Association led by its President Shri M.K. Sharma	10.08.2001
30.	Professor Roberto M. Unger, Harvard Law School	10.08.2001
31.	All India Backward Muslim Morcha, Patna, led by its National Covenor Dr. M. Ejaz Ali.	13.08.2001
32.	Indian Social Institute, New Delhi, led by its Director, Shri P.D. Mathew, S.J.	21.08.2001
33.	Shri Inder Jit, Journalist	23.08.2001
34.	National Commission for Women led by Ms. Vibha Parthasarthy, Chairperson	23.08.2001
35.	Dr. P.C. Alexander, Governor of Maharashtra	24.08.2001
36.	Dr. K.K. Katiyal, Resident Editor, The Hindu	24.08.2001
37.	National Commission for SC and ST led by Shri Dileep Singh Bhuria, Chairman	25.08.2001
38.	Mr. Ralph J. Lysyshn, President, Forum of Federation, Ottawa and Dr. Raloul Blindenpacher, Executive Director, International Conference on Federation, 2002	15.09.2001
39.	Shri Prakash Chandra, IAS (Retd.)	15.09.2001
40.	Sirdar Kapur Singh Memorial Trust, Ludhiana	16.09.2001
41.	Institute of Sikh Studies, Chandigarh	16.09.2001
42.	Shri S.K. Sharma, People First	17.09.2001
43.	Shri Kuldip Nayar, Journalist	17.09.2001
44.	Shri P.K. Kaul, Former Cabinet Secretary	18.09.2001
45.	Eminent persons from North-East	01.10.2001
46.	Group of eminent journalists of the country	22.11.2001
47.	Shri R. Venkataraman, Former President of India	08.01.2002
48.	Justice Shri Faizanuddin, Lok Ayukta, Madhya Pradesh; Justice Shri Om Prakash, Lok Ayukta, Himachal Pradesh; Justice Shri N. Pandey, Lok Ayukta, Bihar and Justice Shri D.V. Sehgal, Lok Pal, Punjab	19.02.2002

LIST OF SEMINARS SPONSORED BY THE COMMISSION

LIST OF SEMINARS SPONSORED BY THE COMMISSION

Sl. No.	Name of the Institution	Date of Seminar held
1.	West Bengal National University of Juridical Sciences, Kolkata	7-8 July, 2001
2.	Mangalore University, Mangalore.	30-31 July, 2001
3.	Banaras Hindu University, Varanasi	4-5 August, 2001
4.	National Law School of India University (NALSAR), Hyderabad.	25-26 August, 2001
5.	National Law Institute University, Bhopal	1-2 September, 2001
6.	Aligarh Muslim University, Aligarh.	6-7 September, 2001
7.	Centre for Political Studies, Jawaharlal Nehru University, New Delhi.	20 September, 2001
8.	Central Law College, Salem.	5-7 October, 2001
9.	Guru Nanak Dev University, Amritsar.	13-14 October, 2001
10.	North East Hill University, Shillong.	17-18 October, 2001
11.	Assam University, Silchar.	9-10 October, 2001
12.	National Law School of India University, Bangalore.	29-30 December, 2001
13.	Delhi University, Delhi	19-20 January, 2002

MINUTES OF MEETINGS OF THE COMMISSION

MINUTES OF THE FIRST MEETING HELD ON 23RD MARCH, 2000

The first meeting of the Commission was held at 10.00 A.M. on 23rd March, 2000 in the Committee Room No.1 of India International Centre to discuss agenda items as circulated to the members. The meeting was chaired by Hon'ble Justice Shri M.N. Venkatachaliah and was attended by all the members. The list of the participants is at annex.

2. The Chairperson, at the outset, extended his warm welcome to all the members. In his opening remarks he emphasised the significance and importance of the work of the Commission and the procedural aspects which need to be kept in mind. After the opening remarks of the Chairperson, agenda items were taken up for discussion.

Agenda Item No.(VI): Procedure for the meetings etc.

3. The meeting started with the discussion on the Agenda Item No.(VI) which was taken up first inasmuch as it related to the procedure for meetings of the Commission. After some discussion the members were of the view that for the present a verbatim records/tape recording of the entire proceedings of each meeting may not be necessary but comprehensive minutes of the meeting should be prepared and circulated to the members. It was also decided that, generally, a notice of two weeks should precede the date of future meetings of the Commission.

Agenda Items No. (II):Scope and amplitude of the terms of reference of the Commission and Agenda Item No. (III): Identification of the areas and topics to be considered by the Commission

4. The meeting thereafter discussed items II and III of the agenda. Taking note of the terms of the reference of the Commission, it was observed that its terms of reference do not require it to "re-write" the Constitution as, indeed, the name of the Commission itself indicated the function is to "review the working of the Constitution" and not to re-write the Constitution and that the recommendation of the Commission were essentially advisory in nature.

5. In regard to the areas where the working of the constitution over the past 50 years needed to be reviewed, it was unanimously felt that the constitutional aspirations for raising the living conditions of the poor and the deprived and ensuring them an adequate means of livelihood was one such important area. It was unanimously emphasised that protection of the constitutional rights of Scheduled Castes, Scheduled Tribes and Other Backward Classes and the minorities required to be effectively ensured and improved.

6. It was decided to examine the working of the present provisions of the Constitution and the applicable laws and practice to consider how the constitutional objectives in the aforesaid areas could be better achieved.

7. The meeting identified certain areas of immediate contemporary concern and proposed to look into those areas in the first instance. The areas identified were:

I. Strengthening the institutions of Parliamentary democracy and their accountability; the grave and persisting menace of un-principled defections.

II. Constitution and pace of socio-economic change and development: promoting literacy; generating employment; ensuring social security and removal of poverty.

III. Union-State relations:
Working of Article 356; appointment and removal of Governors.

IV. Decentralisation and devolution of powers; strengthening of Panchayati Raj Institutions.

V. Fundamental Rights:
Enlargement of the Fundamental Rights in Part-III of the Constitution by specific incorporation of the Freedom of the Media, Right to Compulsory Elementary Education, Right to Privacy and Right to Information.

VI. Effective enforcement of the Directive Principles of State Policy in Part IV of the Constitution in order to achieve the goals enshrined in the Preamble and for good governance.

VII. Fundamental Duties under Part-IVA of the Constitution.

VIII. Fiscal and Monetary Policies; size of government and of government expenditure. Efficacy of public audit mechanisms.

8. Further, as aforesaid and subject to the terms of the reference, the meeting decided to invite public suggestions regarding other areas, if any, that the Commission may be required to examine in the course of its work of reviewing the working of the Constitution.

Agenda Item No. (IV): Constitution of panel of expert advisers.

9. It was decided to associate reputed experts and research institutions in each of the above areas to function as advisory panels. For the purposes of identifying such experts, resource institutions/persons, the meeting decided to constitute a sub-committee consisting of the following members:

(i) Hon'ble Justice Shri Jeevan Reddy.
(ii) Shri Soli J. Sorabjee.
(iii) Shri K. Prasaran.
(iv) Shri Abid Hussain.
(v) Shri Subash Kashyap.

10. In regard to the procedure and methodology in evaluating the working of the Constitution in the areas identified, it was also decided that a 'consultation paper' on each of the aforesaid areas along with a Questionnaire formulated in an appropriate format, shall be circulated to all the political parties; Constitution and Statutory Commissions such as, National Commission for Scheduled Castes and Scheduled Tribes; National Commission for other Backward Classes; National Commission for Minorities; National Human Rights Commission, National Commission for Women and other similar bodies; Trade Unions; Representative Bodies of Trade and Industry; Bar Associations; Universities and Colleges; Academicians; research institutes; Media and NGOs. It was also decided to place the consultation paper and Questionnaire on the Commission's Website on the Internet for access to the general public. The Commission also decided that recommendations or proposals to make shall be put to public debate before finalising them.

Agenda Item No.(I): Notification relating to constitution of the Commission.

11. It was noted that the notification constituting the Commission has been amended to provide that in case of the Chairperson, his condition of service shall be the same as applicable to a serving Chief Justice of India. It was also noted that the said notification has also been amended to provide that a member of the Commission, who is a Member of Parliament, shall not be entitled to any remuneration or allowance other than the allowance as defined in clause (a) of section 2 of the Parliament (Prevention of Disqualification) Act, 1959. The meeting was informed that the Chairperson has decided to accept a notional honorarium of Re. 1 per month. Most of the members also responded by saying that they would also not claim allowance of Rs. 1,000/- for attending the meetings of the Commission.

Agenda Item No. (V): Accommodation for the office of the Commission

12. In respect of agenda item No.(V), the meeting was informed that accommodation for the Commission is likely to become available very soon in Vigyan Bhavan Annexe.

Agenda Item No. (VII): Other subjects:

(i) Spokesperson of the Commission

13. The meeting of the Commission requested Hon'ble Justice Shri B.P. Jeevan Reddy to act as spokesperson of the Commission in relation to the Press. Justice Shri Jeevan Reddy graciously accepted.

(ii) Next meeting of the Commission

14. It was decided that the next meeting of the Commission shall be held on 22nd April, 2000 at 10.00 A.M. The meeting would be extended to the next day, if necessary.

(iii) Commencement of the term of the Commission.

15. In the meeting it was observed that as certain formalities relating to amendment of the Resolution constituting the Commission could only be completed with the publication of Government of India Notification No.A-45012(2)/98-Admn.III (LA) dated the 17th March, 2000, the Commission could hold its first meeting today only, that is, 23rd March, 2000. In view of this, the members felt that the term of the Commission may be deemed to have commenced with effect from the date of its first meeting. It was also decided to apprise the Government accordingly.

16. The meeting ended with a vote of thanks to the Chair.

(Dr. Raghbir Singh)
Secretary

LIST OF PARTICIPANTS OF THE FIRST MEETING:

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri B.P. Jeevan Reddy
3. Justice Shri R.S. Sarkaria
4. Justice Dr. Kottapalli Punnayya
5. Shri P.A. Sangma, M.P.
6. Shri Soli J. Sorabjee, Attorney General
7. Shri K. Parasaran
8. Dr. Subhash C. Kashyap
9. Shri C.R. Irani, Editor in Ch. & MD., Statesman
10. Dr. Abid Hussain
11. Smt. Sumitra G. Kulkarni
12. Dr. Raghbir Singh, Secretary

(2)

MINUTES OF THE SECOND MEETING HELD ON 22ND APRIL, 2000

The second meeting of the Commission was held at 10.00 A.M. on 22nd April, 2000 in the Committee Room 'C' of Vigyan Bhawan Annexe. The meeting was chaired by Hon'ble Justice Shri M.N.Venkatachaliah and was attended by all the members. The list of the participants is at Annex-I.

2. The Chairperson welcomed the members and briefly explained the issues to be discussed in various agenda items. The meeting thereafter took up agenda items for discussion.

Agenda Item No. 1: **Confirmation of the minutes of the first meeting**

3. The minutes of the First meeting of the Commission held on 23rd March, 2000 were read and confirmed.

Agenda Item No. 2: **Report of the Sub-committee constituted for identifying resource persons and institutions**

Agenda Item No. 3: **Preparation and finalisation of consultation papers and Questionnaires**

4. The meeting decided to take up Agenda items 2 and 3 together. With regard to the report of the Sub-committee, in view of certain procedural formalities, the meeting decided that the Sub-committee may kindly meet afresh after lunch and finalise its recommendations. It was also decided that the terms of reference of the Sub-committee be expanded so as to include the consideration as to which of the members, having regard to their expertise in specific areas, are to be associated with the work of Advisory Panels in an appropriate manner. It was further decided that the Sub-committee may also make selection of experts or institutions for the preparation of consultation papers along with Questionnaires in an appropriate computer-friendly format which will enable the ledgerising and classification of the data collected in the responses to the questionnaires. It was also decided to request Shri C.R. Irani to be a member of the Sub-committee. Agenda Item No. 2 was thereafter deferred and taken up later in the day after the Sub-committee finalised its recommendations.

4.1. The report (copy at Annex II) finalized by the Sub-committee was placed before the Commission for its consideration. The Sub-committee has proposed that the contents and subject matter of the eight topics be spread over into ten areas and for each area a Member of the Commission may function as "Member in charge". The Sub-committee has also suggested expert/Advisory Panels in respect of each of the ten areas. The Sub-Committee has also recommended that the "Member in charge" may, in consultation with the Chairperson, nominate additional members to his panel. The "Member in charge" will, in consultation with the Chairperson, also identify research/resource institutions or persons to prepare the Consultation Paper.

4.2. In respect of item No. 3, the Chairperson emphasized the importance and significance of Consultation Papers and Questionnaires and the need for extensive and authentic research back-up for their preparation. The issue was discussed. The Commission reiterates the decision taken in the first meeting to tap the talent in the reputed research Institutions/experts for the preparation of Consultation Papers and Questionnaires. It was noted that the Institute of Social and Economic Change, Bangalore and some other institutions were doing impressive research work in their respective areas of specialization and that it would be useful to utilise the services of such institutions. The Chairperson mentioned that he had a wide-ranging discussions with the Institute of Social and Economic Change at Bangalore and had also addressed its faculty as to the scope and significance of the Commission's work. The Commission also proposed to have widest possible participation of various sections of Indian society in the work of the Commission.

Agenda Item No. 4 : **Progress Report in setting up of the Commission's office**

5. Chairperson informed the Members regarding the progress made so far in setting up of the Commission's office. The Members were informed that vacant possession of the accommodation allotted to the Commission was obtained and expressed the hope that Commission's office would be ready in a couple of weeks.

Agenda Item No. 5 : **Procedure for inviting suggestions from public.**

6. The Commission discussed the mode of inviting suggestions from public. The earlier decision of the Commission to invite suggestions from the public though mentioned in the Press Note dated on 23rd March, 2000, had not received sufficient publicity. It was, therefore, decided that an appropriate advertisement through electronic and print media be issued to invite public suggestions. Dr. Subhash C. Kashyap and Shri C.R. Irani were requested to prepare a draft of the proposed advertisement. The

advertisement, it was felt, should make it clear that the Commission does not propose to entertain any suggestion affecting the basic structure of the Constitution, parliamentary system of democracy and Rights of the minorities, Scheduled Castes, Scheduled Tribes and Other Backward Classes under the Constitution.

Agenda Item No. 6 : Discussion of the further areas in respect of which working of the Constitution needs examination.

7. Some further areas for consideration of the Commission were suggested by some members, but no decision was taken in this regard.

Agenda Item No.7: Other subjects:

(i) CD Rom on Constitution and Amendments

8. The meeting was informed that Legislative Department of the Ministry of Law, Justice and Company Affairs has brought out a CD Rom, which contains all constitutional amendments carried, so far, along with Statement of Objects and Reasons pertaining to the amendments. This software was also capable of tracing any phrase or word used in the Constitution. It was decided that every Member might be provided with a CD Rom.

(ii) Next meeting of the Commission.

9. It was decided that the next meeting of the Commission shall be held on 16th May, 2000.

10. The meeting ended with a vote of thanks to the Chair.

(Dr. Raghbir Singh)
Secretary to the Commission

To
All Members of the Commission

LIST OF PARTICIPANTS OF THE SECOND MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri B.P. Jeevan Reddy
3. Justice Shri R.S. Sarkaria
4. Justice Dr. Kottapalli Punnayya
5. Shri P.A. Sangma, M.P.
6. Shri Soli J. Sorabjee, Attorney General
7. Shri K. Parasaran
8. Dr. Subhash C. Kashyap
9. Shri C.R. Irani, Editor in Ch. & MD., Statesman
10. Dr. Abid Hussain
11. Smt. Sumitra G. Kulkarni
12. Dr. Raghbir Singh, Secretary

(3)

MINUTES OF THE THIRD MEETING HELD ON 8TH AND 9TH JULY, 2000

The third meeting of the Commission was held in the Conference Room of the office of the Commission in Vigyan Bhavan Annexe at 10.00 AM on 8th and 9th July, 2000. The meeting was chaired by Hon'ble Justice Shri M.N. Venkatachaliah. The list of the participants is at Annex-I.

2. The Chairperson welcomed the Members and the meeting thereafter took up the agenda items for consideration.

1209 LJ&CA/2002—18A

Agenda Item No. 1: Confirmation of the minutes of the second meeting

3. The meeting took note of the advertisement of the Commission published in various newspapers and in view thereof, it felt that the last sentence in para 6 (Item No.5) of the minutes of the last meeting beginning from "The advertisement....." and ending with "under the Constitution" be omitted. It further decided that at the end of para 7 (Agenda Item No. 6), the following sentence be added.

> "The Commission would take into account the areas suggested by the Members while considering further areas, if any, that are required to be examined and considered by it."

4. Subject as aforesaid, the minutes of the second meeting of the Commission held on 22.4.2000 were taken as read and confirmed.

5. In regard to the decision taken at the Commission's second meeting for supply to each member of a CD Rom containing Constitutional amendments (para 8, Agenda Item No.7) the Secretary pointed out that, CD Rom presently available contained amendments enacted only upto the Constitution (Seventy ninth Amendment) Act and it was likely to take a few months for NIC to update it by including two subsequent amendments and that if Hon'ble Members so desired, the available CD Rom could be made available to them. It was, decided that the available CD Rom with hard copies of subsequent amendments be made available to the each Member.

Agenda Item No. 2: Constitution of the 'Projects And Finance Committee';
And
Agenda Item No. 6: Scale and limit of expenditure and guidelines for incurring expenditure on TA/DA to the Chairperson and Members of the Advisory Panels and on holding their meetings and payment of professional fees to Research Institutions/Experts

6. The meeting took up Agenda Items 2 and 6 together. They were discussed. It was decided that a Committee called "Projects and Finance Committee" be constituted. The Committee was requested, to consider the following:

(i) Monitoring the quality assurance of the "Consultation Papers" and "Questionnaires" so as to ensure uniformity and eliminate possibilities of duplication or repetition resulting from the overlapping areas in the subjects or topics to which they relate.

(ii) Making suitable recommendations for the apportionment and allocation of consolidated funds earmarked for the following :

- (a) Consultation or professional fees for the preparation of the 'Consultation Papers' and 'Questionnaires';
- (b) the expenses for the meetings of the Advisory Panels and on TA/DA of the Chairperson and Members of these panels;
- (c) holding of seminars; and
- (d) other related purposes; and to

(iii) lay down broad guidelines and procedures for the passage of the 'Consultation Papers' and 'Questionnaires' through the various stages.

7. The meeting left it to the Chairperson to decide on the Members of the Committee*. The committee would evolve its own procedure in respect of holding its meetings and conduct of its business.

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* The constitution of the Committee is at Annex-II.

Agenda Item No. 3 : **Consideration of the requests for participation in or association with the work of the Commission**

8. The meeting noted that the requests received for participation in or association with the work of the Commission, broadly fell into two categories – (i) the requests from the individuals; and (ii) requests from the institutions. It was decided that all such persons and institutions be requested to send their considered views and suggestions to the Commission, informing them that their suggestions would be duly considered by the Commission at the appropriate time.

9. The meeting, however, took note of the request of Indian Law Institute, New Delhi in this regard and decided to suitably associate it with the work of the Commission. It left it to the Chairperson to decide on the area in which the services of the Institute could be so utilised.

Agenda Item No.4 : **Holding a meeting of the leading Journalists and NGOs to explore possibilities of their association with the work of the promotion of awareness of the Commission's remit**

10. It was felt that there was a need to dispel misconceptions and apprehensions in certain sections of the society with regard to the nature of exercise being done by the Commission. On the issue of associating leading journalists and NGOs etc. for promoting awareness of the Commission's remit, the meeting, however, after taking note of the views of Shri C.R. Irani as expressed in his letter dated July 6, 2000 addressed to the Hon'ble Chairperson and of Shri Sangma who were of the view that the Commission may take note of possibility of counter productivity of such a step and after deliberating on its possible implications, came to a view that it would not be beneficial at this stage, to associate journalists or NGOs with any awareness campaign.

11. The meeting noted with satisfaction and appreciation that some of the members particularly Dr. Subhash C. Kashyap and Shri P.A. Sangma were already contributing towards creating public awareness about the true nature of the work of the Commission. It felt that the Members of the Commission should themselves, by making use of the material already made public by the Commission through press notes etc., endeavour to dispel any misgivings or doubts in the public mind in regard to the work of the Commission, whenever they had an opportunity to do so. The Press notes and the advertisement of the Commission have, it was noted, already helped in dispelling some of the doubts and apprehensions in the minds of certain sections of the public. It was felt that ultimately the work of the Commission should be allowed to speak for itself. It was felt that the advertisement issued by the Commission inviting suggestions might also be published through the electronic media at the prime time in order to achieve greater public participation.

Agenda Item No. 5[$]: **Evolving a broad time frame for the various stages of the work of the Commission**

12. The meeting agreed with the suggestion of the Hon'ble Chairperson that there was a need to evolve a broad time frame for completion of the various stages of the work of the Commission and to make every endeavour to adhere to it. Dr. Subhash C. Kashyap was requested in the meeting to evolve a time frame. [#]*The time frame evolved by Dr. Subhash C. Kashyap was considered and it was unanimously accepted. The time-frame, as accepted, is at Annex-III. It was clarified that if any stage in respect of any topic/area was completed earlier to the last date specified for its completion, action for the next stage for that topic/area might be initiated immediately on completion of that stage itself. The Hon'ble Chairperson also emphasised on the need of identifying at this stage itself the persons/bodies/institutions to whom 'Consultation Papers' and 'Questionnaires' would have to be sent; the agencies that would print them; the number of copies that would be required etc. as it would result in saving of time.*

[$] Also includes minutes of agenda item number (ii) for the meeting held on 9.7.2000.

[#] The portion typed in italics refers to the minutes of the meeting held on 9.7.2000.

Agenda Item No.7: **Review of the progress in the preparation of 'Consultation Papers' and 'Questionnaires'**

13. The meeting considered the 'status note' indicating progress made so far in preparation of 'Consultation Papers' and 'Questionnaires' in the areas initially identified by the Commission. It was noted that Institutes/Experts had already been identified for preparation of the 'Consultation Papers' and 'Questionnaires' (in all but one area) and the work was in different stages of completion. Initial drafts on topics for 'Pace of Social and Economic Change in India': 'The Question of Poverty', 'Literacy, Employment and Social Security' and 'Enlargement of Fundamental Rights' had already been received. The initial drafts of the papers on other subjects were also expected to be received shortly. It was decided in the meeting that initial draft of the consultation paper would be scrutinised by the Member-in-Charge and the Advisory Panel on the subject and after modifications and changes as may be considered necessary were incorporated and draft approved by the Advisory Panels, it would be placed before "The Projects and Finance Committee" of the Commission which would ensure uniformity in the quality of the papers and a holistic view of the issues dealt with in the papers. Thereafter, it would be considered by the Commission. However, after the 'Projects and Finance Committee' finalises the procedure, that procedure shall be followed.

Agenda Item No. 8[$]: **Holding of regional seminars for discussing the 'Consultation Papers' and 'Questionnaires' and public responses thereto and identification of the Institutions and Agencies to conduct seminars.**

14. It was decided that after the 'Consultation Papers' and 'Questionnaires' had been prepared and circulated and the responses thereto obtained, the various issues raised in those papers should be discussed in a series of five regional seminars and finally at a national seminar at Delhi. It was further decided to ensure participation of representatives of a wide cross-section of the society, viz. people's representatives, Jurists, Journalists, Academicians, NGOs, Trade Union leaders, Panchayati Raj Institutions, Administrators, Industrialists, Leaders of Cooperative Movements etc. in these seminars. *[#]The Commission also decided to identify the NGOs/Institutions which would be entrusted with holding of seminars at this stage itself so that the organisers have sufficient time for ensuring meaningful and wide participation of different sections of the society. Shri P.A. Sangma, Dr. Subhash C. Kashyap and Shri C.R. Irani were requested in the meeting to identify the nodal agency/institution or agencies/institution for conduct of these seminars.*

Agenda Item No. 9: **Consideration of a programme for interaction and consultation with the Political Parties, the National Commission for the Scheduled Castes and the Scheduled Tribes, the National Human Rights Commission, the National Commission for Minorities, the National Commission for Women.**

15. The Commission decided to interact at an appropriate time with the political parties, the National Commission for the Scheduled Castes and the Scheduled Tribes, the National Human Rights Commission, the National Commission for Minorities, the National Commission for Women etc.

Agenda[#] Item No.10: ***Consideration of responses received so far, in response to recent advertisement of the Commission.***

16. The meeting noted the procedure that was being adopted by the Secretariat of the Commission in acknowledging the suggestions that were being received in response to the advertisement of the Commission. It noted that till date over 1100 responses had been received and

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[$] Also includes minutes of agenda item number (i) for the meeting held on 9.7.2000.
[#] The portion relating to the minutes of the meeting held on 9.7.2000 is typed in italics.
[#] The portion relating to the minutes of the meeting held on 9.7.2000 is typed in italics. This was listed as agenda item no. (iii) for the meeting held on 9.7.2000.

most of them had already been acknowledged. It was felt in the meeting that the work of summarising/ ledgerising of the responses, should also be simultaneously undertaken and completed early.

Agenda Item No. 11: Any other item

Next meeting of the Commission

17. It was decided that the next meeting of the Commission might tentatively be fixed on 26th and 27th August, 2000.

18. The meeting thereafter ended with a vote of thanks to the Chair.

(Dr. Raghbir Singh)
Secretary to the Commission

To

All the Members of the Commission.

ANNEX I

LIST OF PARTICIPANTS OF THE THIRD MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Hon'ble Justice Shri B.P. Jeevan Reddy
3. Hon'ble Justice Shri R.S. Sarkaria
4. Hon'ble Justice Shri Kottapalli Punnayya
5. Shri P.A. Sangma
6. Shri Soli J. Sorabjee
7. Dr. Subhash C. Kashyap
8. Shri C.R. Irani (attended meeting only on 9.7.2000)
9. Smt. Sumitra G. Kulkarni
10. Dr. Raghbir Singh, Secretary

ANNEX II

COMPOSITION OF THE 'PROJECTS AND FINANCE COMMITTEE'

1. Shri Soli J. Sorabjee - Convenor
2. Justice Shri B.P. Jeevan Reddy
3. Shri P. A. Sangma
4. Dr. Abid Hussain
5. Dr. Subhash C. Kashyap

[Constituted by the Hon'ble Chairperson in pursuance of the authority conferred on him by the Commission in its meeting held on 8th and 9th July, 2000]

ANNEX III

PROGRAMME OF WORK AND BROAD TIME-FRAME

SL. NO.	PROGRAMME	TIME-FRAME	REMARKS
1.	Preliminary Meetings; setting-up of Expert Panels on ten subject areas; nomination of Chairpersons and Members of the Panels	23-4.2000 to 15.7.2000	
2.	Identifying Resource Institutions/Persons for preparation of Consultation Papers and Questionnaires; setting the outlines of work and terms of remuneration/fees etc.	23.4.2000 to 20.7.2000	
3.	Convening the Expert Panels for Consideration of the Consultation Papers and Questionnaires etc;	1.8.2000 to 1.9.2000	
4.	Consultation Papers and Questionnaires to be ready.	15.9.2000 to 15.10.2000	
5.	Processing of responses in regard to identifying additional areas, if any, for review and commission's decision thereon and laying down schedule for preparing consultation papers, etc.	1.6.2000 to 30.8.2000	
6.	Scrutiny and approval of the Consultation Papers and Questionnaires by the Commission	15.9.2000 to 1.11.2000	
7.	Consultation Papers and Questionnaires to be distributed and released to the public.	By 15.11.2000	These are to be sent to all MPs, MLAs, Political Parties,Universities All India Service Officers' Associa-tion, Trade Unions, Industrial and Commerce Associ-ations and Groups like FICCI, ASSOCHAM etc; Students' Organi-sations, Bar Assoc-iations, Leading Lawyers, import-ant NGOs, Chair-persons and Mem-bers of all National Commissions, Judges of the Supreme Court and the High Courts, Speakers and for-mer Speakers of the Lok Sabha, Deputy Chairper-son of the Rajya Sabha, Speakers and former Speak-ers of State Assem-blies, Chief Minist-ers and former Chief Ministers, Governors and former Governors, former Prime Ministers, Chief Editors of major News-Papers, prominent Journal-ists, Educationa-lists and Academicians etc;.
8.	Responses to be received	By 31.12.2000	

MINUTES OF THE FOURTH MEETING OF THE COMMISSION HELD ON 26TH AUGUST, 2000

The fourth meeting of the Commission was held in the Conference Room of the office of the Commission in Vigyan Bhavan Annexe at 10.00 AM on the 26th August, 2000. The meeting was chaired by Hon'ble Justice Shri M.N. Venkatachaliah. The list of the participants is at Annex – I.

2. The Chairperson welcomed the Members and the meeting thereafter took up the agenda items for consideration.

Agenda Item No. 1: Confirmation of the minutes of the third meeting.

3. The minutes of the third meeting of the Commission held on 8th and 9th July, 2000 were read and confirmed.

Agenda Item No. 2: Consideration of the recommendations of the Projects and Finance Committee.

4. The Secretary read out his report on the recommendations made by the Projects and Finance Committee, a copy of which is at Annex – II. There was a brief discussion on the report and thereafter the recommendations of the Committee contained in the Report were accepted.

Agenda Item No. 3: Review of the progress made in the preparation of 'Consultation Papers' and 'Questionnaires'.

5. The Chairperson explained the reasons why the preparation of 'Consultation Papers' and 'Questionnaires' has been entrusted to the various Research Institutions of repute in the country and not to the Research Wing of the Commission. It was felt that the copyright of the 'Consultation Papers' and 'Questionnaires' prepared by the Institutes should vest in the Commission so that the Commission can make necessary modifications in the same before releasing it to the public. The meeting decided that the Member-in- Charge of the Advisory Panel may write to the Institute concerned and get a confirmation from it in writing about the copyright being vested in the Commission. Members explained the present status of the preparation of 'Consultation Papers' and 'Questionnaires' relating to the subject under their charge.

Agenda Item No. 4: Requests for grant of extension of time for sending suggestions.

6. The meeting was informed that requests had been received from certain State Governments, political parties, associations and individuals seeking extension of time for sending suggestions in response to the advertisement of the Commission inviting suggestions from public. The Commission agreed that the suggestions received after 31st July, 2000, which was stipulated as the last date in the advertisement, may also be considered.

Agenda Item No. 5: Paper 'Public Audit and the Comptroller and Auditor General of India – Reforming the Institution' by Dr. B.P.Mathur.

7. The meeting was informed that this paper had been prepared by Dr. B.P. Mathur, Director of the National Institute of Financial Management, Faridabad who is a retired Deputy Comptroller and Auditor General of India. Brief comments were made on the Paper by the Chairperson and certain Members. Dr. Abid Hussain, who is the Member-in-Charge of the Advisory Panel to which the subject of the paper relates, suggested that it would be appropriate that this Paper is considered by the Advisory Panel so that its content and form could be looked into and suitably modified to make it more understandable by public. The meeting agreed with the suggestion of Dr. Abid Hussain.

Agenda Item No. 6: Uniformity in the design of 'Consultation Papers' and 'Questionnaires'.

8. The Chairperson emphasized the need to have a uniformity in the design of 'Consultation Papers' and 'Questionnaires', which are being drafted by different Institutes. The meeting agreed that there has to be certain amount of uniformity in 'Consultation Papers' and 'Questionnaires' and the same have to be of a very high quality and presentable. It was decided that help of experts in the field may be taken for the purpose and the experts may be identified by the Projects and Finance Committee. The meeting agreed that that the format of the Questionnaires has to be computer friendly so that the responses to the same could be machine readable. It was also decided that the 'Questionnaires' may have to be accompanied with self addressed envelopes when these are sent to the individuals for response.

Agenda Item No. 7: Any other item.

9. Dr. Abid Hussain suggested that copies of important articles/news items published in the reputed magazines and newspapers relating to the subject matter concerning a member may be supplied to him by the Commission's Secretariat. The meeting agreed to this suggestion.

10. There was some discussion on the issue whether the Commission may hold discussions with senior political leaders, leading journalists and NGOs on certain important issues of national interest'. However, there was no final decision in this regard.

11. The meeting thereafter ended with a vote of thanks to the Chair.

(Dr. Raghbir Singh)
Secretary to the Commission

To

All the Members of the Commission

ANNEX-I

LIST OF PARTICIPANTS OF THE FOURTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri B.P. Jeevan Reddy
3. Justice Shri R.S. Sarkaria
4. Justice Dr. Kollapalli Punnayya
5. Shri P.A. Sangma, M.P.
6. Shri Soli J. Sorabjee
7. Shri K. Parasaran
8. Dr. Subhash C. Kashyap
9. Shri C.R. Irani
10. Dr. Abid Hussain
11. Dr. Raghbir Singh, Secretary

ANNEX II

REPORT OF THE SECRETARY ON RECOMMENDATIONS MADE BY THE PROJECTS AND FINANCE COMMITTEE AND ACTION PROPOSED THEREON

The 'Projects and Finance Committee' of the Commission held its first meeting on 27.07.2000. The Committee, *inter-alia*, has made the following recommendations:-

(i) Earmarking of the amounts specified below towards meeting expenses on finalization of consultation papers etc.:

(a) Rs.20 lakh to meet the expenses on preparation of consultation papers and questionnaires in all the ten areas identified by the Commission;

(b) Rs.13 lakh for meeting expenses on travel, etc. of the Chairperson and Members of all the ten Advisory Panels.

(ii) The ceiling on fee for final preparation of a paper and questionnaire on a topic be kept at Rs.1 lakh. Cases involving payment of higher amounts would be considered by the Committee on merit.

(iii) The fee payable is to be released to research institutions in three instalments as under:

(a) The first instalment of 25% of the total fee payable to be released when the institution was identified and asked to commence the work;

(b) The second instalment of 25% of the total fee payable to be released when the initial draft of the consultation paper and questionnaire were received from it;

(c) Balance 50% of the total fee payable to be released after the consultation paper and the questionnaire were finally approved.

2. With regard to payments to be made to individual institutions for preparation of consultation papers and questionnaires, the following recommendations have been made by the Committee:

(i) Payment of Rs.1 lakh to the Centre for Policy Research for final preparation of each of the four consultation paper along with questionnaire, which that Centre had been asked to prepare.

(ii) Payment of Rs.1.5 lakh to the Institute of Constitutional and Parliamentary Studies for final preparation of the consultation paper and questionnaire on "Party System in India: An Agenda for Reforms".

3. Funds to the Centre for Policy Research and the Institute of Constitutional and Parliamentary Studies on the lines of the recommendations made by the Committee are proposed to be released after the Commission has accepted the recommendations of the Committee. Funds to other institutions would be released in instalments as recommended by the Committee as soon as the fee payable to them was settled.

(Dr. Raghbir Singh)
Secretary
21.08.2000

(5)

MINUTES OF THE FIFTH MEETING HELD ON FRIDAY, THE 29TH DECEMBER, 2000

The Fifth meeting of the Commission was held in the Conference Room of the Office of the Commission in Vigyan Bhawan Annexe, at 10.00 a.m. on 29th December, 2000. The meeting was chaired by Hon'ble Justice Shri M.N. Venkatachaliah. The list of participants is at Annexure.

The Hon'ble Chairperson extended a warm welcome to the Members and requested the Secretary to take up the Agenda.

Item 1: Confirmation of the minutes of the fourth meeting

The minutes of the fourth meeting of the Commission held on 26th August, 2000 were taken as read and confirmed.

Item 2: Consideration whether the Consultation Papers on "Review of Election Law, Processes and Reform Options" and "Review of Working of the Political Parties specially in relation to Elections and Reform Options" which are presently for consideration before the Projects and Finance Committee could be taken up by the Commission itself as all the Members of the Projects and Finance Committee are Members of the Commission".

The meeting discussed the two Consultation Papers in depth and thereafter authorized the Hon'ble Chairperson and the Member-in-charge, Dr. Subhash C. Kashyap to finalise the Papers in the light of the observations made by the members in the meeting.

Item 3: Consideration of the Consultation Paper on "Treaty-making Power under our Constitution".

The discussion on this item began with the Hon'ble Chairperson explaining the various provisions of the Constitution on the subject and giving a brief background of the Consultation Paper. Thereafter, the meeting discussed and approved the Consultation Paper and it was decided that a questionnaire should be prepared and attached to the Paper before its release for public debate.

Item 4: Consideration of the Consultation Paper on "Liability of the State in Tort and Sovereign Immunity"

The Hon'ble Chairperson explained in brief the background of the Consultation Paper and pointed out that the provisions of the Paper are relatable to article 300 of the Constitution and may necessitate a suitable amendment to that Article in view of the developments that had taken place in the area over 50 years since the commencement of the Constitution. The Paper was approved for release for public debate. However, it was decided that an appropriate questionnaire should be prepared and appended to the Paper before it is released for public debate.

Item 5: Consideration of the Consultation Paper on "All-India Judicial Service"

Justice Shri B.P. Jeevan Reddy explained the provisions of the Consultation Paper. Thereafter the paper was discussed in detail in the meeting and was approved subject, however, that an appropriate questionnaire be drafted and appended as part of the Consultation Paper before it is released for public debate.

Item 6: Consideration of the Consultation Paper on "Immunity of Legislators – What do the words 'In respect of anything said or any vote given by him' in article 105(2) signify?"

The meeting discussed this Consultation Paper in detail. The members emphasized that any proposed scheme of change of law should not impinge on the privileges and rights of the members of legislatures. The meeting approved the paper subject to certain modifications on these lines. It was also decided that an appropriate questionnaire be prepared and appended to the Consultation Paper before it is released for public debate.

Item 7: Consideration of the Consultation Paper on "Public Audit and the Comptroller and Auditor General of India – Reforming the Institution"

After discussing the Consultation Paper in detail, the meeting approved the same and decided to release it for public debate.

It was, however, made clear that in respect of all the five Consultation Papers at items 3, 4, 5, 6 and 7, the views expressed or suggestions contained therein did not reflect the final views of the

Commission but the Consultation Papers were meant for the sole purpose of generating a public debate and discussion.

Item 8: **Consideration of the progress made in regard to the Consultation Paper on "Pace of Socio-Economic Change under the Constitution"**

The Hon'ble Chairperson explained the provisions of the draft Consultation Paper. The meeting then discussed the Paper in depth and approved the same in principle. It was noted that the Consultation Paper was presently being examined by the Expert Advisory Panel. The Consultation Paper could be released for public debate only after taking into consideration the views of the Expert Advisory Panel.

Item 9: **To reconsider the schedule of the work of the Commission and to review the progress so far made**

The Commission made a comprehensive review of the progress of the work and took note of the notes on agenda prepared and circulated by the Secretary.

Dr. Abid Hussain informed the meeting that four Consultation Papers were being prepared in relation to the Advisory Panel under his charge and these papers would be finalized by the end of January, 2001.

Shri Soli J. Sorabjee informed that Consultation Paper on "Enlargement of Fundamental Rights" was under preparation and would be finalized soon.

The meeting decided that preparation of the Consultation Paper on "Effectuation of Fundamental Duties" might be entrusted to the Citizenship Development Society, New Delhi, after consultation with the Member-in-charge, Shri C.R. Irani.

Item 10: **Consideration of the Report of the Secretary on the meetings of various Advisory Panels and Projects and Finance Committee**

The Commission took note of and placed on record the Report of the Secretary.

Item 11: **Any other item:**

The Hon'ble Chairperson informed the meeting that Dr. A.P.J. Abdul Kalam, Principal Scientific Advisor to the Government of India intends to interact with the members and the Chairperson of the Commission and was also desirous of making a presentation. It was decided that the Chairperson could invite Dr. Abdul Kalam to meet with the members of the Commission at the next meeting of the Commission.

The Hon'ble Chairperson also informed the meeting that the members of the Minorities Commission intend to have a meeting with the Members of the Commission. It was decided that a meeting with the Members of the Minorities Commission could be fixed to be held in the forenoon of 1st February, 2001.

The meeting was informed by the Hon'ble Chairperson that a number of representations relating to certain matters like the protection of the interests of the Sindhi Community; the inclusion of Maithili language in the Eighth Schedule; demands from the various Sections of Akalis; issues relating to Coorgis of Karnataka State; problems of the Denotified Tribes, etc. have been received and needed to be examined.

The Commission was of the view that these representations may be allocated to Members who, after examining the matter and after such enquiry as they may consider proper, may formulate what, in their opinion, should be the view they should commend themselves to the Commission and place them before the full Commission. The representations/petitions that need to be taken up are the following:

(i) Representation dated 25.8.2000 presented by Justice I.S. Israni on behalf of Sindhi Rights Committee;

(ii) Representation dated 20.4.2000 received from Shri, K.T. Rohra on behalf of the International Sindhi Forum;

(iii) Representation dated 13.7.2000 received from Shri Ram Tolani on behalf of Sindhu Bhartiya Samata Sangathan;

(iv) Representation dated 26.5.2000 received from Shri J.T. Wadhwani on behalf of Bhartiya Sindhu Sabha;

(v) Representation received from Dr. Nanakram Israni, President, All India Sindhi Samaj;

(vi) Representation dated 31.7.2000 received from Ms. Mahashweta Devi, on behalf of De-Notified and Nomadic Tribals Rights Action Group;

(vii) Representation dated 4.10.2000 received from Shri Tarakanth Jha on behalf of Mithilanchal Vikas Manch for inclusion of Maithili in the Eighth Schedule of the Constitution;

(viii) Representation dated 25.7.2000 submitted by Shri Teja Singh on behalf of Sardar Kapur Singh Memorial Trust;

(ix) Memorandum submitted by Shri Prakash Singh Badal, CM of Punjab, on behalf of Shiromani Akali Dal;

(x) Representation dated 25.9.2000 received from Maj. General Narindar Singh on behalf of the Institute of Sikh Studies;

(xi) Memorandum dated 31.7.2000 submitted by Shri Gurcharan Singh Tohra, MP, on behalf of Sarb Hind Shiromani Akali Dal;

(xii) Memorandum submitted on 21.11.2000 by Shri N.U. Nachhappa on behalf of the Coorg National Council;

(xiii) Representation dated 28.12.2000 received from Shri N.S. Deviprasad on behalf of Kodagu Prajavedike (about Coorgis);

(xiv) Memorandum submitted on 13.10.2000 by the Chairman, UPSC;

(xv) Note dated 21.12.2000 received from the Registrar on behalf of the Central Administrative Tribunal, New Delhi;

(xvi) Representation dated 4.9.2000 submitted by Shri Ramvao Longkham on behalf of the Sixth Schedule Demand Committee, Manipur.

(xvii) Representation dated 17th April, 2000, received from Dr. Mumtaz Ahmed Khan, Chairman, All India Muslim Educational Co-ordination Committee;

(xviii) Representation dated 23.6.2000 received from Dr. M. Ejaz Ali, National Convenor, All India Backward Muslim Morcha.

The Hon'ble Chairperson informed that a Delhi based organization known as *'People First, instituting good governance'* wants to have interaction with the Commission. It was decided that a meeting with them might be fixed according to mutual convenience.

The meeting decided that the Consultation Papers and Questionnaires on the subjects mentioned at item numbers 2 to 7 should be released on 8th January, 2001 both in paper print and on the website of the Commission for generating public debate and discussion.

It was decided to hold the next meeting of the Commission on 31st January, 2001 at 2.30 p.m., and on the subsequent day/days depending on the exigencies of work.

The meeting thereafter ended with a vote of thanks to the Chair.

(Raghbir Singh)
Secretary to the Commission

To

All the Members of the Commission.

ANNEXURE

LIST OF THE PARTICIPANTS OF THE FIFTH MEETING

Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)

1. Hon'ble Justice R.S. Sarkaria

2. Hon'ble Justice Shri B.P. Jeevan Reddy
3. Hon'ble Justice Shri Kottapalli Punnayya
4. Shri Soli J. Sorabjee
5. Shri K. Parasaran
6. Dr. Abid Hussain.
7. Dr. Subhash C. Kashyap
8. Smt. Sumitra G. Kulkarni
9. Dr. Raghbir Singh, Secretary

(6)

MINUTES OF THE SIXTH MEETING OF THE COMMISSION HELD ON WEDNESDAY, THE 31st JANUARY, 2001

The sixth meeting of the Commission was held in the Conference Room of the Office of the Commission in Vigyan Bhawan Annexe, at 2.30 p.m. on 31st January, 2001. The meeting was chaired by Hon'ble Justice Shri M.N. Venkatachaliah. The list of participants is at Annexure.

2. The Hon'ble Chairperson extended a warm welcome to the Members and requested the Secretary to take up the Agenda.

Item 1: Confirmation of the Minutes of the Fifth Meeting

3. The Minutes of the Fifth Meeting were taken as read and confirmed subject to the modification of the Minutes under item No. 6. Modified version of the confirmed minutes is as under:

"Item 6: **Consideration of the Consultation Paper on "Immunity of Legislators – What do the words 'in respect of anything said or any vote given by him' in article 105(2) signify?"**

The meeting discussed this Consultation Paper in detail. The meeting approved for circulation the paper subject to certain modifications. It was also decided that an appropriate questionnaire be prepared and appended to the Consultation Paper before it is released for public debate."

Item No. 2: **Consideration of the progress made in finalization of the Consultation Papers.**

4. The Commission made a comprehensive review of the progress in regard to the finalization of the following Consultation Papers:

i) Pace of Socio-economic Change under the Constitution.
ii) Parliamentary Reforms.
iii) Article 356 of the Constitution.
iv) Institution of Governor under the Constitution.
v) Remedies for Misfeasance in Public Office.
vi) Constitutional Response to Good Governance and Macro-economic Management.
vii) Legal Control of Monetary and Fiscal Policy.

5. It was noted that the Consultation Paper at Sl. No. (i) was discussed in detail in the meeting of the Advisory Panel held on 30th January, 2001 under the Chairpersonship of Justice Dr. K. Ramaswamy and that the Advisory Panel is likely to finalize the Consultation Paper in its next meeting to be held during the third week of February, 2001.

6. The meeting was informed that the Consultation Papers at Sl. Nos. (ii) to (v) above were at advanced stages of scrutiny and would be finalized very soon.

7. The meeting was informed that draft Consultation Paper in respect of topic at Sl. No. (vi) had been received from Shri N.L. Mitra, former Director, National Law School of India, Bangalore, and would be placed before the Advisory Panel.

8. In respect of the Consultation Paper at Sl. No. (vii), the Commission was informed that the initial draft had been received and the final draft would be forwarded by the Chairperson of the Advisory Panel very soon.

Item 3: **Review of the progress of preparation of other Consultation Papers and Questionnaires.**

9. Secretary made a presentation about the progress in respect of other Consultation Papers and Questionnaires. The meeting was informed that the Consultation Paper & Questionnaire on 'Municipalities' was being prepared by the All India Institute of Local Self Government (Nagarpalika Network), New Delhi, and the Institute had informed on 29th January,2001 that the draft would be submitted to the Advisory Panel within a few days.

10. The Consultation Paper & Questionnaire on 'Panchayats' was being prepared by the Institute of Social Sciences, New Delhi. The Institute has informed on 30th January, 2001 that the draft would be sent by 15th February, 2001.

11. The Commission was also informed that the Consultation Paper and Questionnaire on "Enlargement of Fundamental Rights" would be finalized by the Advisory Panel within three weeks. Regarding the Consultation Paper and Questionnaire on "Effectuation of Fundamental Duties", the meeting was informed that a communication had been received on 31.1.2001 from the Citizenship Development Society, indicating their willingness to undertake the assignment. The question of entrustment of preparation of the Consultation Paper & Questionnaire to the Society and the consultation fee to be fixed, etc., would be discussed and finalized very soon. The meeting was also informed that Shri Shiv Visvanathan of the Centre for the Study of Developing Societies, Delhi, who has been asked to prepare the Consultation Paper and Questionnaire on "Effectuation of Directive Principles and Achievement of Preambular Objectives of the Constitution", met the Member-in-charge of the Advisory Panel and the Chairperson of the Commission on 31.1.2001 and has promised to send the draft of the Paper within six weeks. The Projects and Finance Committee will be requested to take-up the question of the quantum of the consultation fee.

Items 4 & 5: **Consideration of the request of the Minorities Council, Aligarh dated 16th January, 2001 requesting for interaction with the Commission and representation dated 13th January, 2001, from Smt. Bader Sayeed, Advocate, Chennai.**

12. The Meeting took up item Nos. 4 and 5 together. It was decided that a list of all the prominent organizations which had submitted representations for interaction with the Commission be compiled and submitted before the Commission so that a decision could be taken thereon.

Item 6: **Any other item**

13. With the permission of the Hon'ble Chairperson the following Papers were circulated during the meeting :

(i) 'Peoples' Awareness of the Indian Constitution and the Review Process' received from the Commonwealth Human Rights Initiative, New Delhi and

(ii) 'Working of Parliament and Need for Reforms' submitted by Dr. Subhash C. Kashyap

The Secretary was requested to forward item (ii) above to Dr. Jayaprakash Narayan who is finalizing the Consultation Paper on 'Working of the Legislatures'.

14. The meeting agreed to the suggestion that Hindi version of the Summary of Consultation Papers may also be made available for making the public debate/ discussion more meaningful.

15. The Office was asked to tabulate the responses and suggestions received from the public in response to the Consultation Papers and Questionnaires and circulate the same amongst Members.

16. It was decided that the next meeting shall be held in the last week of February, 2001. The Hon'ble Chairperson was authorized to decide about the exact date of the meeting of the Commission.

The meeting thereafter ended with a vote of thanks to the Chair.

(Raghbir Singh)
Secretary

To

All the Members of the Commission

ANNEXURE

LIST OF PARTICIPANTS OF THE SIXTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Hon'ble Justice Shri B.P. Jeevan Reddy
3. Hon'ble Justice Shri R.S. Sarkaria
4. Hon'ble Justice Shri Kottapalli Punnayya
5. Shri Soli J. Sorabjee
6. Shri K. Parasaran
7. Dr. Subhash C. Kashyap
8. Shri C.R. Irani
9. Dr. Abid Hussain
10. Smt. Sumitra G. Kulkarni

MINUTES OF THE SEVENTH MEETING OF THE COMMISSION HELD ON THE 31ST MARCH AND 1ST APRIL, 2001

The seventh meeting of the Commission was held in the Conference Room of the Commission, in Vigyan Bhawan Annexe, at 10 a.m. on 31st March and 1st April, 2001. The meeting was chaired by Hon'ble Justice Shri M.N. Venkatachaliah. The list of participants is at Annexure.

2. The Hon'ble Chairperson extended a warm welcome to the Members and requested the Secretary to take up the Agenda.

Item 1: Confirmation of the Minutes of the Sixth Meeting

3. The Minutes of the Sixth Meeting were taken as read and confirmed.

Item 2: Consideration of the Consultation Paper on "Pace of Socio-Economic Change under the Constitution".

4. The Commission was informed that the Advisory Panel had thoroughly considered the Consultation Paper in the two meetings held on 16.2.2001 and 29.3.2001 and had approved it in principle; however some editorial modifications and some elaborations were still to be carried out. All the Members endorsed that it was a good Paper. Some of the Members expressed their views on the Paper. It was generally felt that the box at the bottom of the title page of the Paper needed slight modification and the words *"are not the final views of the Commission but"* need to be deleted and

thereafter the contents of the said box should read *"The views expressed and suggestions contained in this Paper are intended for the sole purpose of generating a public debate and eliciting public responses."* The meeting agreed that the Secretariat of the Commission would carry out the necessary modifications consequent to the deliberations of the Advisory Panel and then circulate the Paper to all the Members of the Commission for their comments/suggestions, who may convey them to the Secretary within a period of 15 days. These suggestions would be suitably incorporated in the Paper before the Hon'ble Chairperson finally approved it for being released for public debate and eliciting public responses. Subject as aforesaid, the Consultation Paper was approved for release.

Item 3: Consideration of the Consultation Paper on "The Institution of Governor under the Constitution and Article 356 of the Constitution":

5. This Paper was discussed at the meeting and it was generally agreed that it was well drafted. However, a few Members informed that they had not been able to study the Paper in detail. The meeting, therefore, agreed that the Members may submit their comments/suggestions, if any, on the Paper to the Secretary within a period of 15 days. These would be incorporated in the paper. Subject to this procedure, the Consultation Paper was approved for release.

Item 4: Consideration of the Consultation Paper on "Enlargement of Fundamental Rights"

6. The meeting was informed that this Paper had been approved by the Advisory Panel in its meeting held on 16.2.2001. The salient features of the Paper were explained and it was pointed out that the majority of the rights contained in the Paper were deducible from or merely emanations of the judgments of the Supreme Court of India and some of them had already been found in the international covenants, to which India was a signatory. The meeting discussed the Paper in detail. A note containing some comments on this Paper was circulated at the meeting. The meeting agreed that any Member desirous of submitting his comments/suggestions on the Paper might send the same to the Secretary within a period of 15 days so that it could be suitably incorporated in the Paper before the Hon'ble Chairperson finally approved it for being released for public debate and eliciting public responses. Subject as aforesaid, the Consultation Paper was approved.

Item 5: Consideration of the progress made in regard to finalization of the Consultation Papers on (i) Parliamentary Reforms and (ii) Local Self-Government: Municipalities

7. **Parliamentary Reforms:** The meeting was informed that two drafts – one prepared by Centre for Policy Research (Shri A. Surya Prakash) and second prepared by Dr. Jayaprakash Narayan, of Lok Satta, who is also a Member of the Advisory Panel have been received. The Hon'ble Chairperson felt that both the drafts fell short of the requirements as Consultation Papers which touched certain imperatives that made the parliamentary system in India meaningful. It was also felt that the Papers overlapped the Consultation Papers on Electoral Reforms. The meeting decided to request the Secretary of the Commission to have the fresh Consultation Paper drafted by 22nd April, 2001 and place the same before the Commission.

8. **Decentralisation And Devolution : Consultation Paper on "Local Self-Government: Municipalities":** The meeting was informed that the draft Paper prepared by the Nagarpalika Network of the "All India Institute of Local Self Government" was discussed in the meeting of the concerned Advisory Panel held on 22.3.2001, when in addition to the Members of the Advisory Panel, Shri George Mathew, Director, of the Institute of Social Sciences which was entrusted with the work of preparation of the Consultation Paper on 'Panchayats', was also present as a special invitee. The Advisory Panel proposed to merge the papers on 'Local Self-Government: Municipalities' and 'Panchayats' and trifurcate the same into three papers, namely, first relating to the election aspects, the second relating to functional domain and the third relating to the planning aspects of Panchayats and Municipalities. However, the Secretary explained that at the instance of the Advisory Panel, all State Governments have been requested to intimate the present status of implementation of the 73rd and 74th Amendments of the Constitution, for the purpose of preparation of the Consultation Papers. The Chief Secretaries of the States in the North-East have also been

addressed separately asking for the information about the working of the Sixth Schedule of the Constitution and the Panchayats (Extension to the Scheduled Areas) Act, 1996. In both the above said communications, the States have been requested to furnish the information by 30th April, 2001. It was also explained that unless replies were received from the State Governments, the Advisory Panel may not be able to finalise the draft of the Consultation Paper. The meeting agreed that it may not be possible to wait for the responses from all the State Governments beyond a period of time and the Advisory Panel should finalise the Consultation Paper at the earliest so that the same was available to the Commission by 15th May, 2001. It was decided that the Commission endorsed the idea of three papers instead of two as originally planned, provided that it had no additional financial implications and the drafts of all the papers were available to the Commission by 15th May, 2001.

Item 6: Review of the progress of preparation of other Consultation Papers and Questionnaires; total number of Consultation Papers to be finalized and approved:

9. The Secretary submitted a statement indicating the present status of all the Consultation Papers. The meeting took on record the statement and discussed in detail the progress regarding drafting of each of the Consultation Papers.

10. Regarding the Consultation Paper on 'Literacy, Employment and Social Security', the meeting was informed that the draft from the Institute for Social and Economic Change fell short of the requirements. Later Dr. N. C. Saxena, Secretary, Planning Commission, and member of the concerned Advisory Panel gave some inputs. The meeting emphasized that immediate steps need to be taken by the Member-in-Charge to ensure that the Consultation Paper was finally ready by 15th May, 2001.

11. The meeting considered the six proposed Consultation Papers under the subject 'Union-State Relations'. The topic was redesignated "Union- State Relations under the Constitution : Working of the Federal Text". After a brief discussion, it was agreed that there was no need to have a separate Consultation Paper on the topic 'Sarkaria Commission: 15 Years on'. The meeting noted that it had already considered the Consultation Paper on the 'Institution of Governor Under the Constitution and Article 356 of the Constitution'. The meeting agreed that there was need to finalise the other Consultation Papers latest by 15th May, 2001.

12. The meeting was informed that the Citizenship Development Society, New Delhi, had entrusted the work of drafting the Consultation Paper on 'Effectuation of Fundamental Duties' to a team headed by Shri P.P. Rao and Justice Shri Shiv Dayal. The draft, it was mentioned, was likely to be finalized within about a week. The Advisory Panel would be able to meet thereafter and finalise the Consultation Paper by the end of April, 2001.

13. Regarding the Consultation Paper on 'Effectuation of Directive Principles', the meeting was informed that Shri Shiv Visvanathan of the Centre for the Study of Developing Societies had promised to send the draft by 31.3.2001. The meeting agreed that Shri Visvanathan might be requested to finalise the draft so that the Advisory Panel could meet and discuss it.

14. [redacted]gress in the preparation of other Consultation Papers and Questionnaires was also [redacted]y the Commission.

Item 7: Consideration of the pattern of release of the report of the Commission - whether it may be released in instalments – topic wise:

15. There was a detailed discussion on the subject and different views were expressed. The meeting came to the conclusion that even though the report had to be in several parts and finalized topic-wise in stages, these might all be released together at the final stage.

1209 LJ&CA/2002—19A

Item 8: Consideration of the requests of prominent organizations for interaction with the Commission:

16. A list of all the prominent organizations, who have made requests for interaction with the Commission was circulated to all the Members. The Hon'ble Chairperson referred to his proceedings dated 3.1.2001 whereby he had allocated some petitions/representations to the Members/groups of Members for their consideration and suggesting a course of action to be taken by the Commission thereon. He suggested that the representations from the various organizations could similarly be assigned by the Chairperson to the Members/group of Members for considering the requests and recommending the course of action thereon. The meeting endorsed the suggestion.

Item 9: Consideration of the request from Justice Shri M.C. Jain, Lokayukta, Rajasthan, for conferment of constitutional status on the Institution of Lokayuktas and Upa-Lokayuktas.

17. The meeting agreed that the issue of conferment of constitutional status on the Institution of Lokayuktas and Upa-Lokayuktas was a larger issue and the Commission would take it up at the appropriate time. It was decided that the papers received in this regard may be forwarded to the Member-in-charge of the Advisory Panel I.

Item10: Presentation by Dr. A.P.J. Abdul Kalam, Principal Scientific Advisor to the Government of India:

18. Dr. A.P. J. Abdul Kalam made a presentation on the India Millennium Missions 2020 at 11.30 hours on 31.3.2001. After the presentation, Dr. Kalam also had a brief discussion on the points raised by the Members.

Item 11: General discussion on the broad objectives and purposes of the review of the working of the Constitution so as to integrate the exercise with the vision of new India of future:

19. There was a general discussion. The Members expressed their views indicating the vision, objectives and purposes of the Constitution which the founding fathers had envisaged and how far these aims and objectives had been achieved in the working of the Constitution during the last 50 years. The meeting also discussed the reasons which were responsible for non-achievement of the aims of the founding fathers – whether these were institutional inadequacies or the persons manning the institutions had not come up to the expectations. The Members were requested to send in writing, their views as this important aspect of the vision and objectives of the review of the Constitution's working so that they could be had in mind while drafting the report.

Item 12: Report of Secretary about the responses to the Consultation Papers and Questionnaires, received so far from the State Governments/Political Parties, etc.

20. The Report submitted by Secretary on the item was taken on record. The meeting desired that all the responses received in the Commission may be ledgerised and circulation amongst the Members by the 15th April, 2001.

Item 13: Any other item, with the permission of the Chair.

(i) With the permission of the Chair, the Secretary raised the issue of payment of professional fee for preparation of the Consultation Paper on 'Decentralization in the Tribal Context'. The meeting was informed that, with the approval of the Projects and Finance Committee, it was decided to pay a fee of Rs. 50,000/- to the North-East Hill University (NEHU) for this Paper. Prof. Apurva K. Baruah, Deptt. Of Political Science, NEHU was to prepare the Paper and a sanction order was accordingly issued by the Commission in favour of NEHU. The meeting was informed that the Chairperson of the Advisory Panel had recommended that the

1209 LJ&CA/2002—19B

sanction order may be modified and made in favour of "North-East Indian Social Science Congress (NEISSCONG)" which is presided over by Prof. Mrinal Miri, Vice Chancellor, NEHU, Prof. Baruah being its General Secretary. The meeting approved the proposal as the Member-in-charge of the Advisory Panel had endorsed it.

(ii) With the permission of the Chair, the meeting discussed the question of prescribing time limit for all the Advisory Panels/institutions/experts to finalise the Consultation Papers so that the Commission was able to consider the same and complete its task within time. The Meeting decided that letters of request may be sent to the Members-in-charge, Chairpersons of the Advisory Panels, resource-institutions/experts to the effect that the Consultation Papers should be made available to the Commission latest by the 15th May, 2001 as else it might not be possible for the Commission to keep-up its time-schedule.

(iii) The meeting nominated the Secretary as the Member-Secretary of all the Advisory Panels, in order to facilitate quick finalisation of the Consultation Papers.

(iv) The meeting also considered the question of drafting of the topic wise draft paragraphs of the Report on the Consultation Papers based on the responses received so far thereon. It was emphasized that this work had to be commenced in right earnest so that the draft Report was available by 15th September, 2001 for the detailed scrutiny of the Commission. The Secretary was requested to work out a frame work as regards the classification of topics to be covered by the parts of the final report.

The meeting thereafter ended with vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary

To

All Members of the Commission

ANNEXURE

LIST OF PARTICIPANTS OF THE SEVENTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Hon'ble Justice Shri R.S. Sarkaria (Present only on 31.3.2001)
3. Hon'ble Justice Shri Kottapalli Punnayya
4. Shri Soli J. Sorabjee
5. Shri K. Parasaran (Present only on 31.3.2001)
6. Dr. Subhash C. Kashyap
7. Dr. Abid Hussain (Present only on 31.3.2001)
8. Smt. Sumitra G. Kulkarni
9. Dr. Raghbir Singh, Secretary

(8)

MINUTES OF THE EIGHTH MEETING OF THE COMMISSION HELD ON THE 8TH AND 9TH JUNE 2001

The Eighth meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, at 10.00 a.m. on 8th and 9th June, 2001. The meeting was chaired by Hon'ble Justice Shri M.N. Venkatachaliah. The list of participants is at Annexure.

2. The Hon'ble Chairperson extended a warm welcome to the Members and requested the Secretary to take up the Agenda.

Item: 1. ***Confirmation of the minutes of the seventh meeting of the Commission held on 31st March, 2001 and 1st April, 2001***

3. Dr. Subhash C. Kashyap pointed out that in the Seventh Meeting, while considering item No. 5 of the Agenda relating to the progress made in regard to the finalization of the Consultation Paper on 'Parliamentary Reforms', it had been decided that the Paper submitted by him on the subject in the 6th meeting on 31.1.2001, should also be taken into consideration while redrafting the Consultation Paper on 'Parliamentary Reforms'. This fact had not been brought out in the Minutes.

4. Accordingly, it was decided that paragraph 7 of the aforesaid Minutes shall be treated as modified and the following sentence shall be deemed to have been incorporated in the minutes: -

> "While getting the fresh consultation paper drafted, the Paper submitted by Dr. Subhash C. Kashyap on the subject, which was circulated during the 6th meeting of the Commission on 31.1.2001, shall also be taken into account".

Subject to the above, the Minutes of the seventh meeting of the Commission were taken as read and confirmed.

Item 2: ***Consideration of the Consultation Paper on "Probity in Governance"***

5. Before the Consultation Paper was taken up for consideration, Dr. Subhash C. Kashyap made a point that there should, as far as possible, be uniformity in the format of the Consultation Papers. He pointed out that a few Consultation Papers released earlier had provided for the acknowledgements in the preface and in some of the others, a reference was made to the composition of the Advisory Panel also.

6. The meeting decided that the Consultation Papers should have uniformity and should mention the names of the Members of the Advisory Panel and the name of its author, in case the same had not been prepared in-house. The meeting then took up the Consultation Paper on "Probity in Governance" and approved the same in principle. It was also decided that an appropriate Questionnaire might also be prepared and annexed to the Consultation Paper.

7 However, minor editorial modifications and formatting of the Consultation Paper may be carried out before the Chairperson finally approved it for being released for public debate and eliciting public responses. Shri Soli J. Sorabjee and Shri K. Parasaran were also requested to discuss some policy issues arising out of the paper before sending it to the Chairperson.

Item 3: ***Consideration of the Consultation Paper on "Effectuation of Fundamental Duties"***

8. The Secretary informed that the Consultation Paper had been discussed thoroughly in the meeting of the Advisory Panel held on 15.5.2001. The meeting considered the Paper in detail. It was decided that the paragraph 3.3.8 of the Paper needed to be modified by deleting the sub-Para thereunder mentioning the difference of opinion on whether the contribution of the Citizenship Development Society, New Delhi to the cause of Citizenship Development should be included in the Paper or not. The Meeting was of the view that the said aspect need not be included in the Consultation Paper and this was endorsed by Shri Irani, Member-in-Charge.

9. The meeting considered paragraph 3.5.1 of the Consultation Paper regarding the suggestions received for amendment of the Constitution to ensure full implementation of the Fundamental Duties and decided that the three suggestions should be re-worded as under:-

(i) The opening words of article 51A should be reworded as follows:
"Every citizen of India shall implement in daily life the following duties"

(ii) Article 51A should be shifted to Part II (Citizenship) of the Constitution;

(iii) Suitable Changes may be carried out to make Fundamental Duties to form a compendium with Fundamental Rights.

10. Subject to the above, the meeting approved the Consultation Paper and Questionnaire in principle. However, minor editorial modifications and formatting of the Consultation Paper were allowed to be carried out before the Chairperson finally approved it for being released for public debate and eliciting public responses.

Item 4: ***Consideration of the Progress made in regard to the four Consultation Papers***

Appointments to the Superior Judiciary

11. The meeting was informed that Justice Shri B.P. Jeevan Reddy had prepared the initial draft. The meeting decided that no separate Consultation
Papers were needed to be prepared on the topics of judicial delays and judicial reforms but the final report may have a separate chapter containing all aspects of judicial reforms.

Parliamentary Reforms

12. The meeting was informed that Prof. Aswini K. Ray of the Department of Political Studies, Jawaharlal Nehru University, had undertaken the work on this Paper.

Effectuation of Directive Principles

13. It was noted that the draft Consultation Paper on the topic received from the Centre for Developing Societies, New Delhi, was not up to the expectations of the Commission. The meeting decided that in view of the time constraints, it would not be advisable to undertake a redrafting of the Paper. Therefore, the meeting decided not to take any further action on the said Paper.

14. The meeting noticed that many elements of the Directive Principles had already been covered in the Consultation Paper on 'Pace of Socio-Economic Change under the Constitution', which was released for generating public debate and eliciting public response by the Commission 11.5.2001. The meeting, therefore, decided that while drafting the final Report, all the elements of the Directive Principles might be taken into consideration.

15. Justice Shri B.P. Jeevan Reddy was requested to draft the said report and for the purpose he could take the required assistance from Justice Shri M. Jagannadha Rao, Vice-Chairman of the Law Commission who is also a Member of the Advisory Panel on "Enlargement of Fundamental Rights", and of Shri Raju Ramachandran, Member of the Advisory Panel on "Effectuation of Directive Principles".

16. As Smt. Sumitra G. Kulkarni, Member-in-charge of this subject could not attend the meeting, it was decided that before action on the above lines is initiated, her consent be obtained.

Constitutional Mechanisms for the Settlement of Inter-State Disputes

17. The meeting discussed the Consultation Paper in detail. It was noticed that article 139A of the Constitution of India provided, inter alia, for transfer of cases to the Supreme Court if the cases involving same or substantially the same question of law are pending before two or more High Courts. The meeting decided that the Consultation Paper should contain an alternative suggestion that if a case challenging a central legislation on grounds of lack of legislative competence was pending even before a single High Court, there should be a provision for withdrawal of the case to the Supreme Court, as such an issue would bear upon the larger question of distribution of legislative powers between the Union and the States.

18. Subject to the above, the meeting approved the Consultation Paper in principle. However, minor editorial modifications and formatting of the Consultation Paper were allowed to be carried out including a reference to the nature of issues arising in cases under Article 131 now pending before the

Supreme Court before the Chairperson finally approved it for being released for public debate and eliciting public responses.

Item 5: ***Review of the progress of preparation of other Consultation Papers and Questionnaires***

19. The statement indicating the status of the progress made in each Consultation Paper, submitted by the Secretary, was taken on record.

20. The meeting took notice of delay in the finalisation of the Consultation Papers on the topics relating to the Advisory Panel on Legal Control of Fiscal and Monetary Policies. It was decided that draft final reports might be prepared on the following three topics: -

(i) Legal Control of Monetary and Fiscal Policy;
(ii) Standards in Public Life: For a corruption free governance;
(iii) Reforms in Administrative System.

For the purpose, the Member-in-charge (Dr. Abid Hussain) will hold a meeting on 12.6.2001 with the various experts including Dr. E.A.S. Sarma, on the subject.

21. The meeting noticed the discussions held by Dr. K.V. Raman, Director, P.V. Rao Centre for Sustainable Food Security, Chennai, with the Hon'ble Chairperson and Shri K. Parasaran on 23.5.2001 at Bangalore. It was decided to request Dr. Raman to prepare draft final reports on the two topics, namely, 'Literacy' and 'Social Security'. The meeting also decided to pay an amount of Rs. 60,000/- to Dr. Raman for preparation of each draft report, as suggested by the Secretary pursuant to discussions had with Dr. Raman.

Item 6: ***Report of Secretary about the responses to the Consultation Papers and Questionnaires, received so far from the Central/State Governments/Political Parties, etc.***

22. The Report submitted by Secretary on the item was taken on record.

Item 7: ***Holding of Seminars on the Consultation Papers***

23. The meeting noticed that a Committee of Shri P.A. Sangma, Dr. Subhash C. Kashyap and Shri C.R. Irani, constituted by the Commission in its third meeting held on 8th and 9th July, 2000, had suggested the names of the IIPA, New Delhi, and the ICPS, New Delhi, for holding of the Seminars.

24. In view of the fresh offers and the discussions held by the various representatives of National Law Schools and Central Universities, etc., the meeting decided that the following ten institutions may organize seminars and provide the necessary feed back to the Commission:

1. National Law School of India University, Bangalore
2. West Bengal National University of Juridical Sciences, Kolkatta
3. National Law School of India University, Bhopal
4. National Law School of India University, Hyderabad
5. Centre for Political Studies, Jawaharlal Nehru University, New Delhi
6. Mangalore University, Mangalore
7. Central Law College, Salem
8. Guru Nanak Dev University, Amritsar
9. North East Hill University, Shillong
10. Banaras Hindu University, Varanasi

25. The meeting agreed that the Commission's contribution towards each seminar would be Rs. 40,000/-. The institution itself will incur the rest of the expenditure for organizing the seminar. The seminars will be in the form of 'informed public debates' i.e., public will also be involved in controlled conditions to have public interactive sessions for discussing the various consultation papers released and the subjects identified by the Commission. The meeting also decided that major emphasis should be laid in the seminars on Electoral, Judicial, and Parliamentary Reforms, being the subjects, which

are of larger public interest It was also decided to suggest to the Universities that emphasis should also be on public interaction and the events should be made in the nature of public inter-active sessions or informed public debates.

26. The meeting also noticed that out of the ten institutions mentioned above, four had already agreed and had been requested to proceed with the arrangements for the seminars in the month of July, 2001 and the necessary financial sanctions had also been issued.

Item 8: ***Consideration of the Format for the Final Reports***

27. The draft format for the Final Reports was placed before the Meeting. After considering the same, the meeting decided to constitute a committee consisting of Shri K. Parasaran, Dr. Abid Hussain, and Dr. Subhash C. Kashyap to look into it and suggest the final format for consideration of the Commission.

28. The Meeting continued on 9th June, 2001 also and the additional agenda items were taken up as under:

Item 1. ***To consider whether the remaining consultation papers which are at various stages of finalisation may now be prepared in the shape of the draft final report.***

29. The meeting was informed about the delay in finalisation of the remaining Consultation Papers (other than those Consultation papers released by the Commission on 8.1.2001 and 11.5.2001 and those to which approval in principle was granted by the Commission on 8.6.2001) and the limited time available for preparation of the final reports. In the circumstances, the meeting decided that instead of preparing the Consultation Papers, finalizing them and releasing the same for public debate and discussion and eliciting public responses on the topics, draft final reports on the relevant topic be prepared and placed before the Commission for consideration. The meeting also decided that the above decision would not apply to the four Consultation Papers relating to the Advisory Panel on "Decentralization and Devolution; Empowerment & Strengthening of Panchayati Raj Institutions" and the Consultation Paper on "Appointments to the Superior Judiciary", all of which should be finalized at the earliest and released in the traditional form as Consultation Papers as per the earlier procedure.

Item 2: ***Consideration of the letters dated 6.6.2001 received from Justice Shri J. Eswara Prasad, Chairman, Appellate Tribunal for Forfeited Property.***

30. The meeting considered the letter containing proposals for amendment of section 2(2) (c) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976. It was decided that the topic contained in the proposal would be suitably discussed in the Consultation Paper on "Probity in Governance". The second letter containing proposal for amendment of article 348(1)(a) of the Constitution was deferred to be taken up at the next meeting.

The meeting thereafter ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary

To
All Members of the Commission

ANNEXURE

LIST OF PARTICIPANTS OF THE EIGHTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri B.P. Jeevan Reddy

3. Hon'ble Justice Dr. Kottapalli Punnayya
4. Shri Soli J. Sorabjee
5. Shri K. Parasaran
6. Dr. Subhash C. Kashyap
7. Shri C.R. Irani
8. Dr. Abid Hussain
9. Dr. Raghbir Singh, Secretary

(9)

MINUTES OF THE NINTH MEETING OF THE COMMISSION HELD FROM THE 20TH TO 22ND JULY 2001

The Ninth meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, at 11.00 a.m. on 20th, 21st and 22nd July, 2001. Hon'ble Justice Shri M.N. Venkatachaliah chaired the meeting. The list of participants is at Annexure.

2. The Hon'ble Chairperson extended a warm welcome to the Members and requested the Secretary to take up the Agenda.

Item: 1. **Confirmation of the minutes of the Eighth mooting of the Commission held on 8th and 9th June, 2001**

3. The modified Minutes of the Eighth Meeting of the Commission held on 8th and 9th June, 2001 were taken as read and confirmed.

Item 2: **Review of the progress of public interactive sessions/seminars being organized by the National Law Schools/Universities**

4. Secretary explained that the Commission had identified ten Universities/institutions during the eighth meeting for organizing seminars. Thereafter, Aligarh Muslim University also agreed to organize a seminar. An amount of Rs. 40,000/- being the contribution of the Commission for each seminar has already been released in respect of seven institutions. In respect of the remaining institutions, the amounts will be sanctioned as soon as confirmations are received. The meeting was also informed that the West Bengal National University of Juridical Sciences, Kolkata conducted public interactive seminar on 7th and 8th July, 2001. The official report from the University has not yet come. Reportedly, it achieved a high degree of success in presenting the work of the Commission in proper perspective.

Item 3: **Review of the Progress made in regard to the four Consultation Papers**

(i) **Local Self-government: Municipalities**
(ii) **Panchayats**
(iii) **Decentralization in the Tribal Context**
(iv) **73rd Amendment of the Constitution, where applied in the North-East**

5. The meeting was informed that the draft Consultation Papers had been received on the topics mentioned at (i) and (ii) above and the same were discussed in the third meeting of the Advisory Panel held on 20.6.2001. Shri P.A. Sangma, Member-in-charge of the Advisory Panel, informed the meeting that he would make all efforts to ensure that the Advisory Panel finalizes the Consultation Papers by 30.7.2001.

Item 4: **Consideration of the Background Papers on (i) Concurrent Powers of Legislation under List III of the Seventh Schedule; and (ii) Article 262 and Inter-State Disputes Relating to Water**

6. The meeting discussed these Papers in detail and approved the same in principle subject to editorial modifications and formatting. It was agreed that these would not be required to be released for discussion and public debate, being background papers. When the draft final report on the subject of Union-State Relations comes up for discussion, these background papers, to the extent the Commission may approve, could be integrated into the basic theme of the report and would again be discussed.

Item 5: Review of the progress in drafting of the Background Papers.

7. The meeting was informed of the present status of drafting of all the background papers. The meeting agreed that in view of the limited time available with the Commission for completing its task, all the background papers should be ready latest by 10th August, 2001.

Item 6 & 7: Review of the progress in drafting of Volumes I and II of the Final Report

8. The meeting was informed of the present status of drafting of Volumes I and II of the Final Report. A time schedule for preparation of the draft final report containing the contents, estimated length of the topic, Consultation/Background Papers to be reflected in writing the topic, the name of persons to prepare the report on each topic and the date of completion of drafting of the report on the topic was circulated at the meeting. The meeting generally agreed with the broad design and proposed contents of the two volumes. Regarding the estimated length of the topics, it was agreed that the limits mentioned could be varied depending on the requirements. The meeting decided that in the column indicating the name of the persons responsible for the preparation of the report, only the names of Members-in-charge of the subject be mentioned and the names of other persons who would assist in drafting them, should find a place in the column under the heading 'Remarks'. It was agreed that each Member-in-charge should take the responsibility for the draft final report relating to the topic under his area.

The meeting decided that there was need to have uniformity of approach in the structure of the various chapters of the final report since the drafts are to be prepared by different Members. After a brief discussion, it was agreed that a chapter on each topic should first, mention the relevant constitutional provisions in brief; secondly, discuss as to how the same have worked during last fifty-one years - whether any problems have arisen in their working; thirdly, evaluate what the various options available to tackle the said problems are and finally, make the recommendations.

Item 8: Consideration of the letter dated 6.6.2001 received from Justice Shri J. Eswara Prasad, Chairman, Appellate Tribunal for Forfeited Property.

9. The issues arising out of the letter regarding inclusion of "National Appellate Tribunals and Commissions" after "Supreme Court and in every High Court" in article 348(1)(a) were discussed. The meeting decided that the issue basically related to the Government's policy on official language. No specific decision was taken.

Item 9: Consideration of the letter dated 26.6.2001 received from Justice Shri M.C. Jain, Lokayukta, Rajasthan, regarding the Model Lokayukta Bill.

10. The meeting decided that the issues raised in the letter were relatable to the topic of 'Probity in governance' as well as the area of 'Union-State Relations' and as such these should to be taken up for discussion while considering draft final reports on these subjects.

Item 10: Consideration of the letter received from The India Country Office of UNICEF regarding "Enlargement of Fundamental Rights".

11. The letter was taken note of by the meeting and it was decided that the issues raised in the letter could be considered by the Commission while considering the draft final report on the topic relating to "Enlargement of Fundamental Rights."

Items 11 & 12: Consideration of the letters dated 18th June, 2001 from Shri Syed Shahabuddin and dated 20th June, 2001 from Shri Dawa Lama, M.P.

12. The issues brought out in these two letters relating to the rights of religious minorities were considered by the meeting. The Chairperson explained the background of the matter in brief. Shri Soli J. Sorabjee, the Member-in-charge of the subject 'Enlargement of Fundamental Rights' informed the meeting the reasons why the Advisory Panel had not discussed the subject in the Consultation Paper on the topic that had been approved by the Commission and released for public debate and discussion on 11th May, 2001. However, as Shri Syed Shahabuddin was to be invited to meet the Commission, the matter could be discussed further.

Item 13: Report of the Secretary about the responses to the Consultation Papers and Questionnaires.

13. The report submitted by the Secretary on the item was taken on record. A gist of the responses to the Consultation Papers and Questionnaires received so far from the Central/State Governments/UT Administrations and Political Parties etc. was circulated to the Members during the meeting.

Item 14: Interaction with prominent persons.

14. A list of the prominent persons proposed to be invited for interaction with the Commission was circulated in the Meeting. The meeting felt that there was need to prescribe some broad norms informing the preparation of the list of invitees. It was, however, agreed that the list might include the names of former Presidents, former Prime Ministers, former Chief Justices of Supreme Court, former Speakers, former editors of the national dailies, Chairpersons of the statutory Commissions. It was also agreed that former Governors, whose number may be in the neighborhood of three, based on their seniority, be invited. Similarly three to five senior serving Governors could also be invited.

Item 15: Any other item, with the permission of the Chair.

15. No item was taken up under this agenda item.

Item 16: Letter received from Shri P.A. Sangma in the matter of entitlement of persons of foreign origin to hold public offices.

16. The various issues raised in the letter of Shri Sangma were discussed by the meeting.

Item 17: Letter received from the Counselor, High Commission of India, Nairobi, suggesting visit of the Chairperson and other Members of the Commission to Nairobi.

17. The meeting discussed the letter under consideration. The meeting authorized the Hon'ble Chairperson to take appropriate decision in the matter.

Item 18: Review of the progress in the disposal of representations from organizations and bodies in respect of various issues.

18. The meeting was infomed that in pursuance of the decision of the Commission taken in its fifth meeting held on 29.12.2000, the Hon'ble Chairperson had, vide his proceedings dated 3.1.2001, allocated certain representations to the Members/Group of Members for examination and recommending to the Commission the course of action to be taken thereon. The Hon'ble Chairperson requested the concerned Members to take action on priority basis so that action could be completed on the representations. If the Members so desired, they could hear the representationists before taking a view thereon.

Item 19: Consideration of the cover design for the final Report;

19. The meeting decided to request Shri C.R. Irani to have a few samples of cover design for the final report prepared and place the same for consideration of the Commission. Shri Irani agreed to do so and requested the Secretary to send a few samples that were submitted before the Commission so that he could have an idea of the content part of it.

Item 20: **Constitution of an "Editorial Committee" for processing of final Report on day-to-day basis.**

20. The Meeting agreed to request Dr. Subhash C. Kashyap to Chair the Editorial Committee proposed to be constituted. It was left to the Hon'ble Chairperson to decide about the other Members/Experts to be included in the Committee in consultation with Dr. Kashyap.

Item 21: **Consideration of the proposal to fix dates for two meetings each month for at least four days each in the months of August, September and October 2001.**

21. The Hon'ble Chairperson explained the need to have regular meetings in the next three months in order to complete the task in hand. The Meeting left it to the Hon'ble Chairperson to decide the dates and duration of the meetings.

The meeting thereafter ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary

To

All Members of the Commission

ANNEXURE

LIST OF PARTICIPANTS OF THE NINTH MEETING

1.	Hon'ble Justice Shri M.N. Venkatachaliah	(In Chair)
2.	Justice Shri B.P. Jeevan Reddy	
3.	Justice Shri R.S. Sarkaria	(not present on 21st and 22nd July)
4.	Hon'ble Justice Dr. Kottapalli Punnayya	
5.	Shri P.A. Sangma	
6.	Shri Soli J. Sorabjee	(not present on 22nd July)
7.	Shri K. Parasaran	
8.	Dr. Subhash C. Kashyap	
9.	Shri C.R. Irani	(not present on 20th July)
10.	Dr. Abid Hussain	
11.	Smt. Sumitra G. Kulkarni	
12.	Dr. Raghbir Singh, Secretary	

(10)

MINUTES OF THE TENTH MEETING OF THE COMMISSION HELD FROM THE 23rd TO 25th AUGUST 2001

The Tenth meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, at 10.00 a.m. from 23rd to 25th August 2001. Hon'ble Justice Shri M.N. Venkatachaliah chaired the meeting. The list of participants is at Annexure.

2. The Hon'ble Chairperson extended a warm welcome to the Members and requested the Secretary to take up the Agenda.

Item: 1. **Confirmation of the minutes of the Tenth meeting of the Commission held from 20th to 22nd July, 2001**

3. The meeting decided that the minutes under Item 16 might be substituted with the following:
"There was a brief discussion on the issue raised in the letter of Shri Sangma. Further discussion on the issue was deferred."

Subject to the above, the Minutes of the ninth Meeting of the Commission held from 20th to 22nd July 2001 were taken as read and confirmed.

Item 2: **Review of the progress in the preparation of the following Papers on Judiciary:**

(i) **Consultation Paper on 'Procedure for appointment of Judges of Supreme Court and High Courts';**
(ii) **Background Paper on 'Financial Autonomy of the Judicial Branch of the State'.**

4. The meeting was informed that the Consultation Paper on item No. (i) above has been drafted and the same has been circulated amongst the Members of the Advisory Panel on 25th July, 2001. The meeting was also informed about the progress in the drafting of the Paper on Item (ii) above. The meeting desired that the two Papers should be finalized before the next meeting and placed before the Commission for consideration at the next meeting.

5. The Members were generally of the view that the two Papers would not cover a comprehensive review of the working of the Judiciary in the country, such as the quality of the trial systems, judicial delays, cost of litigation, docket-explosion, the quality of judgments, lack of uniform procedures in the High Courts, etc. It was decided that there was need to prepare a Paper covering all these aspects.

6. The meeting accordingly decided that Prof. N.R. Madhava Menon or, if for any reason his services are not available, some one else with comprehensive knowledge of the working of the judicial branch may be requested to prepare a Paper covering all the above mentioned aspects also taking into account all the existing Reports/studies available on the subject in the country. The meeting left it to Shri K. Parasaran and Dr. Subhash C. Kashyap to discuss with Prof. Madhava Menon and persuade him to undertake the work.

7. The meeting also indicated that the above Paper should encompass 'Systemic and Procedural Reforms' of Judiciary and Shri K. Parasaran and Dr. Subhash C. Kashyap were requested to supervise the work and thereafter prepare a draft final report on the topic.

Item 3: Consideration of the following Consultation Papers on 'Decentralisation and Devolution; Empowerment and Strengthening of Panchayati Raj Institutions':

(iii) **Panchayats**
(iv) **Municipalities**
(v) **Empowerment and Strengthening of Local Self-Government in Cantonments**

8. The meeting discussed these three Consultation Papers in detail and approved the same in principle. However, the requisite editorial modifications and formatting were authorized to be carried out before the Chairperson finally approved these for being released for public debate and eliciting public response.

Item 4: Consideration of the Background Papers on:

(vi) **Literacy**
(vii) **Employment and Social Security**

9. The meeting discussed these Papers in detail and approved the same in principle. However, the requisite editorial modifications and formatting of the same were allowed to be carried out before

the Chairperson finally approved these for being released as Consultation Papers for public debate and eliciting public response.

Item 5. Review of the progress in the preparation of other Background Papers

10. The progress in drafting of all the remaining background papers was intimated to the meeting. The meeting desired that the following background papers might be finalized and placed before the Commission in its next meeting for approval:

(i) Parliamentary Reforms
(ii) Standards in Public Life and Reforms in Administration
(iii) Constitutional Response to Good Governance and Macro Economic Management
(iv) Legal Control of Monetary and Fiscal Policy

11. The meeting was informed that the draft of the Paper on 'Barriers to Inter-State Trade and Commerce' had been received from Prof. M.P. Singh only a day earlier. The meeting desired that this Paper might be referred to the Advisory Panel concerned for consideration at the earliest.

12. The meeting was informed that the Paper on 'Financial Relations amongst the Union and States was being prepared by Shri P.N. Mittal, a retired Member of the Central Board of Direct Taxes and the draft was likely to be received shortly.

Item 6: **Review of the progress of public interactive sessions/seminars being organized by the National Law Schools/Universities**

13. The meeting was informed that the seminars had already been conducted/proposed to be conducted as per the following programme:

(i) West Bengal National University of Juridical Sciences, Kolkatta on 7-8 July, 2001
(ii) Mangalore University, Mangalore on 30-31 July, 2001
(iii) NALSAR University, Hyderabad 25-26 August, 2001
(iv) Aligarh Muslim University, Aligarh 6-7 September, 2001

The other Universities had again been requested to expedite the seminars. The meeting was also informed that in addition to the National Law Schools/ Universities identified earlier, Assam University, Silchar had also agreed to organize the seminar and it was proposed to pay the Commission's contribution (Rs. 40,000) to them for the proposed seminar. The meeting endorsed the proposal. The meeting also desired that the Secretariat should follow up with the North East Hill University for organization of the seminar and there would be no objection if there were more than one seminar in the NE region of the country.

Item 7: **Consideration of the Cover Design for the Final Report**

14. The meeting discussed the Cover Design for the Final Report as prepared and sent by Shri C.R. Irani and desired to have some more designs, particularly in relation to the colour combination as well as the content and size of the font.

Item 8: Review of the progress in drafting of Volume I of the Final Report

15. A draft compilation of volume I of the Final Report was circulated at the meeting with the request that suggestions, if any, may be made after the Members went through the draft, so that the same could be improved.

Item 9: Review of the Progress in drafting of Volume II of the Final Report

16. The meeting discussed the format and broad contents of Volume II of the Final Report. The Hon'ble Chairperson suggested that a small chapter on 'Secularism' might be added at an appropriate place in the Report. The meeting agreed to the suggestion.

Item 10: **Report of the Secretary about the responses to the Consultation Papers and Questionnaires, received so far from the Central/State Governments/Political Parties, etc.**

17. The report of the Secretary on the subject was taken on record. A summary of the suggestions and responses to the Consultation Papers and Questionnaires received up to 17th August, 2001, duly ledgerised, was circulated amongst the Members during the meeting.

Item 11: Review of the progress made in interaction with prominent persons

18. The meeting reviewed the progress made. The meeting deliberated upon the desirability of using a tape recorder for recording the interaction with the prominent persons for facilitating preparation of the record of discussions. There was no consensus on the issue. The meeting decided that the draft of summary of discussions prepared by the Secretariat should first be sent to the dignitary concerned for his approval. After such approval of the draft, the same should be circulated amongst the Members of the Commission and can be appropriately used for the purposes of the Report.

Item 12: Any other item, with the permission of the Chair.

19. With the permission of the Chair, a copy of the letter dated 6th August, 2001 received from Professor Iqbal A. Ansari, Secretary General of the Minorities Council, New Delhi forwarding there with his note of the discussion of the interaction with the Commission in the meeting held on 22nd July, 2001 was circulated. The meeting was of the view the note of discussion sent by Prof Ansari contained his version of the discussions. The meeting, however, decided that a reply might be sent to Prof. Ansari acknowledging his letter and informing him that the Secretariat of the Commission had prepared their own record of the discussions for being placed before the Commission.

20. It was generally agreed that the next meetings of the Commission might be held from 6th to 12th September and from 17th to 30th September, 2001. However, the Hon'ble Chairperson was authorized to fix the actual dates for the meetings after ascertaining the convenience of the members. The Chairperson stressed the importance of the presence and participation of all the Members at the future meetings, which were crucial to the quality of the Final Report.

The meeting thereafter ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary

To
All Members of the Commission

LIST OF PARTICIPANTS OF THE TENTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri B.P. Jeevan Reddy (not present on 25th August)
3. Justice Shri R.S. Sarkaria (not present on 25th August)
4. Justice Dr. Kottapalli Punnayya
5. Shri P.A. Sangma (not present on 24th and 25th August)
6. Shri Soli J. Sorabjee (not present on 23rd and 24th August)
7. Shri K. Parasaran
8. Dr. Subhash C. Kashyap
9. Shri C.R. Irani (not present on 23rd August)
10. Dr. Abid Hussain (not present on 25th August)
11. Smt. Sumitra G. Kulkarni
12. Dr. Raghbir Singh, Secretary

MINUTES OF THE ELEVENTH MEETING OF THE COMMISSION HELD ON 15TH, 17TH AND 18TH SEPTEMBER, 2001 (AS REVISED IN 12TH MEETING)

The Eleventh meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, at 10.30 a.m. on 15th, 17th & 18th September 2001. Hon'ble Justice Shri M.N. Venkatachaliah chaired the meeting. The list of participants is at Annexure.

2. The Hon'ble Chairperson extended a warm welcome to the Members and requested the Secretary to take up the Agenda.

Item 1. Confirmation of the Minutes of the Tenth Meeting of the Commission held from 23rd to 25th August 2001;

3. The Minutes of the Tenth Meeting of the Commission held from 23rd to 25th August 2001 were taken as read and confirmed.

Item 2. Consideration of the following Consultation Papers on Judiciary:

(viii) **Superior Judiciary;**
(ix) **Financial Autonomy of the Indian Judiciary.**

4. The Meeting discussed these two Consultation Papers in detail. Dr. Subhash C. Kashyap desired to know as to whether the concerned Advisory Panel had approved the Consultation Papers. He also desired to know as to whether the Projects and Finance Committee, which had been constituted to consider all the Consultation Papers before their submission to the Commission, had approved the Consultation Papers. The Secretary informed the meeting that the Consultation Papers had the approval of the Advisory Panel but in view of the time constraint and the Papers being in-house preparations, these had not been placed before the Projects and Finance Committee. The Hon'ble Chairperson decided that the Papers be placed before the Projects and Finance Committee in the first instance and only after its approval the Consultation Papers be placed before the Commission.

5. The Consultation Papers were, accordingly, placed before the P&F Committee immediately. The Papers as approved by the P&F Committee on 18.9.2001 were again placed before the meeting of the Commission.

6. Dr. Subhash C. Kashyap stated that according to the earlier decision of the Commission three complete and integrated Consultation Papers were required to be prepared on the working of - (i) The Executive, (ii) The Legislature and (iii) The Judiciary but so far no such complete and integrated Consultation Paper had been prepared on any of the three topics. The two Consultation Papers relating to the Judiciary under consideration of the Commission did not, according to the Member, give the complete picture regarding the working of the Judiciary during the last 51 years. If these papers were released for eliciting public responses it might invite criticism that the Commission had omitted to consider the various other important aspects about the working of the judiciary.

7. The Chairperson explained that Prof. N.R. Madhava Menon was requested to prepare a Paper on many other aspects relating to the working of the judiciary. This project was to be under the guidance of Dr. Subhash C. Kashyap and Shri K. Parasaran. In the very nature of things, the issues relating to the appointments, transfer and removal of judges of the Supreme Court and the High Courts, the financial autonomy of the superior courts have their own distinct features and that at least, at the stage of invoking a public debate, they need to be dealt with distinctly.

8. Dr. Subhash C. Kashyap made the following suggestions about the judiciary for being taken up for discussion by the Commission at the appropriate time: -

(i) Intensive training and orientation programmes should be organized for the members of the Judiciary at all levels at the time of their entry.

(ii) There should be refresher courses for upgradation of training and orientation programmes at regular intervals during the service for judicial officers from the lowest to the highest courts.

(iii) Similar training camps need to be organized for the lawyers for improving their professional skills and responsibilities.

(iv) There should be regulation of fee of the lawyers on the basis of their classification as categories, say A, B, C, etc.

(v) Cash payment of professional fees to the lawyers should be made illegal.

(vi) Limits should be prescribed on adjournments in courts.

(vii) The Judgments given by the Courts should not be unduly lengthy. Plurality and prolixity of judgments should be discouraged.

(viii) There should be only one judgment, whether unanimous or by a majority. There need not be any concurring or dissenting judgments.

(ix) Written arguments should be permitted and encouraged.

(x) The judges should not make laws or amend the Constitution by interpreting the same. The function of working of the Constitution and applying its provisions has been entrusted to various functionaries such as Speaker, Police and Magistrates, in addition to the Judges.

(xi) There should not be any summer or winter vacations for courts as these are colonial legacies.

(xii) A minimum of 220 days of working of the courts should be ensured in a calendar year.

(xiii) Fixed time schedules should be prescribed for clearing the arrears of cases.

(xiv) There should be time bound disposal of the cases.

(xv) The age limit for retirement should be increased for the judges of High Court and Supreme Court uniformly, say 70 years or 75 years and simultaneously judges should not be allowed to take up any paid appointments after their retirement.

(xvi) There should be increased use of alternative modes of resolution of disputes.

(xvii) Lawyers should encourage out-of-court settlement of disputes.

(xviii) There should be better use of the latest technological devices in the working of the courts.

(xix) The court procedures have to be made more citizen friendly.

(xx) The accountability to people applies as much to the judiciary as to the legislators.

(xxi) Neither the Parliament nor the Supreme Court is supreme under our Constitution as the duties and powers of each organ have been defined and delimited under the Constitution. In case of any doubt about the supremacy, it has to be vested in Parliament, which represents the will of the people.

9. Smt. Sumitra G. Kulkarni also made a suggestion for consideration that cases involving women, children and persons of the weaker sections should be adjudicated by special courts and should be decided within a period of six months.

10. It was generally agreed that all the issues pertaining to the working of the judiciary would be discussed while considering the draft final report. The meeting agreed that in view of the importance of the issues raised in the two Papers and the need for eliciting public responses, it would be appropriate to release them for public debate. Thereafter, the meeting approved the two Papers in principle. However, the requisite editorial modifications and formatting were authorized to be carried out before the Chairperson finally approved these for being released for public debate and eliciting public response.

Item 3. <u>Review of the progress in the preparation of other Background Papers.</u>

11. The progress in drafting of the Background Papers was intimated to the meeting. The meeting decided that there should not be any further delay in finalisation of the remaining Papers.

Item 4. Review of the progress of public interactive sessions/seminars being organized by the National Law Schools/Universities.

12. The meeting was informed that the seminars/public interactive sessions have already been conducted at six places and the programme at the following three places had also been finalized: -

(i) Centre for Political Studies, Jawaharlal Nehru University, New Delhi (20.9.2001)
(ii) Central Law College, Salem (6-7 October 2001)
(iii) Guru Nanak Dev University, Amritsar (13-14 October 2001)

13. It was decided that all the Central Universities/Law Schools may be asked to send the reports on the seminars to the Commission at the earliest so as to enable the Commission to take them into consideration at the time of finalisation of its recommendations. The meeting considered the proposal received from the Dean, Faculty of Law, Dr. B.R. Ambedkar University, Agra for organizing a seminar at Aligarh. Since the Aligarh Muslim University had already conducted a seminar at Aligarh, the meeting decided that the Commission might not sponsor any further seminar at Aligarh.

Item 5 & 6 Consideration of draft Volume I of the Final Report, circulated to Members during the Tenth Meeting of the Commission held from 23.8.2001 to 25.8.2001 and

Review of the Progress in drafting of Volume II of the Final Report.

14. Items 5 & 6 were taken up for consideration together. A revised draft Volume I of the Final Report was circulated at the meeting. The meeting decided to nominate Shri K. Parasaran and Dr. Abid Hussain as Members of the Editorial Committee to be chaired by Dr. Subhash C. Kashyap. The drafting Committee was requested to meet at the earliest during the week to start its deliberations. Meeting also decided that a request may be sent to all the Members in-charge to send the drafts of the respective portions of Volume II of the final Report by 2nd October 2001.

Item 7. Report of the Secretary about the responses to the Consultation Papers and Questionnaires, received so far from the Central/State Governments/Political Parties, etc.

15. The report of the Secretary on the subject was taken on record. A summary of the suggestions and responses to the Consultation Papers and Questionnaires received upto 14.9.2001, duly ledgerised, was circulated amongst the Members at the meeting.

Item 8. Review of the progress made in interaction with prominent persons.

16. The meeting was informed of the progress made in interaction with prominent persons. It was also intimated that the summary of discussions sent by the Secretariat to Shri P.V. Narasimha Rao and Shri I.K. Gujral, former Prime Ministers, had been received, duly approved by them and were circulated amongst the Members at the meeting.

Item 9. Consideration of the payment of professional fee to Shri P.M. Bakshi for drafting of Consultation Papers/Background Papers and for rendering assistance in preparation of certain parts of the draft Final Report.

Item 10. Consideration of the payment of professional fee to Shri S.S. Sohoni and Prof. Aswini K. Ray for preparation of Background Papers on "Parliamentary Reforms".

Item 11. Consideration of payment of professional fee to Shri S.S. Sohoni for preparation of a Paper on 'Secularism'.

17. The Meeting took up items 9, 10 and 11 together for consideration. After detailed discussions, the meeting decided that these matters be placed before the Projects and Finance Committee again for consideration and decision.

209 LJ&CA/2002—20A

12. Consideration of the letter dated 14.8.2001 received from Ministry of Agriculture, Department of Agriculture & Cooperation regarding inclusion of "Management of disasters and emergencies, natural or man-made" in List III of the Seventh Schedule to the Constitution of India.

18. The meeting took notice of the proposal received from the Ministry of Agriculture and decided that it might be considered at the time of consideration of the draft final Report on the subject. Shri Sangma suggested that Shri Sharad Pawar, Member of Parliament who is heading a body constituted by the Central Government on Disaster Management could be requested to give his valuable views in the matter. The suggestion was approved.

Item 13. Any other item, with the permission of the Chair.

19. The Commission considered the communication dated 11.9.2001 received from the Department of Legal Affairs regarding proposal of the Ford Foundation for a grant by it of US$ 1,50,000 to the Commonwealth Human Rights Initiative, New Delhi, (CHRI) was brought to the notice of the meeting for consideration. The Commission felt that the matter under consideration was a proposal of a foreign Non-Governmental foundation to afford financial assistance to another Non-Governmental organization, viz, CHRI in the latter's endeavours to review the working of the Constitution. The Commission was of the view that it would be inappropriate for the Commission to offer any comments on the proposal. Indeed the Government of India had set up the present Commission to do that work. The meeting decided that a reply might be sent to the Department of Legal Affairs accordingly.

20. The meeting was informed of the letter dated 10.9.2001 from M/s J.M. Jaina & Brothers, New Delhi, offering their services for printing, publishing and marketing of the Consultation Papers and Report of the Commission. The meeting considered the offer and decided that no action need be taken as the printing and publishing of the Report was to be decided by the Government and the Commission is expected to send the Report, generated through Computers, to the Government at the appropriate time.

21. Smt. Sumitra G. Kulkarni desired that copies of all the important representations received from the organizations in the North-East should be sent to her.

The meeting ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary
Tele: 302 2079, 302 2080

To

All Members of the Commission

LIST OF PARTICIPANTS OF THE ELEVENTH MEETING

1.	Hon'ble Justice Shri M.N. Venkatachaliah	(In Chair)
2.	Justice Shri B.P. Jeevan Reddy	(not present on 15th September)
3.	Justice Shri R.S. Sarkaria	(not present on any day)
4.	Justice Dr. Kottapalli Punnayya	
5.	Shri P.A. Sangma	(not present on 15th September)
6.	Shri Soli J. Sorabjee	(not present on 15th & 18th September)
7.	Shri K. Parasaran	
8.	Dr. Subhash C. Kashyap	(not present on 15th September)
9.	Shri C.R. Irani	(not present on any day)
10.	Abid Hussain	
11.	Smt. Sumitra G. Kulkarni	
12.	Dr. Raghbir Singh, Secretary	

1208 LJ&CA/2002—20

MINUTES OF THE TWELFTH MEETING OF THE COMMISSION HELD ON 1ST OCTOBER, 2001

The Twelfth meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, New Delhi at 10.30 a.m. on 1st October, 2001. Hon'ble Justice Shri M.N. Venkatachaliah chaired the meeting. The list of participants is at Annexure.

2. The Hon'ble Chairperson extended a warm welcome to the Members and requested the Secretary to take up the Agenda.

Item 1. Confirmation of the Minutes of the Eleventh Meeting of the Commission held on 15th, 17th and 18th September, 2001;

3. Dr. Subhash C. Kashyap suggested the following changes in the Minutes:

(i) In paragraph 7 (page 2), the spelling of his name may be corrected.

(ii) In paragraph 8 (i) (page 3), after the word 'Judiciary', the words 'at all levels' may be added and the words 'into judicial service' may be deleted.

(iii) In paragraph 8 (ii) (page 3), after the word 'refresher', the word 'and' may be deleted and words 'courses for' may be added. In the same paragraph, after the words 'judicial officers' the words 'from the lowest to the highest courts' may be added.

(iv) In paragraph 8 (iv) (page 3), the word 'classifications' may be replaced by the word 'classification'.

(v) In paragraph 8 (x) (page 3), the sentence should end after the word 'same'. In the same paragraph the word 'other' appearing after the word 'various' may be deleted.

(vi) In paragraph 8 (xxi) (page 4), the word 'limited' appearing in the third line may be replaced by the word 'delimited'.

(vii) In paragraph 18 (page 7), at the end of the paragraph, the words 'The suggestion was approved' may be added.

4. Smt. Sumitra G. Kulkarni pointed out that in the last meeting she had desired that copies of all the important representations received from the organizations in the North-East should be sent to her. This had not been reflected in the minutes. The Hon'ble Chairperson desired that immediate action be taken to send the copies of representations to Smt. Kulkarni along with a brief purport of the representations.

5. The meeting agreed to the modifications of the minutes as suggested by Dr. Kashyap and Smt Kulkarni in the preceding paragraphs.

Item [illegible] Consideration of the issue relating to the entitlement of the persons of foreign origin earlier to hold high offices in the country.

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[illegible]e was discussed in the meeting but the discussion remained inconclusive.

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[illegible] regarding the preparation of the Consultation Papers and Background Papers [illegible]he Secretary to the Members. It was intimated that a Background Paper on the [illegible]egarding 'Working of Judiciary' was being prepared by Professor N.R. Madhava [illegible]r on Parliamentary Reforms was entrusted to Shri S.S. Sohoni, who had been [illegible] into consideration the material available on the subject in the Commission. The [illegible]hat Shri Sohoni had been requested to prepare a comprehensive Background Paper [illegible]al for preparation of draft final report on the topic.

Dr. Subhash C. Kashyap desired that some time limit should be fixed by which all the Papers should be available to the Commission so that the Commission could adhere to its time schedule.

9. Dr. Abid Hussain informed that the four Papers relating to the areas under his Advisory Panel were in advanced stage of finalisation and he also had the benefit of discussion of the drafts with the Hon'ble Chairperson, who had made some very valuable suggestions. He stated that he would be able to submit the draft Papers to the Commission by 20th October, 2001.

10. The meeting also discussed the preparation of a Paper on North-East. Shri Sangma explained that he had been working on the Paper and hoped to submit the same to the Commission by 8th October, 2001.

Item 4 -- Consideration of revised draft Volume I of the Final Report, circulated to Members during the Eleventh Meeting of the Commission.

11. The meeting was informed that the Editorial Committee had met on 20th September, 2001 and finalized the procedure and methodology to be followed for editing the Report of the Commission. As per the procedure finalized by the said Committee, the draft Chapters as finalized by the Members-In-Charge, would first be placed before the Commission for approval and only thereafter, these would be sent to the Editorial Committee for editing etc.

12. The meeting, however, discussed whether Volume I of the Final Report and the Introductory Chapter in Volume II (both of which are not expected to contain any definitive recommendations) should be taken up by the Editorial Committee before the Commission could consider them. It was agreed that Volume I (except the summary of recommendations, which would be prepared after finalisation of Volume II) and the introductory part of Volume II should be placed before the Editorial Committee, as they did not contain any views/ recommendations of the Commission. After the Editorial Committee edits these parts of the Volumes, they could be placed before the Commission for final approval/adoption.

13. The rest of the contents of Volume I viz. consolidated list of recommendations and the contents of Volume II (except the introductory part) should first come-up before the Commission for full discussion and thereafter be passed on to the Editorial Committee.

14. It was decided accordingly.

Item 5 Review of the Progress in drafting of Volume II of the Final Report.

15. The meeting agreed as mentioned earlier that the procedure outlined in the preceding paragraph may also be followed in respect of such portions of Volume II of the Final Report, which do not contain any views/recommendations of the Commission, such as introduction, areas of concern etc.

16. The meeting also discussed the question of finalisation of various chapters of Volume II of the Final Report. It was agreed that there was an urgent need for all the Members concerned to submit the draft chapters concerning them to the Commission at the e[earliest]. The Secretariat of the Commission has been asked to follow-up and coordinate w[ith] concerned Members in this regard.

Item 6 Any other items, with the permission of the Chair.

17. With the approval of the Hon'ble Chairperson, the Main Report (Volume – I) of the Adv[isory] Panel on Decentralisation and Devolution, (prepared by Shri L.C. Jain, Chairperson of the Adv[isory] Panel) was circulated to the Members of the Commission for consideration. The meeting appreci[ated] the work done by the Advisory Panel. It was agreed that the Member-in-Charge (Shri P.A. Sang[ma]

and the Commission would consider all the material and suggestions made in the said Report while finalizing the recommendations/Report on the topic.

The meeting ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary
Tele: 302 2079, 302 2080

To

All Members of the Commission

LIST OF PARTICIPANTS OF THE TWELFTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri B.P. Jeevan Reddy.
3. Justice Shri R.S. Sarkaria.
4. Justice Dr. Kottapalli Punnayya
5. Shri P.A. Sangma
6. Shri Soli J. Sorabjee
7. Dr. Subhash C. Kashyap
8. Dr. Abid Hussain
9. Smt. Sumitra G. Kulkarni
10. Dr. Raghbir Singh, Secretary

(13)

MINUTES OF THE THIRTEENTH MEETING OF THE COMMISSION HELD FROM 24TH NOVEMBER, 2001 TO 29TH NOVEMBER, 2001

The Thirteenth meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, New Delhi from 24th November, 2001 to 29th November, 2001. Hon'ble Justice Shri M.N. Venkatachaliah chaired the meeting. The list of participants is at Annexure.

2. The Hon'ble Chairperson extended a warm welcome to the Members and requested the Secretary to take up the Agenda.

Item 1 **Confirmation of the Minutes of the Twelfth Meeting of the Commission held on 1st October 2001**

3. The Minutes of the Twelfth Meeting of the Commission held on 1st October 2001 were taken as read and confirmed.

Item 2 **Consideration of the Consultation Paper on "Empowering And Strengthening Of Panchayati Raj Institutions/ Autonomous District Councils/ Traditional Tribal Governing Institutions In The North-East India"**

4. The meeting was informed that after the Advisory Panel had approved the Paper, the Projects and Finance Committee also approved this Paper by circulation. The Hon'ble Chairperson emphasized the importance of this Paper. After discussing the Paper, the meeting approved the same and authorised its release to the public for eliciting response and evoking debate thereon. However,

the requisite editorial modifications and formatting were authorized to be carried out before its release. In view of the nature of the subject, it was agreed that the Consultation Paper should be sent to the targeted group of persons having special knowledge of the North-East so that the Commission is benefitted by the response in this crucial area. In view of the limited time available with the Commission, it was also decided that a draft report on the subject might be prepared by the Member-in-Charge simultaneously without waiting for the responses. The responses received in the meanwhile could be suitably incorporated in the report later before its final adoption by the Commission.

Item 3 Review of the progress in the preparation of the Consultation Papers and Background Papers

5. The Secretary explained the status of preparation of the various Consultation Papers and Background Papers. It was intimated that Professor N.R. Madhava Menon was preparing a Background Paper on 'The Need for Systemic and Procedural Reforms in The Judiciary', Shri K. Parasaran and Dr. Subhash C. Kashyap are incharge of the topic. The Paper was likely to be finalized by him shortly.

6. The Paper on 'Parliamentary Reforms' prepared by Shri S.S. Sohoni, which also contained some suggestions, was circulated to the Members.

Item 6 To consider the recommendations of the Editorial Committee contained in the minutes of its third meeting held on the 20th November 2001.

7. This item was taken up before item 4. The minutes of the third meeting of the Editorial Committee were circulated. In the aforesaid minutes, the Committee mentioned that it would be possible for it to discharge its responsibilities only if the Members could finalise drafts of their full chapters (not piecemeal portions) at their level and the Commission could consider, discuss and approve all the chapters latest by the first week of December, 2001. The Committee had also desired that the time schedule should be placed before the Commission. The aforesaid views of the Committee were discussed and generally agreed to by the Commission. However, it was decided that the draft chapters should be finalized by the Commission by middle of December, 2001 so that the same could be transmitted to the Editorial Committee. The Hon'ble Chairperson was requested to write to the Members concerned to send the Draft Final Report on the Chapter/Topics entrusted to them by 10th December, 2001 so that it could be taken up by the Commission in the next meeting proposed to be held from 12th December, 2001 onwards.

8. The members agreed that the Editorial Committee would be at liberty to make an appropriate formulation in respect of each recommendation and also make additional recommendation(s), which might be necessary in furtherance of main recommendation(s). The Editorial Committee was authorized accordingly.

9. Regarding the suggestion of the Editorial Committee that Members should finalise draft of the full chapters, the meeting noted that some of the chapters of Volume II of the Final Report comprised of many topics and pertained to different Members. It was, therefore, necessary to segregate the topics that could be discussed together. In Chapter 2 relating to 'Effectuation of Fundamental Rights, Directive Principles and Fundamental Duties', topics 1 (Vision of Socio-economic change through the Constitution) and 3 (Directive Principles of State Policy and Pace of Socio-Economic Change) could be discussed together, topics 2 (Fundamental Rights), 4 (Fundamental Duties) and 5 (Literacy) could be discussed together and topic 6 (Employment and Social Security) could be discussed separately. This was approved.

Item 4 Consideration of the topics of Volume II of the Final Report as indicated in Appendix 'B'

10. The meeting decided to take-up for discussion Chapter 4 relating to 'Legislative Institutions, as the draft report and Papers on all the three topics under this Chapter were available for discussion.

11. The meeting discussed the recommendations contained in the paper on 'Parliamentary Reforms' prepared by Shri S.S. Sohoni, which was circulated. After deliberations, it was decided that the recommendations contained in the write-up titled "Working of Parliament and Need for Reforms" prepared by Dr. Kashyap may be taken as the recommendations of the Commission and the same may be transmitted to the Editorial Committee for preparation of the Final Report. The recommendations approved by the Commission in this regard are as under:

PARLIAMENT AND STATE LEGISLATURES AT WORK

For Parliament, it is of the utmost importance constantly to review and refurbish its structural-functional requirements and from time to time to consider renewing and reforming the entire gamut of its operational procedures to guard against putrefaction and decay.

2. The overriding guiding norm and purpose of all parliamentary reforms should be to make both Government and Parliament more relevant to meet the challenges of the times and the changing national needs in the context of the objective of faster economic growth.

3. Some serious thinking is called for in the matter of reforming the budget procedure in Parliament and bringing it closer to the needs and constraints of the new situation.

4. It would, therefore, be wise to reduce to the barest minimum the number of days on which voting by division is considered imminent. Also, the time may be fixed by agreement and announced in advance with appropriate whips issued and attendance ensured otherwise.

5. ***Nodal Standing Committee on Economy:*** It may be advisable to have a nodal Standing Committee on national economy with specific subject-oriented study groups aided by experts and concerned with economic policy formulation and implementation.

6. In its own long-term interest, Parliament as an institution cannot afford to place itself beyond all scrutiny by anyone. There is every need for a parliamentary Ombudsman.

7. Deliberate and concerted efforts are needed also at the professional level to rebuild Parliament's image as the supreme institution of the people.

8. To give a faithful and complete picture of what actually happens in the Houses of Parliament, it is necessary to telecast nationally all important debates live.

9. Improving the quality of Members: It is the primary duty of every Member irrespective of his party affiliations to maintain and project a good image of Parliament by his own conduct both inside and outside the Houses. Members of important parliamentary committees need to lay down a strict code of conduct for themselves, never to ask the senior Government officers appearing before the Committee for personal favours, avoid Committee tours unless really necessary and never accept any gifts, dinners, free transport, five star hospitality and the like while on tours.

10. Institutionalized arrangements are necessary to provide the much needed professional training and orientation to every newly elected Member irrespective of his ideological or party affiliations. The curriculum should include, among other things, adequate knowledge of the political system, the Constitution, the Rules of Procedure and Conduct of Business, the practices and precedents, mechanisms and modalities of the working of the Houses and the Parliamentary Committees, the do's and don'ts for Members, the rules of parliamentary etiquette and the like. The emphasis should be on the practical know-how, the technicalities and the operational realities and the concrete situations and not the rule book.

11. There is need to drastically slash parliamentary spending under various heads. Even if the resultant economy in the context of the overall national budget may not seem very large, the psychological impact is bound to be massive.

12. A strict limit needs to be placed on the number of Ministers and equivalent posts both at the Union level and in the States

13. Instead Of depending almost entirely on published documents – which are almost always outdated and - other official sources, Parliament must build its own independent national information reservoir with a network of feeding and retrieval points. Even if no other parliamentary reform was brought about, the single step of developing an infrastructure of information support system in Parliament would have been profound effect on revitalizing and transforming the institution of Parliament.

14. An essential prerequisite for any such assistance being available in satisfactory measure would be the presence of highly qualified and competent staff in the Library, Research and Reference Services of the Secretariats of Parliament.

15. ***Planning Legislation and improving its Quality***: There is need for a dynamic – not mechanical – approach to legislative engineering and systematic programmic of laws which may be proposed for enactment over a period of time. This can be done by:

(i) streamlining the functions of the Parliamentary and Legal Affairs Committee of the Cabinet;
(ii) making greater use of the Law Commission;
(iii) setting up a new Legislation Committee of Parliament to oversee and coordinate legislative planning; and
(iv) referring all Bills to the newly set-up Departmental Standing Committees for consideration and scrutiny, consulting concerned interest groups and finalization of the second reading stage in the relaxed atmosphere of Committees aided by experts thereby reducing the burden of the House without impinging on any of its rights and improving the quality of drafting and content of legislation.

16. ***Setting up a Constitution Committee***: The proposed involvement of Parliament and a *priori* scrutiny can be achieved through the device of a Constitution Committee of Parliament which may be constituted by resolution or otherwise as a standing joint Committee of the two Houses. The members of the Committee may be elected by the respective Houses.

17. Also, where an enactment is placed beyond the power of judicial review by being included under the Ninth Schedule, it may be desirable for Parliament itself to provide an alternative forum and remedy by way of review, etc. to any aggrieved citizen. The proposed Constitution Committee may perform this function as well

18. ***Department Committees and Improving Accountability***: The setting up of the 17 subject based Standing Committees has been the most historic development in recent years in the area of parliamentary reforms. Seventeen, however, is perhaps too many. Although it may not be easy to reduce the number now, it is strongly felt that 7 to 10 such Committees would be enough and in fact might prove more effective than the 17. Also, it is important from the angle of reducing the overall costs and need for economy.

19. It is reasonably well established that parliamentary scrutiny over public finance is at present inadequate and patchy and there is need for simplifying presentation of the budget and strengthening executive control and parliamentary scrutiny of expenditure.

20. Working away from the glare of publicity, in a truly corporate sense, free from the normal partisan spirit that often characterizes the debates in the House, the new parliamentary committees could play an important, substantial and useful role. These

Committees could provide a potent mechanism for a meaningful multilateral dialogue between the Government and the Members of Parliament enabling a proper appreciation of each other's views, reasonable accommodation of varying viewpoints and harmonization of conflicting interests. In the ultimate analysis, such parliamentary committees alone can ensure that we are making the best use of parliamentary system of Government.

21. Since the functions of every Ministry and Department are covered by the Departmental Standing Committees and also in view of the proposed new Constitution Committee, Legislation Committee and the Committee on National Economy, it does not seem at all necessary to continue the existing Committees on Estimates, Public Accounts, Public Undertakings and Subordinate Legislation. Their functions should also be most appropriately handled by the Departmental Standing Committees. This would rationalize the new Parliamentary Committee structure; streamline the functions of each individual committee, prevent overlapping and duplication of roles and above all lead to greater economy of expenditure under the head of Parliament and various Ministries of the Government.

22. The role of the Committee staff is vital. It should constantly and concurrently monitor the working of the concerned Ministries. The professional staff member should have the necessary competence in his Committee's subject area. He has to scientifically feed the committee with all the relevant information and data. To avoid diffusion of responsibility, there should be just one competent professional staff with one secretarial support in each Committee.

23. ***Parliamentary Control Over Borrowing***: For, public borrowing is a charge on the future generations and must be duly controlled. Beyond certain prescribed limits, borrowing proposals should also be subjected to scrutiny by the proposed parliamentary committee on National Economy or the Standing Committee for the Ministry of Finance.

24. ***Discussing Committee Reports on the Floor of the House***: It would be most desirable to discuss as a regular feature all important reports of Parliamentary Committees particularly in cases of disagreement between the Committee and the Government.

25. ***Codifying Parliamentary Privileges***: The specific parliamentary privileges which may be deemed to be in conformity with contemporary thinking and absolutely necessary for the free and independent functioning of the institution of Parliament should be clearly defined, delimited and simplified. There is a strong case for codifying privileges and ending the necessity of every time referring to the 1950 position in the House of Commons in U.K.

26. Time is now ripe for removing the existing uncertainty and anxiety of the press and the people through early codification. A joint Committee of the two Houses may be set up to lay down the privileges in precise terms and to recommend appropriate, piecemeal or comprehensive legislation.

28. Only [illegible]t on a No-Confidence Motion proper may be deemed to be defeat of the Governme[illegible] for resignation of the Council of Ministers. This might incidentally reduce the in[illegible]incipled defections and instill a new sense of responsibility, relevance an[illegible]member irrespective of ruling party or opposition affiliation.

[illegible]er article 98(2).
[illegible]reorganise the
[illegible]economy and
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[illegible]eforms

[illegible]iamentary Time Table: The floor time ought to be better [illegible]natters of vital national interest and important legislative and [illegible]urgent need for a reorganisation of the parliamentary [illegible]ods and procedures of the House.

[illegible]e Questions, Adjournment Motions, Calling Attention [illegible]initiated by Private Members are at present taken up [illegible]ment business and not in the time already reserved for

Private Members' business on Fridays. A better alternative would be to allocate time on a weekly basis between the Government and the Private Members and to leave the priorities to be decided within each.

The time during the sessions could be divided in such a way that the Committees have also enough time to meet and complete their task. The forenoons could be reserved for the sitting of the Houses and the afternoons for Committee meetings or there could be a three day week for Parliament, with the Houses sitting on, say, Tuesdays, Wednesdays and Thursdays for 7 hours daily from 11 to 6 without lunch break. The Committees could sit on Mondays and Fridays, if necessary, on Saturdays as well. In the 21-hour week, 11 hours of floor-time could be set apart for government business i.e. legislation and other matters initiated by the Government, and the remaining 10 hours of floor-time could be made available to Private Members for Questions, calling Attention Notices, Private Members Bills and Resolutions, No-Day-Yet-Named Motions, Privilege Issues and other non-official business.

(ii) ***Freedom of Expression:*** While unparliamentary or objectionable expressions may be expunged from the proceedings of the two Houses of Parliament by their respective Presiding officers under the existing rules, 'shutting off' or 'blinding' the proceedings of any House under the presiding Officer's direction that 'nothing of what is said without his permission would go on record' may be of questionable desirability inasmuch as in that case the reports of the Proceedings cannot really be regarded any more as a faithful record of all that happened.

(iii) ***The Petitions Committee:*** It needs to be strengthened and put to greater use.

(iv) ***The Question Hour:*** The necessary top priority given to parliamentary Questions causes serious dislocation of normal work in the Ministries and offices of the Government. All this is not satisfactory and involves considerable waste of public money and parliamentary time.

(v) ***Adjournment Motions:*** Since, after independence, the device of No-confidence Motion itself has become available, stiff resistance to admitting any Adjournment Motions at all may be perhaps somewhat misplaced, overdone and unnecessary.

Discussions in the House, on a motion of adjournment, of a matter of urgent importance which may in any case, be upper most in the minds of the members and of the people at large outside at a particular time, can do no harm. It may, if fact ease tensions and help to create a better and healthier atmosphere both inside and outside the House.

(vi) ***Absenteeism of members:*** Absenteeism of Members threatens to become a serious malady. What is required is ensuring better and longer attendance by the Members in the Houses of Parliament. Those Members who are not so present in the Hose may, therefore, under their own self-regulatory procedures, lose their salary and allowances for the day.

(vii) ***Secretariats of Parliament:***

It is most unfortunate that no law has so far been passed und
Desirability of doing so at the earliest may be considered and efforts made t
Secretariats as dynamic instruments with stress on independence, efficiency
promptness. Suitable arrangements may be made on a regular basis for
parliamentary officials special training and orientation in parliamentary politic
legislative management techniques and tools.

29. Parliamentary reforms cannot be effected in a hurry. We must proceed
caution and begin by setting up a Parliamentary Reforms Commission or
parliament Group' outside parliament as was done in U.K. before the procedu

Finally, of course, the Rules committee or a Special Procedure Committee of the House should report on the matter.

30. Parliamentary reforms, political party reforms, electoral reforms, judicial reforms, etc., all have to be taken up together in an integrated approach to political and economic reforms and as part of the overall review of the working of our Constitution. No single reform can provide a miracle cure and no reforms should be effected in a hurry. We must proceed with utmost care and caution and evolve a national consensus on desirable changes.

12. It was also decided that this write-up might be suitably edited for incorporation of the same as a background paper in Volume-III of the Final Report.

System Stability In Polity (Immunity Of Legislators- What Do The Words 'In Respect Of Anything Said Or Any Vote Given By Him' In Article 105(2) Signify? *(Chapter 4, Section 2)*

13. After detailed deliberations, the members agreed to all the recommendations made in the draft on the subject as indicated below:

Immunity of Legislators

The Commission recommends enactment/ insertion of four new clauses, viz., clauses (3A), (3B), (3C) and (3D) in articles 105 and similar clauses with necessary modifications in article 194 of the Constitution in the following terms:

"(3A) Nothing in clauses (1), (2) or (3) shall bar the prosecution of a member of Parliament, in any court of law, for an offence involving receiving or accepting, whether directly or indirectly, and whether for his own benefit or for the benefit of any other person in whom he is interested, any kind of monetary or other valuable consideration for voting in a particular manner or for not voting, as the case may be, in either House of Parliament.

(3B) No court shall take cognizance of the offence mentioned in sub- clause 3(A), except with the previous sanction of the committee constituted under clause (3C).

(3C) For the purposes of clause 3B, the President shall constitute a Committee consisting of five members of Parliament drawn from the House of the People and Council of States (in the ratio of 3:2) nominated by the President in consultation with the Speaker of the House of the People and the Chairman of the Council of States.

(3D) The term of office of the members of the Committee constituted under clause (3C) and the other matters relating to such Committee shall be as the President may, by rule, determine."

Parliamentary Oversight Over Government Functioning And Public Finance: C&AG (Efficacy Of Public Audit System In India: C&AG – Reforming The Institution) *(Chapter 4, Section 3)*

14. The members discussed the various recommendations contained in the draft on the subject. There was general consensus on all the recommendations. However, since the Member In-charge (Dr. Abid Hussain) was not present on 24.11.2001, it was decided to defer the final decision to a day when Dr. Hussain would be present. Accordingly on 28.11.2001, when Dr. Abid Hussain was present, there was a further, detailed discussion and it was agreed to accept the recommendations contained in the draft except the one relating to certain qualifications for the post of C&AG. It was agreed that a citizen of India who had proven capacity and experience in public finance should only be appointed to the post. The experience in 'accounting and auditing systems' mentioned in the draft recommendation was agreed to be deleted from the recommendations. The approved recommendations are as under:

The Commission recommends:

1. Constitution of an Audit Board of India, comprising of the Comptroller and Auditor-General of India as the Chairperson and two other Members, in place of the existing institution of the Comptroller and Auditor General of India by suitably amending the Constitution.
2. The Chairman of the Audit Board of India shall be appointed by the President by warrant under his hand and seal on the recommendation of a Committee comprising of the Prime Minister, Union Finance Minister, Speaker of the Lok Sabha, the Leader of the Opposition and the Chairman of the Public Accounts Committee. The C&AG of India shall be only removed from office in like manner and on the like grounds as a Judge of the Supreme Court is removed. The Members of the Audit Board shall be appointed by the President by warrant under his hand and seal on the recommendation of the Committee referred to above. The Members shall be removed from office only in like manner and on the like grounds as a Judge of the High Court is removed.
3. A citizen of India, who has proven capacity and experience in public finance, should only be appointed to the post of Comptroller and Auditor General of India.
4. Need to decentralise the functioning of Comptroller & Auditor General's set-up and give greater authority to State Accountants General so that they are able to perform their duties more efficiently.
5. Incorporation of a provision in the Constitution to the effect that every State shall have an Accountant General who shall exercise such powers and discharge such duties as may be assigned to him by the Audit Board of India.
6. In view of integrated nature of finances of the Central Government and State Governments and need for maintaining uniformity in auditing and accounting standards, there is a need for C&AG of India to exercise general superintendence, direction and control over the work of State Accountants General. Therefore, a provision may be made that Audit Board of India will have powers to give directions to State Accountants General on policy matters including preparation of Audit Reports.
7. In order to maintain independence of audit, the present position (The Indian Audit and Accounts Department is presently a central outfit and its budgetary allocation comes from Union Government and its employees are Central Government servants) need not be changed even if separate constitutional status is given to State Accountants General. Similarly, the current status of Indian Audit and Accounts Service (IA&AS) need not be disturbed and cadre control may remain with C&AG as hitherto and posting of officers in State AG offices may be made on the basis of a policy which may be evolved by mutual consultation.
8. Conferment of quasi-judicial powers, similar to those available under the Commission of Inquiry Act, 1952 on the Accountants General/Principal Directors of Audit and other senior officers of Indian Audit and Accounts department in the country by making a suitable provision in Comptroller and Auditor-General of India's (Duties, Powers and Condition of Service) Act, 1971 for making the audit effective. They may be vested with following powers:
   (a) powers to summon concerned officers before them to give evidence on oath;
   (b) where, after giving due opportunity, it is established that loss of money or property has been caused due to default of the public official he should be required to make good the loss;
   (c) in case the official does not make good the loss, a report be made to the superior authority of the department where the official is working for recovering the money or initiating disciplinary action under the relevant Conduct Rules;
   (d) where the action of the public official involves criminal liability, the public prosecutor be informed either by Audit officer or the department where he is working for initiating criminal action under the Indian Penal Code or any other relevant law.
9. Need for a constitutional/legal provision that all bodies which receive public funds will fall within the audit mandate of C&AG. While it may not be possible for C&AG to departmentally conduct audit of all such bodies, he should have powers to lay down accounting and auditing standards for them and exercise general superintendence over their audit.

Local (Third Tier of) Government- Panchayats and Municipalities

10. A constitutional amendment to the effect that State Accountants General (whom we have proposed as separate constitutional authority) or in the alternate C&AG will lay down accounting policies and auditing standards for Panchayats and Municipalities and exercise general superintendence over their audit.

Parliamentary Financial Control- Public Accounts Committee (PAC)

11. In order to strengthen parliamentary control over executive it is necessary to devise a system, which envisages that PAC examines all the reports submitted by C&AG and submits its recommendation to legislature within a time limit of, say 12 to 18 months.
12. Public Accounts Committee be given a suitable status with clearly defined mandate and duties and responsibilities and its recommendations be made binding on the Government. The life of the PAC be made five years co-extensive with the life of Parliament/State legislature with one-third of its members retiring every year. The appropriate legislature could make necessary provisions in this regard.
13. Need for an external audit of C&AG's organisation on the same pattern as in the U.K, to fulfill the canons of accountability.

Political Parties And Electoral Process – Need For Reforms (Chapter 3)

15. As regards this chapter, the Commission discussed the summary of suggestions contained in the Consultation Papers on 'Review Of The Working Of The Political Parties Specially In Relation To Elections And Reform Options' and 'Review Of Election, Processes And Reform Options'. The responses to these Consultation Papers received by the Commission were brought to the notice of the Members during the discussion. The decisions on these two topics are indicated in following paragraphs.

Review of the Working of the Political Parties Specially in Relation to Elections & Reform Options

16. The suggestions mentioned in para 8.1 to 8.17 (page Nos. 37-47) of the Consultation Paper on the subject were taken up seriatim.

17. The meeting decided to drop the following suggestions:

Sl. Nos. 8.7(e), sub-para 1,2, 5 and 6 of 8.16.

8.7 (e) Candidates contesting elections should be familiar with the Constitution and should be able to read, write and understand its provisions.

8.16 *Party System and Governance*

1. As the parties provide the necessary political leadership for governance, it is necessary that the incumbent to public offices must be chosen on the basis of their integrity and capacity to administer. If the political parties have a continuous program of grooming the potential members of their parties for different types of assignments corresponding to the ministries and departments of the government, things would become easier and a smooth transition of the government could take place. At the same time, the parties could contribute effectively to the processes of policy formulation, implementation and governance even while remaining in opposition.

2. The practice of political parties extending support to the government from the parliamentary floor from outside is an amoral exercise of power without responsibility. This inhibits the process of governance and has been the immediate cause of premature collapse of all the governments since 1989. This must be disallowed, if the coalition governments have to survive and carry on their task of governance.

5. The think tanks in various political parties' organizations should occasionally come out with alternative policy perspectives in the form of a "Green Paper" for want of a better term on some of the crucial issues facing the nation at a given moment and be widely circulated amongst the public, the media, intellectuals and others to elicit alternative opinions on the subject.

6. In times of emergencies, or national calamities, the parties should not eschew taking specific responsibilities in assisting governments in their activities to tie over the crisis.

18. After discussion the Commission decided to adopt the following suggestions with suitable modifications:

Sl. No. ***8.7(c) [with a modification that to start with, no candidate should be declared elected unless he/she secures more than 40% (instead of 50%) of the votes cast]***

8.7 (c) Under the present system of "first -past -the -post", candidates can get elected on a minority of votes. No candidate should be declared elected unless he or she secures more than 50% of the votes cast. If no candidate gets 50% of votes in the first run, a second run off election be held immediately the next day of the first ballot. These days of electronic voting and counting make it possible to adopt such a system without incurring heavy expenditure or need for fresh security and administrative arrangements.

19. The Commission accepted the following suggestions in toto:

Sl. Nos. 8.1 to 8.6, 8.7(a), (b), (d), (f), 8.8 - 8.15, sub-para 3 and 4 of 8.16, 8.17

8.1 ***Need for a Legislation governing political parties***

There is a need for a comprehensive legislation (may be named Political Parties (Regulation) Act) regulating the functioning of political parties in India. The legislation should provide conditions for the constitution of a political party and for recognition, registration and de-registration. Until now the recognition and registration of political parties is done only for the limited purpose of allocating symbols. The new law, however, should prescribe not only the conditions for the establishment of the political party, but also provisions for regulating the functioning of political parties after establishment. It should be made compulsory for every political party to get registered under the proposed Act. Any party so constituted under the proposed Act should declare its allegiance to the provisions to the Constitution and the sovereignty and integrity of the nation. The legislation should also prescribe that every political party should abide by the spirit of democracy in its internal management and operation and should observe inner party democracy in its decision making process. It should provide that elections to the various levels of party organs should be held at least once in three years. It should also make it mandatory for political parties to provide for a representation of at least 30 percent of its organizational positions at every level for women. The leaders of political parties should also make sure that at least 30 percent of their party tickets are distributed amongst the women at the time of elections. The legislation should make it compulsory for the parties to maintain accounts about the receipts of funds and expenditures in a systematic and regular way. The form of accounts of receipt and expenditure and declaration about the sources of funds may be prescribed by an independent body of Accounts & Audit experts, created under this proposed Act. The accounts should also be audited by the same independent body, created under the legislation who should also prepare a report on the financial status of the political party, which should be open and available to public for study and inspection. The proposed law should make it compulsory for the political parties to make their candidates declare their assets and liabilities at the time of their nomination being filed before the returning officers for elections to any office at any level of government. It should provide for limiting the expenditures of the political parties in relation to holding public rallies and large scale demonstrations and protests which hardly serve any effective purpose in these days of high tech electronic media, which is far more effective and

economical and causes least inconvenience to public than the very frequent huge public rallies and large protests in capital cities. In this way the political parties would also be spared the burden of huge expenditure on all sorts of illegitimate or dubious means adopted to raise that amount of money for that kind of expenditure. [Malaysia has imposed a total ban on large-scale rallies for political demonstration and/or for election purposes.] The money saved could be more fruitfully employed in other more important activities of political parties, such as educating the voters through door to door contacts and /or sensitizing their own party-men in respect of various controversial issues facing the nation.

Only those parties, which are registered under the proposed Act be allowed to contest elections.

8.2 *Criteria for Registration*

(a) The law should define the criteria of registration of political parties. Every political party or a pre-poll alliance of political parties should be compulsorily registered under the proposed Act. The Registration authority can be the Election Commission of India.

(b) The criteria for registration as a national party be revised to at least securing of 10% of the valid votes polled by all the candidates in at least one half of the states.

(c) The parties be designated as State parties if they secure the required percentage of at least 10% of total votes cast in any of the states.

(d) Only parties or a pre-poll alliance of political parties registered as National parties with the Election Commission be allowed to contest for the Lok Sabha. State parties may contest for State Legislatures and the Council of States (Rajya Sabha).

8.3 *Criteria for De-Registration*

The law should define the criteria and conditions for de-registration of political parties, and the decision of the Election Commission in this respect should be final, subject to the judicial appeal to High Court/Supreme Court on points of law. For example, one of the criteria for de-registration could be the non-adherence to the conditions prescribed for registration or obtaining of registration in the first instance by fraudulent means or wrong declarations.

8.4 *Structural requirements*

The constitution of the parties submitted for Registration under the law should provide for:

(a) a declaration to the adherence to the democratic values and norms of Constitution in their inner party organizations
(b) a declaration to shun violence for political gains
(c) a declaration not to resort to casteism and communalism for political mobilisation, but to adhere to the principles of secularism in the achievement of their objectives
(d) provision for party conventions to nominate and select candidates for political offices at the grass root and state level
(e) representation to the women and weaker sections of the society in party offices and candidates for contesting of polls.

8.5 *Educational Training and Developmental Activities*

Political parties should in their constitution provide for establishing some institutional mechanism for planning, thinking and research on crucial socio-economic issues facing the nation and educational cells for socializing their party cadres and preparing them for responsibilities of governance.

8.6 *Leadership conventions*

Indian parties should seriously consider adopting the leadership convention system, as is practiced in countries like Canada, and the USA. This would have the advantage first, of making the leadership election process more open, democratic, and federal. Second, the people will know in advance of the prospective Prime Ministerial candidates. Third, it would introduce a nationally aggregative mechanism in major parties and curb the tendency of regionalisation and fragmentation. If the national convention is found too expensive, a series of staggered state conventions may be held by major parties with their respective slates of candidates (common for all the states in one party). This will go a long way in making parties aggregative and thus more functional in a parliamentary federal system of governance.

8.7 *Stabilising the Parliamentary System*

Following suggestions may be considered

(a) Rules of procedure may provide for the election of the Leader of the House by the Lok Sabha along with the election of the Speaker and in the like manner. The Second Ballot system be adopted, in case no candidate secures a majority in the first round. The Leader may then be appointed as the Prime Minister. The same procedure may be followed for the Chief Minister.

(b) Adoption of a system of constructive vote of no confidence. For a motion of no-confidence to be brought out against a government at least 20% of the total number of members of the House should give notice. Also, the motion should be accompanied by a proposal of alternative Leader to be voted simultaneously.

(d) Candidates should not be allowed to contest election simultaneously for the same office from more than one constituency.

(f) The election code of conduct, which should come into operation as soon as the elections are announced, is only a guideline. It should be given the sanctity of law and its violation should attract penal action. Political parties should also evolve their own codes for fair and violence free polls.

8.8 *Curbing Criminalisation of Politics*

The entry of criminals in politics is a matter of great concern. Although it can be prevented by laws, but more than that it is within the powers of political parties to see that no criminals or persons with the reputation of being in criminal activities are selected as candidates. The proposed law on political parties should provide that no political party would be able to sponsor and provide ticket to a candidate who has been convicted by any court for any criminal offences or if the courts have framed criminal charges. In case of conviction, the bar should apply for six years after the completion of the period of the sentence. If any party violates this provision, the candidate involved should be disqualified and the party deregistered forthwith.

Any person convicted for any heinous crime like rape, murder, etc. should be permanently debarred from contesting for any political office.

Criminal cases against politicians pending before Courts either for trial or in appeal must be disposed off speedily by appointing Special Courts.

8.9 *Checking Proliferation of Independent candidates*

Vide the Representation of People (Amendment) Act, 1996, security deposit for independent candidates was enhanced to twenty times of the earlier limit, number of proposers for independent candidates increased and it had been provided that the names of the independent candidates would be listed in the ballot paper below the names of the candidates set up by the political parties. These measures to some extent succeeded in reducing the number of non-serious independent candidates. But, more needs to be done.

In order to check the proliferation of the number of independent candidates and the malpractices that enter into the election process because of the influx of the independent candidates, the security deposits in respect of independent candidates may be raised further.

The security deposits should be doubled progressively every year for those independent candidates who fail to win and still keep contesting every election.

If any independent candidate has failed to get at least five percent of the total number of votes cast in his constituency, he/she should not be allowed to contest as independent candidate for the same office again at least for 6 years.

Any independent candidate who looses election three times consecutively for the same office as an independent candidate should be permanently debarred to contest election to that office.

An independent candidate should be nominated at least by twenty elected members of Panchayats, Municipalities or other local bodies spread out in majority of electoral districts in his constituency.

8.10 *Problem of Party Funding*

The problem of political funding is a complex and undeniable reality, and there are no panaceas to remedy it. In effect, the premise that there are no absolute truths or ideal solutions in electoral matters has gained even more strength with regard to funding for two main reasons. One because of the close link that exists between this issue and the specific characteristics of the political system as a whole, as well as with the characteristics of the political party system in particular. Another reason is the permanent relationship posed by this subject with the values of political culture, which may mean that any solution can be evaluated in completely different ways in different contexts. For instance, whereas in Scandinavian countries the disclosure of electoral expenses and sources of funding is perceived as a violation of the fundamental principle of the right to voter secrecy, in other countries, such as Germany and Canada, these practises are viewed as exactly the opposite, as a guarantee of transparency in political activity and of the citizens' right to be duly informed.

Two other considerations deserve attention. The first one has to do with emphasising the importance of reviewing the funding system, not only in terms of the aims of the reform effort and its desired effects on the political system and system of political parties, but also with respect to the degree of effectiveness of regulations as well as their undesirable or immoral effects. The second expresses the need to insist that not every reform to the funding system must be analysed separately, but rather as an integral part of political/electoral reforms as a whole. This is so because the consequences of such an analysis affect very important aspects, such as competition among parties, conditions for competition, the system of political parties and, consequently, the very credibility and legitimacy of democracy itself.

Moreover, every reform on this issue must be aimed at achieving greater and improved levels of transparency with respect to party revenues and expenditures. In fact, the issue of transparency and public disclosure is crucial to the fight against political corruption. In principle, this need would seem more fitting with regard to hefty contributions than for small ones, since greater the contribution, the greater the risk of dependence and the greater the danger of corruption. Thus, there is a need for greater transparency and public disclosure in respect of party funding. This demand for transparency must be conceived, rather, as a democratic value in itself, a tool designed to avoid any wrongful influences of money in politics that might lead to corruption.

If laws are intended to be effective with regard to transparency, they should be very general in nature and be enforced with respect to everyone, and not just political parties or candidates, but also to the donors as well. Otherwise, alternate or indirect ways to evade control will be

devised. In fact, while it is essential to strengthen regulation, the mechanisms and capabilities of supervision and controlling entities, this only addresses part of the problem. Quite often, funding and commitments do not reach the parties, but rather go directly to the candidate and his/her inner circle of supporters. This is truer today in the context of the image and credibility crisis that partisan organisations have been undergoing, and the emergence of regional leaders due to the decentralisation process. This usually tends to make transactions between donors and beneficiaries become even more secretive. Hence, the main leaders or party members are often not aware of private contributions (many of them dubious in origin and in quite large sums), but only the candidate and his/her inner circle, which frequently consists of private contributors and/or individuals not involved in the party.

Consequently, any proposals for reforms concerning political funding should revolve, among other things, around the following five main objectives: (i) reducing the influence of money by diminishing its impact (by shortening campaigns, establishing ceilings on expenditure and limiting individual contributions); (ii) improving the use of money by investing it on more productive activities for the sake of democracy, and not just squandering it on propaganda and negative campaigns; (iii) stopping, or at least curtailing, as much as possible, current levels of influence peddling and political corruption; (iv) strengthening public disclosure and transparency mechanisms with respect to both the origin and the use of funds; and (v) promoting fairer requirements for elections, particularly concerning access to the media.

8.11 *Regulating political contributions*

There is a need for one comprehensive legislation regarding the regulation of political contributions to political parties and towards election expenses. The various existing provisions in different Acts need to be consolidated into a single law regulating the flow of funds to political parties both from the internal as well as external sources.

Legislation should provide for compulsory auditing of the accounts of all political parties registered with the Election Commission by an independent authority specified under the new law regulating the functioning of political parties, publishing of audited party accounts, and immediate de-recognition and enforcement of penalties for filing false or incorrect election returns. Accounts should be made available for public inspection.

Legislation should also contain provisions for making both donors and receivers of political funds accountable.

Individuals and corporate agency be permitted to make contributions to the political parties upto a certain ceiling higher than the present 5% of profits and an incentive be provided in terms of tax concessions.

The Government should encourage the corporate bodies and agencies to establish an electoral trust, which should be able to finance political parties on an equitable basis at the time of elections.

8.12 *Controlling Electoral Expenditure*

In view of the increasing cost of the election campaigns, it is desirable that the existing ceiling on election expenses for the various legislative bodies be suitably raised to a reasonable level reflecting the increasing costs. However, this ceiling should include all the expenses by the candidate as well as by his political party or his friends and his well-wishers or any other expenses incurred in any political activity sponsored on behalf of the candidate by an individual or a corporate ontity. Such a provision should be the part of a legislation regulating political funding in India.

8.13 *Monitoring Election Expenditure*

The Election Commission should devise specific format(s) for filing of election returns by the candidates as well as political parties in such a manner that the fudging of accounts be made

difficult. These accounts should be monitored through a system of checking and cross-checking through the income-tax returns filed by the candidates, parties and their well-wishers.

The Election Commission should organize training-cum-orientation workshops for the candidates and party agents to enable them to manage party accounts and election expenses in the format prescribed by the Election Commission, especially on the eve of elections.

A suitable law should be enacted providing penalties against damaging or desecrating public or private property by candidates, political parties or the agents, through painting of slogans or erecting cut-outs and hoarding or putting banners and buntings. The law should also provide for constitutions of special courts to ensure strict compliance of the aforesaid provisions of law, should any dispute arise in respect of the alleged violations of provisions of law by any candidate, political party or his agents and well-wishers.

8.14 *Property of candidates and politicians*

A useful tool in the fight against corruption would be legislation to make it possible to ascertain details about the inherited and self-acquired property of candidates by means of public affidavits reporting on it. Such affidavits should be audited by the Special Authority created by the proposed law on Political Parties. During their term of office, elected officials should also submit audited reports on a yearly basis, as well as a final audited statement at the end of their term of office. This type of measures would serve to keep the public fully informed about the property and lifestyle of politicians before they assume power, during their term of office and at its conclusion, thereby avoiding any unlawful acquisition of wealth.

8.15 *Strengthening of Anti-Defection Measures*

In order to curb the insidious practice of defection, the law should be amended to specifically provide that all persons defecting from the party or the alliance of party, on whose tickets they had been elected, must resign from their parliamentary or assembly seats and must contest fresh elections. In other words, they should lose their membership and the protection under the provision of split etc. should be scrapped. The defectors should also be debarred to hold any public office of a minister or any other remunerative political post for at least the duration of the remaining term of the existing legislature or until, the next fresh elections whichever is shorter.

8.16 *Party System and Governance*

3. The practice of bloating the Council of Ministers must be stopped. A ceiling on the number of Ministers in any state or the Union government be fixed at the maximum of 10% of the total strength of the lower house of the legislature.

4. The prac[redacted]ing a number of political offices equivalent to the position or privile[redacted]ister should also be stopped. Any new administrative organization [redacted]e] created through regular administrative procedures and only if the [redacted] have been made in the regular budget estimates of the government [redacted]ned.

Restoring Moral Standards in Public Life

To the question what can be done for the restoration of moral standards and ethical values in public life, there is no simple answer. In the context of the current feeling of resignation to corruption and unethical and criminal practices in public life, and the disposition to consider them as inevitable and, therefore, acceptable, it may be well to remember Gandhiji's observation that "Life is an aspiration...the ideal must not be lowered because of our weakness and imperfections", and the fact of his life long resistance to evil in many forms - from racialism and imperialism to untouchablility.

Thus, in addition to measures like the proposed legislation to effectively curb defections and operation of black money, break the nexus between electoral politics, economic resources and criminal support, and establishing the institution of Lok Pal, it is necessary that a rigorous Code of Conduct be drawn for both Ministers/Legislators and important functionaries of all political parties, which should incorporate what the Nolan Committee in the U.K. has suggested as the seven principles of public life-- *viz.*, selflessness, integrity, objectivity, accountability, openness,, honesty and leadership.

A Public Ethics Committee consisting of representatives of all Political Parties and some eminent public persons of impeccable integrity and acceptability may be constituted to oversee, monitor and enforce the adherence to this code.

Review Of Election, Processes And Reform Options *(Chapter 3, Section 2)*

20. The suggestions mentioned in the summary of the Consultation Paper on the subject were taken up seriatim.

The Gandhian Model

21. It was decided that in the report, it should be brought out that the Commission had considered the Gandhian Model of decentralization of power. However, in the present situation it was not found feasible to be adopted.

22. The meeting considered the following suggestions mentioned in the summary of the Consultation Paper on the subject issued by the Commission and noticed that the points made therein have already been covered in the earlier topic:

Sl. Nos. ***2,13,14,15,21,24,29-30,34-37, 40-42, 44-49 and 51.***

2. There should be a mechanism for constantly updating these rolls and during each 1st week of April the updated rolls as of 31st December of the previous year should be posted on the web.

13. CEC's suggestion to impose President's rule over all the States for the duration of elections may not be considered logical or feasible.

14. Once charges relating to certain crimes have been framed by a court against a person, he should not be permitted to contest elections unless cleared.

15. A potential candidate against whom the police have framed charges may take the matter to a special electoral court. This court would be obliged to enquire and take a decision in a strictly time bound manner. Basically, this court may decide whether there is indeed a *prima facie* case justifying the framing of charges. If yes, the pe[redacted]uld not be allowed to contest.

21. Create special electoral courts for deciding on electi[redacted]ould be decided in a time bound way within 6 to 12 weeks unlike the [redacted]ears by which time they have lost their meaning.

24. Partial state funding of elections through time provided on [redacted] campaign activities of recognised parties may continue.

29. All political party accounts, much like the accounts of a public company, sh[redacted] published yearly with complete disclosure under pre-determined account heads. The Elec[redacted] Commission should have these accounts audited.

30. Also make it obligatory for campaign expense accounts – both receipts and expenses of all candidates to be made public in their constituencies.

34. Let candidates both at state level and parliamentary level win only on the basis of a majority vote meaning 50%+1 of the votes cast. This will create a majority representation and also push political parties and serious contenders to widen their appeal to their electorate.

35. For this let there be a run-off election if required between the top two candidates who get the highest and the second highest number of votes.

36. When using EVMs, have election spread over two days and keep the second day for possible run-offs. This will save considerable resources.

37. If this is not possible have the shortest possible gap between the main election and the run-off. No further campaigning should be permitted.

Defection and The Tenth Schedule

40. Whether by an individual or a group, defections should not be permitted. If a legislator wishes to leave his party or vote against it he should vacate his seat. Let him/her contest on a fresh platform. The vote cast by a defector should also be invalidated. In the alternative, the 10th Schedule should be repealed.

41. As a corollary to this, the role of whip should be reduced. Whip should be allowed to be used only for those votes in the House, which might threaten the life of the government.

42. Defectors should not eligible for any public office until re-election.

Problems of Instability

44. Independent candidates should be discouraged. Permit only those who have a track record of having won any local election.

45. Let only recognised national parties or pre-poll alliances contest elections to Lok Sabha.

46. It should be possible without any constitutional amendment to provide for the election of the Leader of the House (Lok Sabha /State Assembly) along with the election of the Speaker and in like manner, under the Rules of Procedure. The person so elected may be appointed the Prime Minister/Chief Minister and the Government constituted by him may be removable only on a constructive vote of no-confidence.

Issues of Public Morality

47. Educate India's masses about their fundamental rights and duties, by driving home the message that political position holders are not "rulers" in the sense of a "mai-baap" or a "maharaja" but are elected into positions of authority to administer and serve the society's needs. Create a strong public opinion against political corruption and by making sure that no one gets to enjoy the fruits of their corrupt actions.

Miscellaneous

48. Debar all legislators from being appointed as chairpersons of various state undertakings, also debar them from any non-ministerial post other than chairmanship of legislative committees.

49. There must be a bar on ministries that are larger than 10% of the house. No other position of profit, executive authority or discretion should be available to legislators.

51. Some policy should be devised to encourage public-spirited "professionals" to contest elections and give to the legislature the benefit of their expertise and experience for a term or two.

23. After discussion the Commission decided that the following suggestions made in the summary of the Consultation Paper might be dropped:

50. There must be a limit of two terms for any political position. So you may be a member of the panchayat for two terms, of state assembly only for two terms even if non-contiguous and MP for two terms.

59. Create multi-member or double-member constituencies to eliminate or at least reduce narrow appeals based on religion or caste.

24. After discussion the Commission decided to adopt the following suggestions with suitable modifications:

Sl. Nos. ***1,8,10,17,18,20,22,43,52,56,58,60 and 61.*** *(The modifications approved by the Commission are indicated in italics below the original suggestion contained in the Consultation Paper)*

1. Electoral roll should be updated at the lowest constituency level with a clear link to the higher constituency levels till the parliamentary constituency.

1 *The Electoral Rolls should be easily accessible to the general public, preferably at a public place such as all the Post Offices in the country so that these could be inspected on payment of a nominal fee by any one. Facilities should also be provided to the members of the public at the post offices for submitting their applications for modification of the electoral rolls.*

8. Reference section 58A of the Representation of the People Act 1951, give Election Commission the authority to take decision regarding booth capturing not only on the report of the returning officer but even otherwise if it is satisfied.

8 *Under section 58A of the Representation of People Act, 1951, the Election Commission should be authorized to take a decision on the report of the Prominent Citizens Groups also.*

10. Make booth capturing punishable with more stringent punishment and empower the Election Commission, to investigate booth capturing and other violations of the electoral law, through the Central or State police investigating agency; by the establishment of special electoral courts.

10 *The Special Electoral Courts as envisaged under Article 323B(2)(f) of the Constitution should be constituted at the level of High Courts and their decisions should be appealable to the Supreme Court only (in similar way as the decisions of the National Environmental Tribunal).*

17. Under Section 8(4), sitting members are not disqualified even when convicted until their appeal is decided. This should be deleted.

18. If an elected representative gets convicted on charges related to specific crimes, he should be required to withdraw from the legislature for six months and if within that period he fails to get an acquittal, he should be disqualified.

17&18 *These should be reworded: Section 8 of the R.P. Act, 1951 should be rationalized.*

20. Amend current practice that once the High court hands out the judgement on an election petition holding the candidate guilty of corrupt practices, the case goes to the Secretary of the concerned State Legislature or the Secretary General Lok Sabha or Rajya Sabha, as the case may be. It is then forwarded to the President who in turn forwards it to the EC. Only then does the EC get jurisdiction to tender its opinion to the President based on

which the disqualification order is issued. Instead of this round about procedure a direct reference between the High Court, the Election Commission and the President should be created to cut unnecessary delay.

20 Pre-1975 position needs to be restored.

22. The basic problem is that the present rules have a significant loophole in the shape of explanation 1 to section 77(1) of the Representation of the People Act 1951, under which the amounts spent by persons other than the candidate and his agent themselves, are not counted in his election expenses. This means that there can be never any violation of the expenditure limits. All extra expenditure, even when known and proven, can be shown to have been spent by the party or by any friends and it remains outside of the enforceable limits. This must be rectified and all expenditure made by or on behalf of the candidate must be included in his expenditure limit as provided under the rules.

22 The explanation 1 to section 77(1) of the RP Act, 1951 should be deleted.

43. Have intra-state delimitation exercise undertaken by the Election Commission to eliminate anomalies like the Chandni chowk Lok Sabha constituency being only 1/7th of the voter size of the Outer Delhi Lok Sabha constituency. The same should be done for assembly constituencies.

43. The delimitation Commission should reflect the plural composition of the society.

52. The EC should be unanimously appointed by a body consisting of the Prime Minister, the Leader of the Opposition, the Chief Justice of India and the Presiding Officers of Lok Sabha and Rajya Sabha. This should also be done for the State Election Commissioners.

52 The words 'unanimously' & 'Chief Justice of India' may be deleted from the suggestion.

56. There is every case for their being more women representatives. Political parties should be asked to put up women candidates for at least one-third of the seats they contest both for State and parliament elections or the same number of seats should be reserved for them by rotation.

56 Law should require the Political Parties to put up at least one-third women candidates for elections to Parliament and State Legislatures. Failure to do so should invite penalty of losing recognition for the Political Party.

58. All candidates should be required to clear government dues before their candidature is accepted. This pertains specially to payment of taxes and bills and to holding on the accommodation, telephones, and government facilities used while in power.

58 The fact that the matter regarding Government dues in respect of the candidate are pending before a Court of Law should be no answer to the suggestion.

60. Hold State level and parliamentary level elections at the same time. This would reduce election expenditure.

60 To the extent possible State & Parliamentary level elections should be held at the same time.

61. Every candidate at the time of election and every holder of a political position annually must declare his assets and liabilities along with those of his close relatives.

61 The word 'annually' should be deleted from the suggestion.

25. The Commission accepted the following suggestions in toto:

Sl. Nos. 3-7,9,11,12,16,19,23,25-28,31-33,38-39,53-55 and 57

3. Multipurpose voter ID card or citizenship card should be designed with a bar coded unique voter ID number. Over an acceptable period of time these should become mandatory for all elections.

4. This job should be entrusted to a pre-qualified professional organisation and should include designing the implementation of the scheme in coordination with and under the EC. Panchayati Raj Institutions and local post offices to be involved in helping in its implementation.

5. The designing of Electoral Rolls and ID should be coordinated with a view to the future.

6. The responsibility for the electoral rolls and ID should rest with one integrated machinery under the EC/SECs.

Electronic Voting Machines

7. Introduce Electronic Voting Machines in all constituencies as rapidly as possible. For all sensitive constituencies use them straightaway.

Booth Capturing and Rigging

9. Again, under section 58A of the Act, the Election Commission should not only be empowered to countermand the election and order a fresh election as now provided under the law, but also should be empowered to declare the earlier poll to be void and order only a re-poll in the entire constituency, instead of a re-election there, depending on the nature and seriousness of each case.

11. Consider use of tamper-proof video and other electronic surveillance at sensitive polling stations/constituencies.

Caste and Communal Hatred

12. Any campaign on the basis of caste or religion and any attempt to spread caste and communal hatred during elections should be punished with immediate disqualification and mandatory imprisonment.

Criminalisation

16. Eliminate incongruities in the existing provisions of sub-sections (1), (2) and (3) of Section 8 of the Representation of the People Act, 1951, whereby a rapist convicted and sentenced to ten years imprisonment, may be disqualified only for six years under sub-section (1) and thus remain free to contest elections, even while in prison serving the last four years of his sentence. The law should provide that whoever is convicted of any offence by a Court of law and sentenced to imprisonment for six months or more should be debarred from contesting elections, for a period totalling the sentence imposed plus an additional six years.

19. Political parties, when they are seen to be abetting criminalisation should face derecognition and other action.

Election Expenditure – the high cost of elections and abuse of unaccounted money power

23. Political parties as well as individual candidates should be subject to a proper statutory audit of the amounts they spend. At the end of the election each candidate should

submit an audited statement of expenses, head-wise. The audit should not only be mandatory but it should be enforced by the Election Commission appointing a council of at least two auditors say for 10 constituencies each. Any violation or misreporting should be dealt with strongly.

25. For other proposed state funding, it has to be linked to the political parties being regulated by law and to creating a foolproof mechanism to implement financial limits strictly and to deter expenditure violations.

26. Bring in transparency into all political funding.

27. Permit corporate donations within prescribed limits and keep them transparent.

28. Make all legal and transparent donations tax exempt and treat this tax loss to the state as its contribution to state funding of elections. For example, tax exemptions could be limited to say 25,000 for individuals and 10,00,000 for companies provided that the contributions are made to party funds and not to individuals. In the case of corporate contributions, the Board of Directors may approve up to say 1,00,000 and anything over this amount may be approved by the shareholders. Political funding should be a separate head in the accounts and annual reports of the company. This will ensure transparency.

31. There should be a serious attempt at reducing election expenses and this can be done by perhaps changing the ground rules for electoral campaigns – partly by encouraging the use of electronic and digital technology to campaign at state cost and simultaneously by totally and effectively banning other overt and wasteful *tamashaas* of campaigning

32. Place reasonable restrictions on the following:

Wall writings, Display of cut-outs hoardings and banners, Hoisting of flags (except at party offices, public meetings and other specified places), Use of more than a specified number of vehicles for election campaign and for processions, Announcements or publicity by more than a specified number of moving vehicles, Holding of public meetings beyond the specified hours, Display of posters at places, other than those specified by the district/electoral authorities, strong penalty for violation of expenditure ceiling. During election times rallies only under covered roofs should be allowed. No outdoor public rallies should be permitted.

33. Create an effective mechanism to implement these rules and create an effective deterrence against violations.

Compulsory Voting

While compulsory voting may not be feasible or advisable at present, a scheme of suitable incentives for increasing voter participation may be considered.

Negative Voting

Sound on principle, the suggestion for a provision of negative voting may be found impracticable and unnecessary.

38. Consider providing incentives to voters for casting their vote by providing of some simple facilities in order to push up the electoral turn out. Together with the 50%+1 vote scheme this will have a salutary effect on the campaigning rhetoric of the candidates and political parties because they will have to reach a higher number of voters now.

39. Electoral offences in the run-off elections should have a higher punishment prescribed.

Miscellaneous

53. The EC should not be appointed to any other office after retirement.

54. An independent auditing authority should be appointed for auditing annual statements of accounts of all political parties.

55. Rotation of seats should be done for SC seats and non-scheduled area ST seats.

57. The minimum number of valid votes polled should be increased to 25% from the current 16.67% as a condition for the deposit not being forfeited. Also the amount of deposit should be increased. These steps would further reduce non-serious candidates.

26. It was pointed out that some of the suggestions mentioned by the Commission in the Consultation Papers were already being acted upon by the Government. Members agreed that it would be desirable to mention this fact appropriately in the report.

Additional Agenda for 27th & 28th November, 2001

27. The Hon'ble Chairperson had allocated the representations submitted by various organizations containing their demands to some Members/group of Members in January 2001 for consideration and suggesting the course of action to be taken by the Commission. It was noted that there had not been much progress in this regard. Moreover, some more representations have been received after the aforesaid allocations. It was decided that the representations should be taken note of when the draft chapters on the relatable subject are considered by the Commission in its future meetings. The Secretariat was asked to take note of it.

Additional Agenda for 29th November, 2001

Consideration of the suggestions made by "Dr. Jayaprakash Narayan, Campaign Coordinator, Lok Satta

28. It was noted that Dr. Jayaprakash Narayan had made a suggestion about the availability of the Electoral Rolls in the post offices so that general public could have easy access to it. This suggestion had already been accepted by the Commission while considering the Chapter on 'Political Parties and Electoral Process – Need for Reforms'.

29. The other suggestion made by him relates to a 'direct election' of Chief Minister in States. It was felt that this suggestion in effect means introduction of Presidential form of Government in the States and acceptance of the same may amount to interfering with the basic features of the Constitution. This would be outside the Commission's terms of reference and, therefore, it could not be accepted.

Item 5 (Any other item)

30: Smt. Sumitra G. Kulkarni, Member was in favour of establishment of Special Courts for women, children and SC/ST so that their problems could receive special attention. She also wanted a time limit to be fixed for these Special Courts for disposal of the cases before them.

31: With the permission of the Chair, the meeting was informed that Deans of Faculty of Law of University of Delhi and Dr. B.R. Ambedkar University, Agra have sought permission and funds for organizing a public interactive session cum seminar in Delhi and Aligarh respectively. After some discussion, it was agreed that the University of Delhi being a premier University might be allowed to conduct a Seminar at Delhi at the earliest and preferably by the end of December, 2001 so that its proceedings could be available before the Commission prior to finalisation of its report. An amount of Rs. 40, 000/-, which was paid to other universities for similar seminars, could be paid to it. However,

the Commission did not agree to the conduct of a Seminar by the Dr. B.R. Ambedkar University, Agra at Aligarh as the Aligarh Muslim University had already held one such seminar at this place.

32. A communication received from one Shri O.P.R. Mishra from Mumbai seeking appointment to present his views before all the Members of the Commission during its meeting was placed before the Commission. All the members agreed that it was not necessary to invite Shri Mishra as they have already received his memoranda.

The meeting ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary
Tele: 302 2079, 302 2080

To

All Members of the Commission

ANNEXURE

LIST OF PARTICIPANTS OF THE THIRTEENTH MEETING

1.	Hon'ble Justice Shri M.N. Venkatachaliah	(In Chair)
2.	Justice Shri B.P. Jeevan Reddy	(except 25th & 26th November)
3.	Justice Dr. Kottapalli Punnayya	
4.	Dr. Subhash C. Kashyap	(except 28th & 29th November)
5.	Shri C.R. Irani	(except 25th November)
6.	Dr. Abid Hussain	(except 24th to 27th November)
7.	Smt. Sumitra G. Kulkarni	
8.	Dr. Raghbir Singh, Secretary	

(14)

MINUTES OF THE FOURTEENTH MEETING OF THE COMMISSION HELD ON 14,15,17 AND 18 DECEMBER, 2001

The Fourteenth meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, New Delhi on 14,15,17 and 18 December, 2001. Hon'ble Justice Shri M.N. Venkatachaliah chaired the meeting. The list of participants is at Annexure-A.

2. The Hon'ble Chairperson extended a warm welcome to the Members and requested the Secretary to take up the Agenda.

Item 1 **Confirmation of the Minutes of the Thirteenth Meeting of the Commission held from 24th November, 2001 to 29th November, 2001**

3. The Minutes of the Thirteenth Meeting of the Commission held from 24th November, 2001 to 29th November, 2001 were taken as read and confirmed subject to the following amendments:

4. In para 11 of the minutes regarding 'Parliament and State Legislatures at Work', under the heading 'Reorganising Parliamentary Time Table' at page 8 of the minutes, the minimum number of days for which the legislatures should have sittings in a year should be prescribed as under:

Legislative Assemblies of Small States (number of legislators being less than 70)	: 50 days
Legislative Assemblies of Other States	: 90 days
Rajya Sabha	: 100 days
Lok Sabha	: 120 days

Review of the Working of the Political Parties Specially in Relation to Elections & Reform Options

5. Justice Dr. K. Punnayya had some reservation on the adoption of modified para 8.7(c) mentioned at page 15 of the minutes that no candidate should be declared elected unless he/she secures more than 40 % (40% +1) of the votes cast (instead of 50% +1 mentioned in the recommendation in that para originally). He felt that there would be practical difficulties in holding of run off elections.

6. Para 8.8 at page 18 of the minutes regarding 'Curbing Criminalisation of Politics' should be modified as under:

> Any person charged with any offence punishable with imprisonment for a maximum term of five years or more, should be disqualified for being chosen as or for being a member of the Parliament or Legislature of a State on the expiry of period of one year from the date the charges were framed against him by the court in that offence and shall continue to remain so disqualified till the conclusion of the trial for that offence. In case of conviction, the bar should apply during the period under which the convicted person is undergoing the sentence and a further period of six years after the completion of the period of the sentence. If any party violates this provision, the candidate involved should be liable to be disqualified and the party deregistered forthwith.
>
> Any person convicted for any heinous crime like rape, murder, smuggling, dacoity, etc. should be permanently debarred from contesting for any political office.

7. In Para 8.9 at page 18 of the minutes regarding 'Checking Proliferation of Independent Candidates' the portion regarding 'security deposits' should read as under:

The existing security deposits should be doubled.

8. In para 19 of the minutes para 8.14 at page 21 should be replaced by the following:

> 8.14 *Property of candidates and politicians*
> A useful tool in the fight against corruption would be to lay down by legislation to make it possible to ascertain details about all the assets and Liabilities of candidates by means of public affidavits reporting on it. Such affidavits should be audited by the Special Authority created by the proposed law on Political Parties. During their term of office, elected officials should also submit audited reports on a yearly basis, as well as a final audited statement at the end of their term of office. This type of measures would serve to keep the public fully informed about the property and lifestyle of politicians before they assume power, during their term of office and at its conclusion, thereby avoiding any unlawful acquisition of wealth.

9. In para 19 of the minutes, para 8.17 at page 22 under the heading 'Restoring Moral Standards in Public Life' should be deleted as it was not agreed to in the thirteenth Meeting of the Commission.

Review Of Election Processes And Reform Options *(Chapter 3, Section 2)*

10. <u>In para 24 of the minutes:</u>

(a) In place of suggestion in para 8 (at page 26), the following shall be substituted:

> *8 Under section 58A of the Representation of the People Act, 1951, the Election Commission should be authorized to take a decision regarding booth capturing on the report of the returning officer, observer and also of the Citizens Groups.*

(b) In place of suggestion in para 10 (at page 26), the following shall be substituted:

> *10 The Special Electoral Courts should be constituted at the level of High Courts and their decisions should be appealable to the Supreme Court only (in similar way as the decisions of the National Environmental Tribunal). The Special Electoral Courts*

should decide the cases within a period of six months. For deciding the cases, these Courts should take evidence through Commissioners.

(c) In place of suggestion in para 17 (at page 26), the following shall be substituted:

18. *The disqualification shall apply after expiry of a period of one year from the date the charges were framed in a court of law (as stated in para 8.8 above).*

(d) In place of suggestion in para 61 (at page 27), the following shall be substituted:

61 Every candidate at the time of election must declare his assets and liabilities along with those of his close relatives. Every holder of a political position must declare his assets and liabilities along with those of his close relations annually. Law should define the term 'close relatives'.

11. In para 25 of the minutes:

(a) In place of suggestion in para 28 (at page 29), the following shall be substituted:

28. Make all legal and transparent donations upto a specified limit tax exempt and treat this tax loss to the state as its contribution to state funding of elections. For example, tax exemptions could be limited to say, 25,000 for individuals and 10,00,000 for companies provided that the contributions are made to party funds and not to individuals. In the case of corporate contributions, the Board of Directors may approve up to say 1,00,000 and anything over this amount may be approved by the shareholders. Political funding should be a separate head in the accounts and annual reports of the company. This will ensure transparency. This will be in addition to the existing conditions laid in the Companies Act, 1956 for making donations to political parties.

(b) In place of suggestion in para 38 (at page 30) the following shall be substituted:

38. Consider providing incentives to voters for casting their vote by providing of some simple facilities in order to push up the electoral turn out. Together with the 50%+1(40%+1 to begin with) vote scheme this will have a salutary effect on the campaigning rhetoric of the candidates and political parties because they will have to reach a higher number of voters now. However, there should be no tax rebate for exercise of the right to vote.

(c) In place of suggestion in para 57 (at page 30) the following shall be substituted:

57. *The minimum number of valid votes polled should be increased to 25% from the current 16.67% as a condition for the deposit not being forfeited. Also the amount of deposit should be doubled for independent candidates. These steps would further reduce non-serious candidates.*

12. Dr. Abid Hussain was in favour of the power being vested in the defeated Prime Minister and his cabinet to recommend dissolution of Lok Sabha to the President, which recommendation would be binding on the President. This suggestion had not been mentioned in the minutes of the 13th Meeting and should be deemed to be incorporated therein.

13. **The meeting took up for consideration topics under Chapter II of the draft final report. After detailed discussions, the Commission agreed on each of the topics under this Chapter as under:**

(A) VISION OF SOCIO-ECONOMIC CHANGE

It was noted that this part did not contain any recommendations as such. The Commission, therefore, decided to remit this portion of the draft Report to the Editorial Committee for such editorial changes as are considered appropriate by it.

(B) EFFECTUATION AND REALISATION OF DIRECTIVE PRINCIPLES OF STATE POLICY

1. The Directive Principles of State Policy shall be called the Directive Principles of State Policy and Action

2. The demand that has been made from time to time that the Directive Principles of State Policy be made justiciable so that the same can be enforced like the Fundamental Rights contained in Part III of the Constitution has been carefully considered and the Commission has come to the conclusion that the same can not be accepted at this stage.

3. For ensuring that the Directive Principles of State Policy are realised more effectively, the Commission recommends as under:

(i) The Planning Commission shall ensure that there is specific mention/emphasis on and specific bench-marks for the progressive effectuation/realizations of the Directive Principles of State Policy in all the plans and schemes formulated by it.

(ii) Every Ministry/Department of the Government of India/ State Governments shall prepare and publish a special annual report indicating the extent of effectuation/realization of the Directive Principles of State Policy, the shortfall in the targets, the reasons for the shortfall, if any and the remedial measures taken to ensure their full realization, during the year under report.

(iii) The aforesaid Report at (ii) above shall be discussed by the Planning Commission in interactive seminars/workshops with the representatives of various NGOs, Civil Society Groups, etc. in which the representatives of the concerned Ministry/Department and the Departmental Related Parliamentary Standing Committee would also participate.

(iv) The report under (ii) along with the records/ proceedings under (iii) will be considered and discussed by the Departmental Related Parliamentary Standing Committee which shall submit its report on the working of the Department indicating the achievements/failures of the Ministry/Department along with its recommendations thereto to the Parliament which shall discuss the Report within a period of three months and pass a resolution about the action required to be taken by the Ministry/Department.

4. The Commission also recommends a similar mechanism for the States.

5. The requisite amendments to the Rules of Business to enable these procedures shall be brought about.

(C) SOCIAL SECURITY AND EMPLOYMENT

Article 41 of the Constitution may be amended and a proviso may be added to that article so as to provide that the State shall bring a suitable legislation for providing the right to rural wage labour for a minimum of 80 days in a year. A proviso to Article 41 in the following terms may be inserted:

"Provided that the State shall by suitable legislation endeavour to guarantee rural wage labour for a minimum of eighty days in a year".

(D) LITERACY

The summary of recommendations made under this topic was remitted to the Editorial Committee Shri K. Parasaran, the Member-in-charge of this topic being a member of the Editorial Committee it could consider, discuss and fine tune the recommendations with particular reference to the new technology that may be required for handling the enormous changes required after the proposed Article 21-A becomes part of the Constitution as it would be a crucial area.

(E) FUNDAMENTAL DUTIES

The draft report on the topic of Fundamental Duties prepared by the Member-in-Charge was considered. On finding that the recommendations contained therein were found to contain inadequate picture of the Commission's comprehension of the subject, it was decided that the matter be remitted to the Editorial Committee for suitably drafting the report, taking into consideration, *inter alia*, (i) Recommendations of Justice J.S. Verma Committee, which were generally found to be acceptable by the Commission (ii) Consultation Paper on the subject released by the Commission and (iii) Paper on the subject submitted by Smt. Sumitra G. Kulkarni, Member.

(F) FUNDAMENTAL RIGHTS

In the light of the discussion contained in this section, the Commission is making the following recommendations for amendment of Part III of the Constitution of India, which deals with Fundamental Rights.

RECOMMENDATIONS

1. In Article 12 of the Constitution, the following Explanation should be added:

> '**Explanation.**- In this article, the expression "other authorities" shall include any person in relation to functions of a public nature.'.

2. In sub-clause (1) and sub-clause (2) of Article 15 and in sub-clause (2) of Article 16, before the words "or any of them" the following words should be inserted, namely:-

> "ethnic or social origin, political or other opinion, property or birth"

3. (i) In sub-clause (1) of Article 19, in clause (a), after the words "freedom of speech and expression", the following words should be added:

> "which shall include the freedom of the press and other media, the freedom to hold opinions and to seek, receive and impart information and ideas"

(ii) In sub-clause (2) of Article 19, after the words "incitement to an offence", the following words should be added:

> "or for preventing the disclosure of information received in confidence, if required, in public interest"

4. Existing Article 21 may be re-numbered as clause (1) thereof, and a new clause (2) should be inserted thereafter on the following lines:-

> "(2) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

5. After Article 21, a new Article, say article 21A, should be inserted as follows:

> "21A. (1) Every person shall have the right to leave the territory of India and every citizen shall have the right to return to India.
> (2) Nothing in clause (1) shall prevent the State from making any law imposing reasonable restrictions in the interests of the sovereignty and integrity of India, friendly relations of India with foreign States and interests of the general public.".

6. The existing Article 21 may be re-numbered as clause (1) thereof, and after clause (1) as so numbered, a new clause namely, clause (2) should be inserted as follows:

> "(2) Every person who has been illegally deprived of his right to life or liberty shall have an enforceable right to compensation.".

7. It is proposed that a new article, namely, Article 21-B should be inserted in Part III of the Constitution:

"21-B. (1) Every person has a right to respect for his private and family life, his home and his correspondence.

(2) Nothing in clause (1) shall prevent the State from making any law imposing reasonable restrictions on the exercise of the right conferred by clause (1) in the interests of security of the State, public safety or for the prevention of disorder or crime, or for the protection of health or morals, or for the protection of the rights and freedoms of others."

8. In article 25 of the Constitution, -

(a) in clause (2), for sub-clause (b), the following clause should be substituted, namely:-

"(b) providing for social welfare and reform or the throwing open of Hindu, Sikh, Jaina or Buddhist religious institutions of a public character to all classes and sections of these religions.".

(b) Explanation II should be omitted.

9. After Article 30, the following Article should be added as Article 30-A:

"30-A: Access to Courts and Tribunals and speedy justice.

(1) Everyone has a right to have any dispute that can be resolved by the application of law, decided in a fair public hearing before a court or tribunal or forum or where appropriate, another independent and impartial court, tribunal or forum.

(2) The right to access to courts shall be deemed to include right to reasonably speedy and effective justice in all matters before the courts, tribunals or other forum and the State shall take all reasonable steps to achieve the said object."

10. After the proposed Article 30-A, the following Article should be inserted as Article 30-B:

"30-B: Equal justice and free legal aid:

The State shall secure that the operation of the legal system promotes justice on the basis of equal justice, and shall, in particular, provide free legal aid, by means of suitable legislation or otherwise, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

11. (i) The first proviso to article 22(4) as contained in the Constitution (Forty-fourth Amendment) Act, 1978 should be substituted by the following proviso.

"Provided that an Advisory Board shall consist of a Chairman and not less than two other members, and the Chairman and the other members of the Board shall be serving judges of any High Court."

(ii) Article 22(4) or (7) should be suitably amended providing for restricting the maximum period of detention to six months.

12. For the existing Article 300-A, the following article should be substituted:

"300-A: (1) Deprivation or acquisition of property shall be by authority of law and only for a public purpose.

(2) There shall be no arbitrary deprivation or acquisition of property:

Provided that no deprivation or acquisition of agricultural, forest and non-urban homestead land belonging to or customarily used by the Scheduled Castes and the Scheduled Tribes shall take place except by authority of law which prescribes making of a suitable rehabilitation scheme before taking possession."

13. In Article 31-B, the following proviso should be added at the end, namely:-

"Provided that the protection afforded by this article to Acts and Regulations which may be hereafter specified in the Ninth Schedule or any of the provisions thereof, shall not apply unless such Acts or Regulations relate —

a) in pith and substance to agrarian reforms or land reforms;
b) to reasonable quantum of reservation under articles 15 and 16;
c) to provisions for giving effect to the policy of the State towards securing all or any of the principles specified in clause (b) or clause (c) of article 39:"

14. Article 359 (1-A) should be amended by substituting for "(except articles 20 and 21)", the following:

"(except articles 17, 20, 21, 23, 24, 25 and 32)"

15. The Commission has received representations for abolition and for retention of death penalty. The Commission, after due deliberations, has not thought it appropriate to recommend, at this stage, any change in the existing law relating to imposition of death penalty.

16. A new article, say Article 30-C, should be added in Part III of the Constitution on the following lines:-

"Article 30-D: (1) Every child shall have a right to free elementary education of quality until he completes the age of fourteen years.

(2) Every person shall have the right to education beyond the age of fourteen years within the limits of economic capacity and development of the State."

17. After article 24, the following article should be inserted, namely:-

"24A. Every child shall have a right for care and assistance in basic needs and protection from all forms of neglect, harm and exploitation.

18. After the proposed Article 30-C, the following Article should be inserted as Article 30-D:

"30-D: Right to prevention of pollution, conservation of ecology and sustainable development:

Every person has the right—
(a) to an environment that is not harmful to his health or well-being; and
(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measure that—
(i) prevent pollution and ecological degradation,
(ii) promote conservation; and
(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;"

14. The Commission took up the topic **'All-India Judicial Service'** under Chapter 6 of volume II of the Final Report for consideration. Justice Shri B.P. Jeevan Reddy explained the background of the matter and the views of the various High Courts and others. After detailed discussions, the Members agreed to conclusion that the formation of an All-India Judicial Service would not be a better alternative, than the present system and therefore, it would not be preferable to disturb the present position. The Commission did not favour deletion of clause (3) of article 312 of the Constitution.

15. The next topic taken up for consideration under Chapter 6 of volume II of the Final Report was **'Financial Autonomy of the Judicial Branch of the State'**. After discussing the draft in detail, the Commission decided on the following recommendation to be made on this topic:

1209 LJ&CA/2002—22A

'The financial autonomy is one of the essential elements for the independence of judiciary and the Commission recommends that an appropriate mechanism be devised to ensure that the budget proposals of the judiciary may be finalized after mutual discussions between the judiciary and the concerned Ministry keeping in view the developmental needs of the judiciary.'

16. **'Appointment, Transfer and Removal of Judges'** was the next topic under Chapter 6 of volume II of the Final Report taken up for consideration. After comprehensive discussions, the Members agreed to the following recommendations:

(i) There shall be a National Judicial Commission for making recommendation as to the appointment of a Judge of the Supreme Court (other than the Chief Justice of India), a Chief Justice of a High Court and a Judge of any High Court.

(ii) The composition of the National Judicial Commission would be as under:

a) The Vice-President of India
b) The Chief Justice of India
c) Two senior-most Judges of the Supreme Court, next to the Chief Justice
d) The Union Minister for Law & Justice.

The National Judicial Commission shall meet as a round table. While meeting for making recommendation as to the appointment of a Judge of a High Court, the Chief Justice of the concerned High Court shall also be associated as a Member of the Commission.

(iii) Proposals for appointment of Judges should originate either from the Chief Justice of India or the Chief Justice of a High Court, as the case may be.

(iv) The retirement age of High Court and Supreme Court Judges should be uniform and it can be 65 years.

(v) The Pension of the judges should be same as the last basic pay drawn by them plus the Dearness Allowance.

(vi) The retired judges should not be appointed to any paid appointment under the Government. However, even for post-retirement non-paid assignments, it is recommended that, to eliminate room for irrelevant considerations, it would be appropriate to provide as a matter of law that where a retired Judge is sought to be appointed to a Tribunal/Commission or similar other body, such appointment should be made in consultation with the concerned Chief Justice. In the case of appointment of a retired Judge/Chief Justice of the Supreme Court, the Chief Justice of India will be consulted and in the case of appointment of a judge/Chief Justice of the High Court, the Chief Justice of that Court should be consulted. Such a course would help in eliminating irrelevant considerations and would also facilitate appointment of appropriate persons to these bodies.

(vii) As regards the transfer of Judges, it should be as a matter of policy and the power under article 222 and its exercise in appropriate cases should remain untouched. The President would transfer a Judge from one High Court to any other High Court after consultation with a committee comprising the Chief Justice of India and the two senior-most Judges of the Supreme Court.

(viii) The Commission considers that the present position of impeachment is totally inadequate and for various reasons impracticable.

(ix) The Commission suggests a procedure as to how to deal with complaints of deviant behaviour as at Annexure-B.

(x) The Commission is of the opinion that the mere creation and existence of a mechanism as suggested herein should itself operate as a check against deviant behaviour. Where, however, deviance occurs, it is necessary that it is dealt with appropriately.

Chapter 7 – Union-State Relations

17. The next topic taken up for consideration was **'Article 356'**. After discussing the draft prepared by Justice Shri B.P. Jeevan Reddy and a Paper prepared by Shri S.K. Sharma, former Secretary in the Inter-State Council, in detail, the Commission decided that retention of this article was

1209 LJ&CA/2002—22B

very much necessary. Shri S.K. Sharma participated in the discussions on the topic as a special invitee. The Commission requested Shri S.K. Sharma to modify the recommendations part of the draft in the light of discussions and submit the revised draft recommendations in a narrative form to the Editorial Committee by 25th December, 2001.

18. The Commission took up the next topic "the Institution of Governor". The draft report prepared by Justice Shri B.P. Jeevan Reddy was taken up for consideration and after detailed discussions, the Commission decided to adopt the following recommendations:

(a) *The appointment of Governor should be entrusted to a Committee consisting of the Prime Minister of India, Union Minister for Home Affairs and the Chief Minister of the concerned State.*

(b) *Normally five year term of the Governor should be adhered to.*

(c) *Removal or transfer of Governor should be by following a similar procedure as for appointment i.e. in consultation with the Committee. The Chief Minister of the concerned State(s) should always be consulted in the matter.*

(d) *In the matter of selection of a Governor, the following matters mentioned in para 4.16.01 of the Sarkaria Commission Report should be kept in mind:-*

"4.16.01 A person to be appointed as a Governor should satisfy the following criteria:

- *He should be eminent in some walk of life.*
- *He should be a person from outside the State.*
- *He should be a detached figure and not too intimately connected with the local politics of the State.*
- *He should be a person who has not taken too great a part in politics generally, and particularly in the recent past.*

In selecting a Governor in accordance with the above criteria, the persons belonging to the minority groups should continue to be given a chance as hitherto.".

(e) The time-limit – say a period of six months – within which the Governor should take a decision whether to grant assent or to reserve it for consideration of the President should be prescribed.

(f) The Editorial Committee was requested to examine and further consider the following suggestion:

If the Bill is reserved for consideration of the President, there should be a time-limit, say of three months, within which the President should take a decision whether to accord his assent or to direct the Governor to return it to the State Legislature or to seek the opinion of the Supreme Court regarding the constitutionality of the Act under Article 143 (as it happened in the case of Kerala Education Bill in 1958).

(g) When the State Legislature reconsiders and passes the Bill (with or without amendments) after it is returned by the Governor pursuant to the direction of the President and the Bill as passed is again presented to the President for assent, the President shall not withhold assent therefrom.

(h) It should be provided that save as otherwise provided in clause (4) of article 360 of the Constitution, a "Money Bill" cannot be reserved by the Governor for the consideration of the President.

The meeting ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary
Tele: 3022079,3022080

To
All Members of the Commission

ANNEXURE - A

LIST OF PARTICIPANTS OF THE FOURTEENTH MEETING

1.	Hon'ble Justice Shri M.N. Venkatachaliah	(In Chair)
2.	Justice Shri B.P. Jeevan Reddy	(except 18th December)
3.	Justice R.S. Sarkaria	(except 15th, 17th and 18th December)
4.	Justice Dr. Kottapalli Punnayya	
5.	Shri P.A. Sangma	(except 17th and 18th December)
6.	Shri Soli J. Sorabjee	
7.	Shri K. Parasaran	
8.	Dr. Subhash C. Kashyap	
9.	Dr. Abid Hussain	(except 17th December)
10.	Smt. Sumitra G. Kulkarni	
11.	Dr. Raghbir Singh, Secretary	

Special Invitees

1. Shri Gopi K. Arora
2. Shri N.C. Saxena
3. Shri S.K. Sharma

ANNEXURE-B

How complaints of deviant behaviour should be dealt with:

A committee comprising the Chief Justice of India and two senior-most Judges of the Supreme Court should examine complaints of deviant behaviour of all kinds and complaints of misbehaviour and incapacity. Their scrutiny at this stage would be confined to ascertain whether –

a) there is no substance in the complaint; or
b) there is a *prima facie* case calling for a fuller investigation and enquiry; or
c) whether it would be sufficient to administer an appropriate advice/warning to the erring Judge or give other directions to the concerned Chief Justice regarding allotment of work to such Judge or to transfer him to some other court.

If, however, they find that the matter is serious and that it calls for a fuller investigation or inquiry, they will refer the matter for a full inquiry to the committee (constituted under the Judges' Inquiry Act, 1968).

The committee shall be a permanent committee with composition indicated in the said Act and not one constituted *ad-hoc* for a particular case or from case to case, as is the present position under Section 3(2) of the Act. The tenure of the Committee shall be for a period of four years and to be re-constituted every four years.

The committee shall be constituted by the President on the advice of the Chief Justice of India. The membership shall not be full time salaried employment. But the terms and other conditions of service of the Members of the Committee shall be such as may be specified in the notification constituting the committee. The committee shall inquire into the allegation against the Judge in accordance with the procedure prescribed by the said Act, i.e. in accordance with sub-sections (3) to (8) of Section 3 and sub-section (1) of Section 4 of the said Act and submit their report to the Chief Justice of India.

The report should be considered by the full court of the Supreme Court. The full court shall take a decision as to –
whether (a) the Judge concerned ought to be exonerated of the charge or the charges levelled against him; or
(b) whether any charge or charges are established against him and if so, whether the charges held proved are so serious as to call for his removal (i.e. proved misbehaviour) or whether it should be sufficient to administer a warning to him and/or make other directions with respect to allotment of work

to him by the concerned Chief Justice or to transfer him to some other court (i.e., deviant behaviour not amounting to misbehaviour).

If the decision of the full court of the Supreme Court is to remove the Judge, the recommendation to that effect shall be made by the Supreme Court to the President of India who shall pass orders accordingly. The decision of the Full Court of the Supreme Court means the decision arrived at by two-thirds of the Judges of the Supreme Court present and voting and a simple majority of the total effective strength (and not sanctioned strength) of the Supreme Court.

This procedure shall equally apply in case of Judges of the Supreme Court as well with the modification that the judge against whom complaint is received or inquiry is ordered, shall not participate in any proceeding affecting him.

(15)

MINUTES OF THE FIFTEENTH MEETING OF THE COMMISSION HELD FROM 5th TO 8th JANUARY, 2002

The Fifteenth meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, New Delhi from 5th to 8th January, 2002. Hon'ble Justice Shri M.N. Venkatachaliah chaired the meeting. The list of participants is at Annexure.

2. The Hon'ble Chairperson extended a warm and respectful welcome to the Members and requested the Secretary to take up the Agenda.

Item 1 **Confirmation of the Minutes of the Fourteenth Meeting of the Commission held on 14th, 15th, 17th and 18th December, 2001.**

3. The Minutes of the Fourteenth Meeting of the Commission held on 14th, 15th, 17th and 18th December, 2001 were taken as read and confirmed subject to the following amendments:

(i) Dr. Subhash C. Kashyap pointed out that the minutes did not reflect an important decision of the Commission to have a meeting with Shri R. Venkataraman, former President of India to elicit his views on various matters of national importance relating to working of the Constitution. Such a decision had been taken twice earlier but somehow was neither recorded nor acted upon thus far. The Commission could call on him after ascertaining his convenience.

[The Hon'ble Chairperson directed that immediate action be taken to seek an appointment with the former President of India.]

(ii) Mentioning of the names of S/Shri Gopi K. Arora, N.C. Saxena and S.K. Sharma in the list of participants at Annexure-A (page 18) of the minutes as special invitees was not correct. Shri Gopi K. Arora had participated in the meeting as Consultant in pursuance of a decision of the Commission for assisting them in the drafting/editorial work whereas Shri Saxena was only called to clarify a point. Similarly, Shri Sharma was called for a few minutes only to explain the contents of his note. Hence of these three names, only the name of Shri Gopi K. Arora as Consultant should remain in the minutes. The meeting accepted the suggestion and decided accordingly.

(iii) In para 6, the portion regarding 'Curbing Criminalisation of Politics' mentioned thereunder should be modified as under:

> Any person charged with any offence punishable with imprisonment for a maximum term of five years or more, should be disqualified for being chosen as or for being a member of Parliament or of the Legislature of a State on the expiry of a period of one year from the date the charges were framed against

him by the court in that offence and shall continue to remain so disqualified till the conclusion of the trial for that offence. In case of conviction, the bar should apply during the period under which the convicted person is undergoing the sentence and for a further period of six years after the completion of the period of the sentence. If any political party violates this provision, the candidate involved should be liable to be disqualified and the party should be deregistered and ***de-recognised*** forthwith.

Any person convicted for any heinous crime like rape, murder, smuggling, dacoity, etc. should be permanently debarred from contesting for any political office.

(iv) Para 12 at page 5 should be substituted as under:

Dr. Abid Hussain was in favour of the power being vested in the Council of Ministers, irrespective of any vote, to recommend dissolution of Lok Sabha to the President, which recommendation would be binding on the President. This suggestion had not been mentioned in the minutes of the 13th Meeting and should be deemed to have been incorporated therein.

(v) In para 16 regarding appointment, transfer and removal of Judges on page 14, it should be mentioned that there was some discussion regarding the composition of the proposed National Judicial Commission 16(i). Since the substantive issue relating to judiciary was scheduled to be discussed on 7th January, 2002[1], the decision on this item was deferred to that date.

(vi) In para 16(iv), at page 14, it was noted that the Commission had agreed that the retirement age of High Court and Supreme Court judges should be uniform. However, there was no decision that it could be 65 years. The matter would be discussed on 7th January, 2002[1] and decision on this item was deferred to that date.

(vii) Para 16(v), at page 14, relating to pension of the judges should be deleted.

(viii) Para 16(vi) at page 14, relating to prohibition of appointment of retired judges to any paid appointment under the Government, it was suggested by some members that such jobs should include those of Governor, Ambassador and the like. However, no firm decision could be arrived and hence decision on this item was deferred[1].

(ix) Para 16(viii) at page 15 of the minutes may be substituted as under:

"The Commission considers that the present position regarding removal of a judge of the Supreme Court or of a High Court is totally inadequate and for various reasons impracticable".

(x) Para 17 at page 15 of the minutes may be substituted as under:

"The next topic taken up for consideration was **'Article 356'**. After discussing the draft prepared by Justice Shri B.P. Jeevan Reddy and a Paper prepared by Shri S.K. Sharma, former Secretary in the Inter-State Council, in detail, the Commission decided that retention of this article was very much necessary. Shri S.K. Sharma was called before the Commission to explain the contents of his paper. The Commission requested Shri S.K. Sharma to submit the draft of a recommendation in the light of discussions in a narrative form to the Editorial Committee by 25th December, 2001.

The Commission noted that the Editorial Committee had not received the desired draft from Shri Sharma.

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[1] No final decision could be arrived at when the matter was discussed again.

(xi) Para 18(a), at page 16 of the minutes regarding appointment of Governor may be substituted as under:

"Article 155 of the Constitution may be amended and the amended Article may read as under:

"The Governor of a State shall be appointed by the President after consultation with the Chief Minister of that State, by warrant under his hand and seal."

(xii) At the fourteenth meeting of the Commission, topics discussed included (i) Treaty Making Powers and (ii) Liability of State in Tort. After full deliberation, it was decided by the Commission to drop both these matters. The minutes may be modified to include a reference to these decisions.

Item 2 **The Commission then took up the next agenda item regarding certain topics of Volume-II of the Final Report.**

Chapter 2- Effectuation of Fundamental Rights, Directive Principles and Fundamental Duties

1. Pace of Socio- Economic Change

4. The Commission decided to request Justice Dr. K. Punnayya, Member In-charge of the subject to prepare a Draft Final Report on this topic, preferably not exceeding 15 pages and submit the same to the Drafting and Editorial Committee by 12th January, 2002. The said Draft Report would be circulated to all the Members of the Commission, who would be requested to send their comments to the Drafting and Editorial Committee latest by 20th January, 2002 so that the said Committee could take the same into consideration before finalization of the Draft Final Report.

Chapter 5 - The Executive and Public Administration

(A) Executive Responsibility.

1. Treaty-making Power

5. After deciding to drop the proposals contained in the Consultation Paper, the Commission recommended that Parliament may consider enacting suitable legislation under article 253 "for giving effect to international agreements."

2. Liability of State in Tort

6. After considering the points made in the Consultation Paper, the Commission decided that no recommendation was necessary to be made on the subject.

(B) Administrative Accountability

1. Legal Control of Monetary and Fiscal Policy

7. The decisions of the Commission on the recommendations contained in the Draft Report on 'Legal Control of Monitory and Fiscal Policy prepared by Dr. Abid Hussain, Member In-charge are as under:

1. No change is needed in the existing provisions of the Constitution in so far as appointment of the C&AG and other related matters are concerned. The Commission would, however, recommend that a healthy convention be developed to invariably consult the Chairman of the Public Accounts Committee, who by a well-established parliamentary convention is always a leading member of the Opposition, before the government decides the appointment of the C&AG.

(It was decided that in modification of the decision taken by the Commission in its Thirteenth meeting regarding appointment of the C&AG [Chairman of the Audit Board of

India] by a Committee, the present method of appointment of C&AG may continue. However, a healthy convention be developed to consult the Speaker of the Lok Sabha before the Government decides on the appointment of the C&AG).

2. The Constitution should be amended to provide for the constitution of an Audit Board for better discharge of the vital function of public audit, but the number of members to be appointed, the manner of their appointment and removal and other related matters should be dealt with by appropriate legislation, keeping in view the need for ensuring independent functioning of the Board.

(This recommendation was agreed).

3. The findings and recommendations of the PACs be made binding on the government. This need not require an amendment of the Constitution. A political convention should be developed with the cooperation of all major parties represented in the legislature to accord to the PACs the status of a permanent conscience-keeper of the nation in financial matters.

(After discussing this recommendation in detail it was decided that Dr. Abid Hussain would discuss the issue with one of the former Chairmen of the Public Accounts Committee before finalizing the draft recommendation in the Drafting and Editorial Committee).

4. To fulfil the canons of accountability, a system of external audit of C&AG's organization by a reputed firm or agency, be adopted to ensure that our audit agencies have kept abreast of developments in the theory and practice of public audit. A similar system should be evolved for the state level organizations.

(Regarding this recommendation, the Commission reiterated its earlier decision contained in recommendation No. 13 in para 14 of the minutes of the Thirteenth meeting of the Commission which reads as under:

> ***"the Commission recommends need for an external audit of C&AG's organization on the same pattern as in the U.K, to fulfil the canons of accountability.")***

5. The approach contained in the Fiscal Responsibility Bill (FRB) is whole-heartedly endorsed and would urge the Parliament to enact it as expeditiously as possible.

(It was decided that in the above recommendation the word 'urge' be replaced by the word 'request').

6. The FRB should not go beyond the ambit of Article 292 and it may not be necessary to provide for express authority to Parliament to legislate the purposes for which borrowings should be made.

(This recommendations was modified as: "It may not be necessary to provide for express authority to Parliament to legislate the purposes for which borrowings should be made in as much as the FRB does not go beyond the ambit of Article 292")

7. The State Assemblies should enact similar legislation as provided in Article 293 to put their respective fiscal houses in order.

(After discussing this recommendation the Commission requested the Drafting and Editorial Committee to further examine the matter and finalise the recommendation).

8. No amendment of Article 293(3) is considered necessary with a view to rectifying the practices and tendencies which have been noticed in regard to borrowings at the State level.

(It was explained that the recommendation has been drafted in response to some of the suggestions received in this regard. The Commission decided that the recommendation was not a positive recommendation and therefore, it should appropriately find a place in the body of the report only and not in the recommendations portion).

9. No amendment of Article 280(3)(d) is considered necessary to provide for formal involvement of the National Development Council in a consideration of the additional terms of reference for the Finance Commission. All political parties are urged to develop a consensus on a political practice of referring such terms of reference to the National Development Council.

(It was explained that the recommendation has been drafted in response to some of the suggestions received in this regard. The Commission decided that the recommendation was not a positive recommendation and therefore, it should appropriately find its place in the body of the report and not in the recommendations portion).

10. It is not considered necessary to amend the Constitution to provide for the recommendations of either the Finance Commission set up under Article 280 or of the State Finance Commissions set up under Articles 243-I and 243-Y for being treated as awards.

(It was explained that the recommendation has been drafted in response to some of the suggestions received in this regard. The Commission decided that the recommendation was not a positive recommendation and therefore, it should appropriately find its place in the body of the report and not in the recommendations portion).

11. No constitutional amendment is required to make surcharges shareable but would expect public policy to move decisively in the direction of doing away with the surcharges as part of the Centre's fiscal armoury.

(It was explained that the recommendation has been drafted in response to some of the suggestions received in this regard. The Commission decided that the recommendation was not a positive recommendation and therefore, it should appropriately find its place in the body of the report and not in the recommendations portion).

12. Enumeration of services that can be taxed exclusively by the States should get top priority with a view to augmenting the resource pool of the States. The Commission would advocate a well thought out amendment of the Constitution after more experience has been gained, particularly with regard to administrative capabilities of the States' taxation machineries in administering service taxes.

(It was explained that the recommendation has been drafted in response to some of the suggestions received in this regard. The Commission decided that the recommendation was not a positive recommendation and therefore, it should appropriately find its place in the body of the report and not in the recommendations portion).

13. No need for a change in the Constitution to specifically provide for independent conduct of monetary policy. The existing legislation and the long history of non-interference by government in the day to day conduct of monetary policy and of maintenance of a suitable environment of security and continuity for the key personnel and autonomy of decision-making by the top management have ensured that monetary policy would be conducted in an independent way.

(This recommendation needs to be reworded and end with the words "and therefore, it is not considered necessary to amend the Constitution. It should appropriately find its place in the body of the report and not in the recommendations")

2. Executive And Public Administration

8. The Commission thereafter considered the recommendations in the Draft Report on 'Executive And Public Administration' prepared by Dr. Abid Hussain. It was decided that the recommendations were required to be reworded so as to make them more specific. It was also felt that there was need to specify the composition of the Civil Services Board and to mention its functions precisely. The desirability of having some professional management persons such as the Directors of Indian Institutes of Management or the Chairman of the Administrative Staff College on the Governing

Board of the Civil Services Board needs to be examined. The functions of the Civil Services Board may also include transfers and postings of the civil servants above a particular level.

9. Smt. Sumitra Kulkarni made the following suggestions for making the bureaucracy more effective and efficient:

(i) All the services should be treated at par and there should not be preferential treatment given to the Indian Administrative Service.
(ii) The posts at the level of Deputy Secretary and above should be open for recruitment from a wide variety of sources, including the open market, instead of the posts at the level of Joint Secretary as mentioned in recommendation No. 9 of Dr. Abid Hussain's draft report.
(iii) Any officer who brings political influence to further his prospects in the service should be disqualified for promotion, etc.
(iv) The disciplinary cases should be decided within time limits, laid down for the purpose.
(v) The officers should not be allowed to continue on central deputation after completion of their tenure and should be reverted back compulsorily.
(vi) The officers who go on deputation to organizations other than the Central Government must go back to their parent cadre after serving the tenure so that the experience gained by them is utilized by their parent cadres.
(vii) The powers to discipline the civil servants should be exercised effectively by the disciplinary authorities.

10. The Drafting and Editorial Committee was requested to finalize the recommendations in the light of the discussions held during the meeting.

11. The Commission then took up the draft report on the topic **'Probity in Governance'** prepared by Justice Shri B.P. Jeevan Reddy. After detailed discussion the Commission approved the recommendations as under:

1. The Benami Transactions (Prohibition) Act, 1988 requires to be modified and strengthened. The Act could become effective and operational only when the necessary rules are made under section 8 of the Act prescribing the authority and the manner and procedure following which benami properties could be acquired by the State without paying any compensation. Hence, action should be taken to make necessary rules for giving effect to the provisions of the Act and thus fulfilling the legislative mandate. Whenever a public servant is found to have screened the illegally acquired assets in the name of a benamidar, action should be taken under that legislation to acquire those assets without paying any compensation. For this purpose, the appropriate authority should be clothed with necessary powers of investigation, verification, enquiry and the power to gather and receive information from any source, authority, institution or organization. The burden of proving that the property is not held "benami" should be placed upon the holder of the property/asset in question.

   (paras 5.3.6 , 5.3.7 and 5.3.8)

2. A comprehensive law containing the principles on the basis of which misfeasance, malfeasance and nonfeasance of public servants could be rendered punishable should be made. In this connection, guidance could be taken from section 60 of the Andhra Pradesh Co-operative Societies Act, 1964.

   (The Commission felt that the nomenclature of the proposed legislation should be specified. The legislation should have only very limited number of sections and model draft legislation should be annexed to this recommendation).

   (paras 5.3.13 and 5.3.14)

3. It would be appropriate for the Parliament and the State Legislatures to enact a comprehensive law to provide that where public servants cause loss to the State by their *mala fide* actions or omissions of a palpable character, they should be made liable to make good the loss caused by them to the State and in addition they should be open to the imposition of exemplary damages. The law should also deal with the public functions of the public servants and their relationship with the State. The public servants should be made aware that a *mala*

fide act or action on their part carries the liability for damages or compensation. Creating personal liability of such a kind would contribute greatly to good governance and would emphasise the need for transparent, fair and honest exercise of power.

(para 5.3.14)

4. Government should take action to enact a law for forfeiture of property of corrupt public servants otherwise than through the route of conviction. A law providing for forfeiture of properties acquired by holders of public office (including the offices/posts in the public sector corporations) by indulging in corrupt or illegal acts and deals should be enacted. The law must extend not only to the properties acquired in the name of the holders of such property but also to properties held in the names of his spouse, children or other relatives and associates.

(paras 5.3.15 and 5.3.18)

5. One of the measures adopted in several western countries to fight corruption and maladministration is enactment of Public Interest Disclosure Acts which are popularly called the Whistle-blower Acts. Similar law may be enacted in India also. The Act must ensure that the informants are protected against retribution and any form of discrimination for reporting what they perceived to be wrong-doing, i.e., for bona fide disclosures which may ultimately turn out to be not entirely or substantially true.

(paras 5.3.19 and 5.3.22)

6. The Freedom of Information legislation may also provide for the government to make information public without the request therefor from any one if such information pertains to matters involving major policy proposals and the major multilateral agreements proposed to be entered into.

(para 5.3.28)

7. The Lok Pal legislation may be enacted early. It may provide for an effective machinery of investigation under the Lok Pal. Maybe, the Constitution may have to be amended to provide for an effective Lok Pal, with his own machinery of investigation.

(paras 5.3.32 and 5.3.33)

(The Commission decided that the Prime Minister should be kept outside the purview of the proposed legislation.)

8. The legislation relating to the Central Vigilance Commission may be enacted soon keeping in mind the directions contained in the decision of the Supreme Court in Vineet Narain's case.

(para 5.3.34)

9. For overseeing appointment and transfer of civil servants to senior posts, a Civil Services Board should be constituted. Till such time a legislation is brought in, executive measures may be taken to set up the Board.

(para 5.3.35)

10. An Act called the Ethics in Government Act was enacted by the US Congress in 1978. This legislation *inter alia* provides that persons assuming the position of an officer or an employee should within 30 days of such assumption furnish full, true and complete disclosure of all kinds of their assets. It would be advisable for Parliament to enact legislation similar to the said US Act.

(paras 5.3.36 and 5.3.37)

Chapter 6 – The Judiciary

Need for Systemic and Procedural Reforms

12. The Commission was informed that Prof. N.R. Madhava Menon would submit the background paper on the subject by 10th January, 2002. The Secretary was requested to follow up with Prof. Menon and ensure that the said draft was received by 12th January, 2002. The paper would then be circulated to all Members of the Commission, who were requested to send their comments to the

Editorial Committee latest by 20th January, 2002 so that the said Committee could take note of the same before finalization of the Draft Final Report.

Chapter-7 – Union State Relations (Including Inter-State Disputes)

1. Barriers to Inter-State Trade and Commerce

13. The Commission was informed that Dr. Bibek Debroy and Dr. P.D. Kaushik of Rajiv Gandhi Institute for Contemporary Studies would submit the revised background paper on "Barriers to Inter-State Trade & Commerce by 10th January, 2002. The Secretary was requested to follow up with Dr. Bibek Debroy and ensure that the said draft was received by 12th January, 2002. The paper would then be circulated to all Members of the Commission, who were requested to send their comments to the Editorial Committee latest by 20th January, 2002 so that the same could be taken into consideration before finalization of the Draft Final Report by the said Committee.

2. Constitutional Mechanisms for Settlement of Inter-State Disputes

14. After discussing the draft report prepared by Justice Shri B.P. Jeevan Reddy, the Commission decided on each of the recommendations as under:

1. **The Supreme Court should be given exclusive jurisdiction under Article 131 to resolve the disputes/controversies concerning the distribution of legislative powers, which have an All India repercussion and where at least one of the parties is a Government.**

   (The Drafting and Editorial Committee was requested to further examine this recommendation and take a view in the matter)

   (Paras 3.20 and 3.21 of the Consultation Paper)

2. **Article 139A,** which confers power on the Supreme Court to withdraw cases involving the same or substantially the same question of law which are pending in Supreme Court and one or more High Courts, **should be amended so as to provide that it can withdraw the cases even if they are pending in other courts in the cases in which legislative competence of the Parliament is questioned.**

   (The Commission decided that the Supreme Court should have power to withdraw the cases to itself in appropriate cases.)

   (Para 3.22 of the Consultation Paper).

3. Article 253 confers power on the Parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. This power includes the power to make law on the subjects mentioned in the State List also. Passing of a law under this article on subjects in the State List may create tension or friction between the Union and the States. To reduce such tension or friction, **the Inter-State Council should be consulted, before the treaty is signed, which may vitally affect the interests of States regarding matters in the State List. Either a constitutional convention can be evolved to that effect, or, if necessary, article 263 could be enlarged or clarified, to permit consultation on the above point.**

   (With regard to above recommendation, the Commission decided that the recommendation should mention 'the desirability of prior consultation with the Inter-State Council may be considered').

   (Para 5.5 of the Consultation Paper)

4. Article 293(3) prohibits a State Government from raising a loan, where an existing loan is already outstanding against the State Government, unless the Government of India gives its consent. Article 293 (4) further provides, that while giving consent under article 293(3), the Government of India may impose such conditions as it may think fit. The Government of India may refuse a loan or grant a loan stipulating certain conditions. Such refusal of consent or imposition of conditions linked with a loan may give rise to disputes. Though such disputes may not be justiciable but a State Government may harbour a plausible grievance, that the consent has been unreasonably refused or that unreasonable conditions have been suggested by the Union Government. **For the resolution of such disputes, instead of creating a new mechanism, the matter could be appropriately dealt with by the Supreme Court under article 131 of the Constitution. If necessary, a clarificatory amendment to this article to cover such disputes may be made.**

(Para 6.4 (a) and (b) of the Consultation Paper).

(The Commission decided to delete this recommendation)

3. Settlement of Inter-State Water Disputes

15. The Commission reviewed the working of Article 262 of the Constitution and the Tribunals constituted under this Article read with the Inter-State Water Disputes Act, 1956 and it was felt that the mechanism of the Tribunal had not proved very satisfactory particularly in view of the long time taken by the Tribunals to complete their work. The Commission also noticed that for implementing the awards of the Tribunals constituted under the aforesaid Act, the parties have to approach the Courts. After detailed discussion the Commission considered it desirable to confer the power of resolving the inter-state water disputes on the Supreme Court, for which an appropriate amendment of Article 131 and deletion of Article 262 may be necessary. The Supreme Court can appoint Commissioners to record evidence. It can also engage experts to assist it. Shri K. Parasaran was requested to prepare the draft final report on the topic based on the discussions held during the meeting. Shri Parasaran was also requested to take into consideration the note submitted by Smt. Sumitra G. Kulkarni on the topic suggesting nationalization of all the inter-state rivers.

4. Financial Relations amongst the Union and the States

16. The Commission requested the Drafting and Editorial Committee to prepare the draft on the topic keeping in view the various representations made to the Commission and the suggestions made by the members of the Commission.

5. Concurrent Powers of Legislation under List-III of Seventh Schedule

17. The Commission considered the Draft Report on the topic and generally agreed to the following recommendations:

The Concurrent List is, therefore, a vibrant medium for legislative action in a federal scheme to consider and evolve national policy. These trends anticipate the emergence of a wide platform of concurrent jurisdiction with the passage of time. However, the Commission are of the view that no Constitutional amendments are necessary in order to obviate the distortions in the operation of the Concurrent List. The purpose and the vitality of common legislative action in the concurrent list can only be secured only through a well structured procedure of consultation between Union and the States. We, therefore, recommend that:

(i) There should be a wide and a deep process of consultation with the State Governments on legislation in the Concurrent List.

(ii) The individual and the collective consultation with States should be undertaken through the Inter-State Council established under Article 263 of the Constitution.

(iii) The Inter-State Council Order, 1990 issued by President may clearly specify in 4(b) of the order the subjects that should form a part of consultation in the Inter-State Council.

(iv) The Commission also reiterates the principles enunciated in the Supreme Court decision M/s Internal Tourist Corporation vs. the State of Haryana that "where there is a division of legislative subjects but the residuary power is vested in the Parliament, such residuary power cannot be so excessively interpreted as to whittle down the power of the State Legislature".

18. It was brought to the notice of the Commission that the Union Ministry of Agriculture had suggested inclusion of "Management of Disasters and Emergencies, Natural or Man-made" in List-III of the Seventh Schedule of the Constitution. After considering the proposal contained in the note of Ministry of Agriculture, the Commission agreed to accept the suggested inclusion of the aforesaid entry in List-III of the Seventh Schedule of the Constitution.

Chapter-8 Decentralisation/Devolution of power at the grassroots/local Government Institutions

19. The Commission took up the draft report under Chapter-8 on the topic Decentralisation/Devolution of power at the grassroots/local Government Institutions prepared by Shri P.A. Sangma under the following headings:

1. Panchayats
2. Local Self-government: Municipalities.
3. Cantonments
4. Empowering And Strengthening Of Panchayati Raj Institutions/ Autonomous District Councils/ Traditional Tribal Governing Institutions In The North-East India

1. **Panchayats**

20. After detailed discussion the Commission approved the recommendations as under:

1. There is no inherent problem with article 243K relating to elections to the Panchayats or article 243ZA relating to elections to the Municipalities. However, past experience indicates that the State Governments quite often delay the process of Panchayat elections willfully on purely political considerations. They can do so, partly because they retain some powers relating to the conduct of elections under the States' Acts/Rules and partly because SEC (State Election Commission) has to depend upon the State Government for logistic support that includes staff as well as fund-support. There is specific provision for providing staff support to SEC under clause (3) of article 243K, but similar provision does not exist in respect of funding to defray the expenses of conducting elections. SECs of some States cited non-receipt of adequate funds as reasons for not holding elections. Besides, certain important powers like issuance of election notification, delimitation of constituency, earmarking reserved seats, etc. are retained by the State Governments in many States. Considering all these, ***there seems to be a case for strengthening further the hands of the SEC by making specific provisions in the Constitution itself.*** Article 243K (and article 243 ZA) may specifically, assign the following functions, among others, to the SEC, namely:-

(1) Delimitation of territorial constituencies of Panchayats and municipalities;
(2) Allotment of reserved seats to various electoral wards; and
(3) Rotation of reserved seats among constituencies.

[Para 2.6]

2. Sometimes, SECs have to fight lone battles against the State Governments in order to fulfil their Constitutional duty to hold elections timely and as per the provisions of law. Accordingly, ***it is recommended that the Constitution should make provisions requiring SEC to submit a report annually to the Governor in the same manner as the State Public Service Commission is required to submit under clause (2) of article 323.*** As provided in the said clause, the report of the SEC along with the views of the State Government on the same may be placed before the State Legislature. Such a provision will, at least, enhance the accountability of the State Government, if it fails to fulfil the Constitutional mandate of holding Panchayat/municipal elections.

[Para 2.7]

FUNCTIONAL DOMAIN

3. Mere statutory authority to undertake functions already being performed by the State Government is no guarantee that those would, indeed, be taken up by the PRIs, unless they have adequate funds and personnel to discharge them. Since these resources are not made available to them, the lists of various functions that every Panchayat Act religiously provide remain sterile. What the 73rd Constitution amendment intended is 'exclusive' and not 'permissive' functional domain, backed up by resources for the Panchayats. That has not happened. **Necessary remedial measures are to be taken.**

[Para 3.20]

4. The Constitution failed to guarantee assignment of a set of exclusive functions for the Panchayats. Hence, the kind of role they would be expected to play in governance depends on the policies of the regime that controls the Government of a State. **It is recommended that exclusive functions are to be given to Panchayats.**

[Para 3.22]

5. We are now faced with two types of conceptualisation of Panchayats and municipalities. Both of them draw their strength from the Constitution. One type of conceptualisation leads us to envision these institutions as constituting the third stratum of governance. Another takes us to the opposite extreme under which the Panchayats (and municipalities), subject to the Constitutional guarantee of their permanent existence, composition, election, etc., are no more than a local authority as understood under the General Clauses Act, 1897. ***The Constitution has to categorically express the status of the 'institution of self government' as mentioned in article 243G or 243W.***

[Para 3.27]

6. Panchayats (and Municipalities) will not have a coordinate status along with the other two levels of governance. They will still be the creatures of the State Acts and subject to some kind of control by the State Government. Yet, they will have sufficient autonomy over a set of identifiable functions which **should be spelt out in the Constitution. The functions that will be carved out by the Constitution for these institutions will represent the minimum that should be given to all such bodies of the country, but the State Legislatures may have the option to endow these institutions with more functions, power and authority.**

[Para 3.27(b)]

FINANCIAL DOMAIN

7. **Major fiscal restructuring and financial resources are necessary to enable the Panchayats to function as viable local self-government institutions.** Some of the measures necessary for such reforms may be taken even within the framework of existing Constitutional provisions. But, there are areas where rethinking about the Constitutional framework itself would be necessary.

[Para 4.9]

8. What is significant is that the Constitution does not specifically earmark some of the fiscal powers of the State List either exclusively for the local government or under State-local concurrent jurisdiction. It is not difficult to introduce the concept of exclusive and/or State-local concurrent tax domain for the Panchayat as well as the municipal bodies. At the moment this concept is absent. The purpose behind article 243H was to ensure that the issue of financial viability of PRIs is not overlooked by the State Legislatures. But by giving blanket power to the State Legislatures, the said article has been made practically sterile. It is not capable to serve its purpose, since the State Governments do not want to share their fiscal powers with the local government institutions. ***The only way out is to introduce afresh the concept of a separate tax domain for the local bodies.***

[Para 4.13]

9. Independent as well as concurrent tax domain for the local bodies can be brought about by restructuring the existing Seventh Schedule to the Constitution. ***The restructuring would necessitate introduction of a local list and a State-local concurrent list.*** The other alternative is to make changes in the 11th and 12th Schedules. There are problems in the second alternative, as these Schedules, in present form, are no more than illustrative lists. Experience shows that without

Constitutional support, Panchayats and the municipalities will not be able to achieve substantial fiscal autonomy. ***Ideally, a Local List in the Seventh Schedule will be most helpful to provide fiscal autonomy to the local government institutions. If that is found difficult, then the Eleventh and Twelfth Schedules have to be restructured in a manner that reduces the area of State's discretion and guarantees devolution of fiscal powers from State to the Panchayats/ Municipalities.***

[Para 4.14]

(The sentence beginning from the word 'Ideally' and ending with the word 'institutions' may be deleted. The words 'if that is found difficult, then' in the next sentence may also be deleted. The specific areas on which the taxation powers could be exercised and the limits of taxation should be specified).

10. Sub-clauses (bb) and (c) of clause (3) of article 280 require the Federal Finance Commission to make its recommendations in respect of the Panchayats and municipalities "on the basis of the recommendations made by the Finance Commission of the State". The Eleventh Finance Commission found it difficult to work strictly within this frame because of various problems. It found that in some States SFCs were not either constituted or did not submit their reports. Again, in view of the 'heterogeneity of approach' of different SFCs and differences in contents and periods covered by them, the Eleventh Finance Commission found it difficult to form their opinion only on the basis of their recommendations. For the purpose of avoiding such situation in future and in order to enable the Federal Finance Commission to take a macro-level view, **the provisions of article 280(3) (bb) and (c) may be amended. The words "on the basis of the recommendation" in these clauses may be replaced by the words "after taking into consideration the recommendations."**

[Para 4.22]

11. In order to enable the Federal Finance Commission to give due weight to the reports of SFCs for assessing the situation in each State, it is necessary to synchronize the periods covered by the reports of both of them. The first generation SFC reports made available to the Eleventh Finance Commission were for different periods of time. It would have been much better if the periods covered by both of them were same or nearly the same. Since the second generation SFCs has already started working, it will also be creating the same problem for the Twelfth Finance Commission. **Ideally, the periods covered by both the types of Finance Commissions should more or less be the same. Presently, that part of the provision of clause (1) of article 243-I which calls for constitution of SFC at the expiration of every fifth year create problem to get the above objective realised. Hence, in line with article 280(1), the words "or at such earlier time as the Governor considers necessary" may be added after the words 'fifth year'.**

[Para 4.23]

According to the information available to the Eleventh Finance Commission, some States—for example, Goa, Gujarat, Haryana and Sikkim – had not submitted to the respective Legislatures the report on action taken on the SFC recommendations, even after the lapse of one year or more after submission of the report. Some States had taken more than six months time to present the action taken report (ATR). Some States (for example, West Bengal) took about four years to implement partially the SFC recommendation. While, it is for the State Legislature to ensure that the Government implements fully what it assures before it, ***there has to be Constitutional obligations for placing the ATR before the legislature within 'six months' or so after the submission of the report. Clause (4) of article 243-I may need to be amended accordingly.***

[Para 4.24]

13. Taxes on professions, trades, callings and employment under article 276 has been a traditional source of revenue for the local bodies. (Of late, there is, however, a tendency for the State Governments to take over such powers from the local bodies). One of the impediments in generating substantial revenue from the levy and collection of this tax is that the upper ceiling (presently, Rs. 2500 per annum) has been Constitutionally fixed [*see* article 276(2)]. While there is a need for fixing the upper ceiling of the tax centrally in order to avoid the charge of double taxation on 'income', Constitutional provision for this is unnecessary and troublesome. For long, the upper ceiling remained at the unrealistic level of Rs. 250 only because of the rather difficult process involved in amending the Constitution. ***It would be better to change this provision and give the necessary legislative power of fixing upper limit to the Parliament. The words "district board, local boards or any***

29. There is considerable lack of accountability because of **inadequate provisions in law relating to audit of accounts of public bodies**. There is no time-frame to conduct the audit of accounts of a given year, submit the audit report or comply with the objections raised in the report. Delay in audit provides opportunity for misuse of fund, tardy implementation of projects and over-all weakening of the system. It is, therefore, necessary that **the provisions be made in this respect to ensure that all works related to audit (conduct of audit, submission of audit report and compliance with audit objections if any) are completed within a year of the close of a financial year.**

[Para 8.27]

30. It seems that there is necessity to make suitable provisions in the Constitution for introducing a uniform pattern throughout the country in-so-far-as matters relating to audit of Panchayat accounts are concerned. ***The Comptroller and Auditor-General of India may be either empowered to conduct the audit or lay down accounting standards for Panchayats.***

[Para 8.29]

[Recommendation 31 dropped]

2. Municipalities

21. After detailed discussion the Commission approved the recommendations as under:

I. Constitution of Municipalities, Elections and State Election Commissions

A. Constitution of Municipalities

1. Article 243Q provides for a Nagar Panchayat for a transitional area, Municipal Council for a smaller urban area and a Municipal Corporation for a larger urban area. While clause (2) allows the States to take into consideration various other factors, given the very wide variance, **it is desirable that a population classification is provided in the Constitution itself.** Given the increasing rate of urbanisation, its density and economic factors, a Corporation should have a minimum population of 5 lakhs, a Municipal Council 50,000 and a Nagar Panchayat 20,000. Provision can be made to preserve previously existing municipalities.

(State Legislature may consider prescribing the population classification in the appropriate legislation)

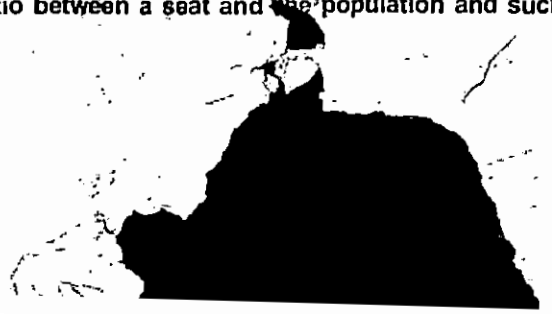
2. The proviso to article 243Q states that a municipality may not be constituted for an industrial township under certain circumstances. This proviso did not figure in the Constitution Amendment Bill relating to the 73rd Amendment Act introduced in Parliament in July, 1991 or in the Bill as reported upon by the Joint Committee in July, 1992. This appears to be an after thought in response to some suggestions from certain quarters. The provision goes against the grain of decentralisation and local self-government. **Hence, the proviso may be deleted.**

3. Article 243U (1) contains a proviso that where a municipality is superseded "it shall be given a reasonable opportunity of being heard before its dissolution". There is no corresponding proviso in article 243E relating to Panchayats. **The same proviso should be inserted.**

(This recommendation may be incorporated in the recommendations under the topic of Panchayats).

4. **Whenever a Panchayat or a Municipality is superseded, a report stating the grounds for such dissolution should be placed before the State Legislature.** This will be a deterrent to treating supercession casually and resorting to it because of political expediency. This provision is on par with a report being placed before each House of Parliament in the event of a proclamation of President's rule in a State under article 356.

5. **In determining the number of municipal wards and in delineating them, there should be parity, in the ratio between a seat and the population and such ratio should be uniform**



other local authority" as mentioned in clauses(1) and (2) of Art. 276 may be suitably replaced by the words "Panchayats and Municipalities".

[Para 4.25]

14. Now-a-days, the local governments are being encouraged to take recourse to borrowing for financing asset-building and/or remunerative projects. Some Municipal Corporations have been given power even to go to the capital market. The Panchayats of West Bengal are permitted to borrow from the financial institutions, subject to Government approval. With the role we are envisaging for PRIs in the governance structure, there is no reason as to why the borrowing power should not be Constitutionally given to the Panchayats, especially, the Zilla Parishads. ***In chapter II of Part XII of the Constitution, a new article may be added to allow the Panchayats (and Municipalities) to borrow from the State Government and financial institutions. The zilla parishads may, in addition, be permitted to borrow from the capital market.***

[Para 4.26]

[Recommendations 15 to 19 dropped]

PERSONNEL SYSTEM

20. **Failure to address the human resource issue has definitely affected the growth of Panchayats as self-governing institution.** For governance at the third stratum, the Panchayats, with or without coordinate status, have to have autonomy over management of its personnel. It is, however, necessary that the enabling powers in this respect are provided in the Constitution, as has been done in matters relating to finance under article-243H. ***A specific Constitutional provision on personnel will, if not anything else, legitimise the right of Panchayats to have their own staff and to have powers to control them, so that they are enabled to perform functions devolved upon them.*** **What is necessary is full-scale transfer of services of staff from the State Government to the PRIs.** It is necessary that an enabling provision is made in Part IX of the Constitution ***permitting the State Legislature to make, by law, provisions that would empower the State Government to confer to the Panchayats full power of administrative and functional control over such staff as are transferred following devolution of functions, notwithstanding any right they may have acquired from Act/Rules made under article-309.***

[Paras 7.1, 7.11, 7.12 and 7.13]

[Recommendations 21 and 22 dropped]

OTHER ISSUES

23. **To be an institution of self-government, a gram Panchayat should, as far as possible, be a viable unit both financially as well as administratively. It should be capable of generating internal resources by using its own fiscal powers that include taxing power.**

[Para 8.12]

(This recommendation may be included in the text of the report).

[Recommendations 24 to 27 dropped]

28. **There is a suitable machinery at the State level to bring about necessary co-ordination among them and between the Panchayats and the State Government.** Gujarat, Orissa and Karnataka Acts provide for such a body. Keeping in view the necessity and importance of such a body, it may be considered whether a provision for Constitution of the ***State Panchayat Council under the chairmanship of the Chief Minister may be made in the Constitution on the analogy of the provision in article 263 of the Constitution relating to the Inter-State Council.*** The leader of the opposition may be made ex-officio vice-chairman to provide a consensual approach to the development of Panchayats as fully democratic, efficient and responsible institutions.

[Paras 8.25 and 8.26]

(Recommendation accepted and it was decided to follow the Gujarat pattern.)

1209LJ2CA102-23

within a State among any category of municipalities such as Corporations, Municipal Councils and Nagar Panchayats:

(It was decided to add the words 'so far as possible' after the word 'parity'.]

[Recommendations 6 to 8 dropped]

B. Qualifications and Disqualifications for Membership in Municipalities

9. Articles 243T and 243V contain identical provisions so far as disqualifications for membership in a panchayat or a municipality is concerned. The main principle followed is that the grounds of disqualification should be the same as applied for elections to the State Legislatures. State laws may make additional provisions. State laws should compile all provisions regarding qualifications and disqualifications for elections in a single law and in the meantime prepare a manual compiling existing provisions for public information.

[Para 1.23]

10. While SEC should have the authority to prescribe ceiling of expenses and code of conduct and while these may vary depending on the conditions of the different States, **State laws should clearly specify the powers of the SEC to disqualify candidates or set aside elections in the event of violations of those laws.**

[Para 1.23]

C. Regularity of Elections

Ensuring regular elections

Articles 243E and 243U of the Constitution contain identical provisions. Clause (1) of article 243E states that every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer". Similarly, clause (1) of article 243U states that every municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting. Clause (3) of article 243E and that of 243U further state that elections to constitute a Panchayat and a municipality respectively shall be "completed before the expiry of its duration specified in Clause (1)"

Both articles 243E and 243U in sub-clause (1) contain a provision for dissolution of panchayat or municipality respectively. Here again sub-clause (b) of clause (3) in both the articles stipulate that elections have to be completed "before the expiration of a period of six months from the date of its dissolution."

11. To reinforce the existing provisions in the Constitution the following additional stipulations are recommended:-

a **It shall be the duty of a State and the Union (in case of panchayats and municipalities located in Union territories) to ensure the completion of elections as stipulated.**

b. **It should also be duty of the State Election Commissioner to ensure this and in the event of possible delay make a report to the Governor of the State drawing his attention to the problems and suggesting remedial action to fulfill the requirements of the Commission.**

c Article 243K(I) and article 243 ZA(I) State that the "superintendence, direction and control of the preparation of electoral roles and the conduct of all elections to the panchayats/municipalities shall be vested in a State Election Commission." This is a composite set of responsibilities. The preparation of electoral roles and the conduct of elections involve several processes and actions which are closely inter-related. The words, "superintendence, direction and control" are comprehensive and unambiguous and do not permit any artificial division. Clause (4) of 243K and Clause (2) of 243 ZA do provide for a State Legislature to make provisions with respect to all matters relating to interaction with these elections. However, this has to be subject to the provisions of the Constitution and can relate only to processes to be followed and guidelines for this purpose so that such processes serve public interest and ensure

1209 LJ&CA/2002—24

free and fair elections. They do not permit splitting up of the composite responsibilities as Stated in article 243K and 243ZA. However, as experience indicates certain important parts of these responsibilities such as delimitation of territorial constituencies or reservation of seats or rotation of such reservation among constituencies have been assumed by some State Governments. The effect of this has been to enable these State Governments to intervene in the composite and integrated process of conducting elections and thereby hold up the same if they so chose to do. **Articles 243K and 243 ZA may, therefore, be suitably amended to specify that the responsibility for the conduct of elections shall include all preparatory steps for the same including the electoral roles, delimitation, reservation, rotation and matters connected therewith and the responsibility for the same shall vest with the State Election Commission.**

Electoral Rolls and Delimitation

12. As regards electoral rolls and delimitation, the following recommendations are made:-

a Under articles 243K and 243ZA, the preparation of electoral rolls is the responsibility of the State Election Commission (SEC). The general practice has been for the SECs to adopt the electoral rolls available for the Assembly and Lok Sabha elections. In some cases however the electoral rolls for the local elections are prepared afresh and the two rolls may differ. **The Constitution should specifically stipulate a common electoral roll.** The processes for preparing the roll as also its periodical revision should be uniform throughout the country.

(It was decided that after the words 'common electoral roll' the following may be added:

> **'for local elections and Assembly/ Lok Sabha elections. It should be the same electoral roll which is prepared by the Election Commission of India under Article 327, and as updated'.)**

b The Election Commission has been evolving over a period of time a system whereby each polling station in an Assembly constituency has a unique identity which is linked to the roll of electors using that polling station. It is possible that panchayat and municipal elections may require more polling stations. If so, these additional polling stations should be extensions or sub-units of the main polling station. This will ensure a 'building block' approach for elections in the country whereby the smallest unit will be a polling station or a sub unit theory. A certain number of these will form a 'panchayat ward' or a 'municipal ward' which in turn will be grouped into panchayats and municipalities or Assembly segments and Lok Sabha constituencies. The voter is the same. **The relevant R.P. Act and State laws should specify that common polling stations should be used for elections to local bodies, State Legislatures and Parliament.**

c While delimitation of the constituencies for panchayat and municipal elections should be under the control and direction of the SEC, **the Constitution should stipulate that such delimitation should be adjusted after every census and not for every elections.** This will be in keeping with articles 82 and 170 of the Constitution requiring readjustment of Assembly and Lok Sabha Constituencies after every Census.

d **The State laws should provide guidelines for the delimitation work such as parity in the ratio between the population of a territorial constituency and the number of seats within the same class of panchayats or municipalities. The extent of permissible variations should also be mentioned.** Parity as a requirement is already stipulated in the proviso to article 243C so far as Panchayats are concerned but is missing in article 243R relating to municipalities.

(It was decided to add the words 'so far as possible' after the word 'parity'.)

e State laws should specify that changes in the administrative boundaries of districts, sub-divisions, taluks, police stations, etc., should not be made within six months prior to a panchayat or a municipal election.

[Para 1.40.2]

Reservations

13. Regarding reservations, the following recommendations are made:

(a) Articles 243D and 243T contain identical provisions so far as reservation of seats in panchayats and municipalities for SC/STs and women are concerned. However there are some ambiguities about the rotation of such reserved seats. The words used in both the articles are "may be allotted by rotation". However in the second proviso under article 243D regarding reservation of the offices of chairpersons the words used are "shall be allotted by rotation". The Constitutional provisions also do not specify the frequency of rotation. Moreover, in clause (4) of article 243T there is no stipulation for rotation. To remove ambiguities, articles 243D and 243T should be suitably amended to provide for rotation and changes only at the time of delimitation and not in between.

(b) State laws should however, provide the guidelines for the process of reservation which should ensure transparency and adequate opportunities for eliciting voter response.

(The word 'should' be replaced by 'may')

(c) Clause (6) of article 243D and clause (6) of article 243T enable a State Legislature to provide for reservation of seats as also offices of chairpersons in panchayats and municipalities in favour of backward class of citizens. Neither of the articles stipulate any ceiling for the total number of reserved seats and reserved offices. Since not less than one-third of total seats has been specified as the minimum for women; the reservation additionally made for backward classes can take a large proportion. To remove ambiguities, the overall total of reserved seats and reserved offices should be specified in the Constitution.

[Para 1.40.3]

D. State Election Commissions

14. Some specific provisions should be added to the Constitution as follows:

[In the above sentence the word 'Constitution' may be replaced by the words 'State Law'.]

(a) The State Election Commissioner should be appointed by the Governor on the recommendations of a group comprising the Chief Minister, the Speaker of the State Assembly and the Leader of the Opposition. This would make the selection impartial in the eyes of all concurred.

(b) The State Election Commissioner should have a fixed term of 5 years.

(c) In rank and status the State Election Commissioner should be equal to a Judge of the High Court.

(d) The broad qualifications for position of State Election Commissioner may be specified in the Constitution itself or in the laws of the State. Since the conduct of elections is a major logistical exercise, administrative experience should be stressed.

(The words 'in the Constitution itself or in the laws of the State' may be replaced by the words 'under the State laws.')

(e) Notification for all elections to Panchayats and Municipalities should be issued by the SEC.

(f) **SEC should be the single and common electoral authority in the State for all local body elections and elections to the State Legislatures.** The SEC will also carry out the elections to Parliament under the supervision and control of the Election Commission of India. What is envisaged is a strong link between the State Election Commissions and the Election Commission of India so that the Election Commission of India can reinforce the autonomy of the State Election Commissions, support their functioning with expertise and technical help and enable the whole election machinery of the country to emerge as an integrated system.

(The words 'and elections to the State Legislatures' may be deleted).

[Para 1.50]

E. Wards Committees and Proximity to Citizens

15. Article 243S of the Constitution should be amended suitably to incorporate the following proposals:-

(a) **Wards Committees should be mandatory for each of the ward in all Municipal Corporations with a population of three lakhs or more, to comprise of persons chosen by direct election from the territorial area of the Ward. The Chairman of the Committee will be the Councillor elected from the Ward.**

(b) **The State laws should determine the number of persons to be so elected but there should be parity, within the city in the ratio between that number and population of a ward.**

(c) **State laws should also enable Wards Committees to co-opt such residents of a ward who are knowledgeable and can assist the work of the Committee.**

(d) **In all Corporations with a population of six lakhs and more, Zonal Committees at a level between the Wards Committees and the Corporation Council should be formed.** State laws may determine the number and area of such Zonal Committees. The Councillors of all the municipal wards represented in that area shall be members. In addition, one other person from each of the Wards Committees elected by and from amongst the elected members of that Committee shall be a member of the Zonal Committee.

(e) **State laws should determine the manner in which elections to the Ward and Zonal Committees are to be held, their functions and responsibilities and the allocation of funds to carry out the same.**

[Para 1.62]

[Heading E. Wards Committees and Proximity to Citizens and para 15 there under may be dropped].

II. Functional and Financial Domain

[The following remaining recommendations are on the same lines as in the case of Panchayats and hence adopted.]

A. Functional Domain

16. As regards the functional domain, it is recommended that-

(a) **a common Schedule of functions for both rural and urban local bodies is desirable. The existing 11th and the 12th Schedules which have several common items should be integrated.**

(b) the integrated Schedule should not be illustrative only, but should be mandatory. It should be on par with the lists in the Seventh Schedule in status and in the exercise of Legislative and Executive powers, which should be co-extensive with the subject, listed in the Schedule.

(c) the assignment of functions should be by substantive law rather than by rules and regulations.

(d) the laws should also provide for the transfer to the Municipalities of organisations, funds and staff who were previously responsible for discharging the functions being assigned. The local bodies should have full control over its staff including those transferred to them. Functions, functionaries and funds should go together.

[Para 2.10]

B. Financial Domain

17. In the financial domain, it is recommended that –

(a) The concept of a distinct and separate tax domain for municipalities should be recognised. This concept should be reflected in a list of taxes and should form part of the common schedule of functions and responsibilities for local bodies or in the event it is decided to continue with the 11th and 12th Schedules as separate, the tax domain should figure in the relevant schedule. Carving out items from the existing State lists such as item 49 (taxes on land and buildings) and item 52 (taxes on entry of goods into a local area for consumption) should not be difficult.

(b) Similarly, the concept of a divisible pool of taxes which can be shared between the Union, the States and the Municipalities should also be recognised similar to the provisions in articles 268 to 274. There should be categories of taxes and other levies specifying who will collect the same and how it will be distributed between the 3 levels.

(c) In case of taxes and levies, the proceeds of which are to be shared with municipalities, prior consultation will be required before any modification is made in the scope of the tax or its rates.

(d) Article 276 on taxes on professions, trades and employment should be amended as suggested by the 11th Finance Commission. The ceiling should be specified by Parliament from time to time rather than requiring amendments to the Constitution.

(e) State laws should provide for composition of the State Finance Commission and the criteria for its membership similar to the provisions in the case of the Finance Commission set up by the President under article 280.

(f) State laws should provide for the establishment of the SFCs in a periodical manner and determine a time schedule for the same so that the work and output of the SFCs are synchronised suitably with the Central Finance Commission.

(g) Articles 243-I and 243Y should be amended to ensure that the Action Taken Report by the Government is laid before the State Legislature within six months of the submission of the SFC recommendations.

(h) Sub-clauses (bb) and (c) of clause (3) of article 280 should be amended so that the Central Finance Commission while taking into consideration the recommendation of the SFCs, is not circumscribed by the same.

(i) State laws should also provide for establishing and maintaining a financial database as suggested by the 11th Finance Commission.

(j) State laws should specifically empower municipalities to borrow.

(k) State laws should also provide for the preparation and adoption of municipal budgets in a transparent manner in keeping with the public right to information.

[Para 2.22]

III. District Planning Committees, Metropolitan Planning Committees and Organic links between municipalities and Panchayats

A. District Planning Committees

18. As regards District Planning Committees, the following legal changes are recommended:-

(a) As per the definitions given in article 243, 'district' means a district in a State while 'Panchayat area' means the territorial area of a Panchayat. The Panchayat at the district level should, therefore, be for the district as a whole instead of the rural areas only. The definitions under article 243 should be amended accordingly. **Clause (1) of article 243 ZD should be amended to stipulate that the District Planning Committee shall be constituted within the Panchayat at the district level or Zilla Parishad.**

(b) **Sub-clause (d) of clause (2) of article 243 ZD should be amended to provide for the Chairperson of the Panchayat at the district level to be the Chairperson of the District Planning Committee. The Chairperson of the largest Municipality in the District should be the Vice-chairman.**

(c) **In clause (1) of 243ZD, the words "consolidate the plans prepared by the Panchayats and Municipalities in the district" should be omitted so that the DPC's main task of preparing a draft development plan for the district is not contingent or dependent on individual plans prepared by the Panchayats and the Municipalities.** However, clause (3) of article 243ZD can provide that in preparing the development plan the DPC will have regard to such plans as are prepared by the Panchayats and the Municipalities. Zilla Parishad should help panchayats and municipalities to prepare these plans which will serve as building blocks for preparation of Development Plan for the district.

(d) **Article 243ZD should also contain a provision to enable the State laws and State Governments to entrust additional responsibilities as monitoring of development schemes and programmes in the district, co-ordination of their implementation including powers to modify sanctions to ongoing schemes subject to limits.**

(e) The Zilla Parishad should be the technical and administrative secretariat for the DPC independent of and distinct from the District Collector or the District Magistrate.

(f) The State laws should provide for association and involvement of government and non-government agencies and professionals in the DPCs. MPs, MLAs and Ministers desiring to participant in the District Planning Committee should be welcome as invitees.

(g) State agencies, district agencies and district administration should assist the DPC with data and technical know-how in preparation of the development plan for the district. State laws should provide for this.

(h) Where Metropolitan Planning Committees (MPCs) are required to be set up, State laws and regulations should determine the functional and territorial jurisdiction of the DPCs as distinct from the MPCs. Where Metropolitan Planning Committees exist for predominantly urban districts, they should be deemed as DPCs, as no separate DPC is necessary.

[Para 3.17]

B. Metropolitan Planning Committees

19. As regards Metropolitan Planning Committees, the following legal changes are recommended:-

(a) Metropolitan Planning Committees should be limited to metropolitan areas with 20 lakh population or more. Clause (c) in article 243P may be amended accordingly.

(b) The composition of the MPC should be as suggested in para 3.29 of the Paper, which reads as under:

Another item of importance is the representation of the Members of Parliament and MLAs in the MPC. Here again the rationale for their participation is more than in individual municipalities or Panchayats. Under article 243ZE two-hirds of the members of the MPC are to be elected by and from amongst the elected members of the Municipalities and Chairpersons of the Panchayats in the metropolitan area in proportion to the population ratio. Since the MPC itself is conceived as an inter-sectoral and an inter-governmental platform bringing together the concerns and interests of local, State and Central Governments within a metropolitan perspective, it stands to reason that provisions should be made to secure the participation of MPs and MLAs. This can be done by determining the composition of the MPC in the Constitution itself. As suggested in the case of the DPC earlier, three-fifths of the total number of members can be elected by and from amongst the elected members of the Municipalities and Panchayats. The remaining two-fifths should be representatives of organisations and institutions, as the State Governments may consider necessary for carrying out the functions of the MPC. As in the case of DPC, MPs can be invitees.

Article 243ZE should be amended accordingly.

(c) State laws should specify the organisation which will function as the technical and administrative secretariat of the MPC under its control.

(d) Where MPCs exist, their functional and territorial jurisdiction should be distinct and separate from the DPC.

[Para 3.34]

C. Organic links between Municipalities and Panchayats

20. For bringing organic links between Municipalities and Panchayats, the following legal changes are recommended:

(a) In keeping with the spirit and substance of the 73rd and 74th Amendments envisaging Panchayats and Municipalities as institutions of self-government, the provision for representation of MPs, MLAs and MLCs in articles 243C and 243R should be deleted.

(b) If such representation is considered necessary, it should be without voting rights and as invitees.

(c) Representation, if allowed at all, should be in District Planning and Metropolitan Planning Committees.

(d) Dual membership in a Panchayat or a Municipality on the one hand and a State Legislature or Parliament on the other should hand be specifically prohibited.

[Para 3.47]

3. <u>Cantonment</u>

22. *After considering the draft recommendations made under this Chapter the Commission decided that there was no need to make any recommendations on the topic of Cantonment.*

4. **Empowering And Strengthening Of Panchayati Raj Institutions/ Autonomous District Councils/ Traditional Tribal Governing Institutions In The North-East India**

23. The Commission noticed that the Consultation Paper on the subject had been released recently. Shri P.A. Sangma informed that he had released the Consultation Paper separately to various bodies and organizations in the North-East. It was decided that Shri Sangma would be associated with the Drafting and Editorial Committee in its ensuing meetings when it discusses the draft recommendations on the topic.

Item 3 **Note dated 18.12.2001 submitted by Justice Dr. K. Punnayya, containing his views on the 'First-Past-The-Post-System".**

24. The Commission discussed the matter in detail but no final conclusion was reached. However, the Commission generally agreed to the suggestions of introducing compulsory voting in elections and increasing the percentage of votes polled for recognition of political parties to be 10 per cent. Both the measures were aimed at increasing the representative character of the legislators.

Item 4 **Letter from the Secretary, Ministry of Social Justice and Empowerment requesting the Commission to examine the relevance of the Office of the Commissioner for Linguistic Minorities under Article 350-B of the Constitution.**

25. After considering the issues raised in the letter from Ministry of Social Justice and Empowerment, the Commission felt that no change was considered desirable in Article 350-B of the Constitution regarding the office of the Commissioner for Linguistic minorities.

Item 5 **To consider the representations received from various organizations/ authorities and to indicate if any of the suggestions made in the representations can be adopted and if so, the Chapter in which such recommendations may be included:**

<u>Sindhi Organizations - S.No. (i) to (v)</u>

26. The Commission considered the recommendation made by Dr. Subash C. Kashyap, to whom the matter was referred by the Commission, on the demands made by various Sindhi Organizations in his note dated 24.8.2001. It was agreed that the grievances of the community were genuine and hence required action. The Commission agreed to the recommendations made by Dr. Kashyap. It was agreed that the recommendation at S.No. (ii) which is indicated as (a) below may be included in the body of the final report

a The Commission is required to review the working of the Constitution and to examine if the objectives of the Constitution have been fulfilled in practice and if not what, if any, remedial measures may be advisable. Dignity of the individual citizens is the bedrock of Indian polity established by the Constitution. The Constitution stands for equality before law, equal protection of laws and non-discrimination on grounds of religion, race, caste, sex, place of birth or any of them. It does not recognize any community or communal rights except that, as a most special case, provisions have been made for the Scheduled Castes, the Scheduled Tribes as also for other socially and educationally backward classes. In view of this basic principles of our polity, it may not be possible for the Commission to consider granting any separate constitutional status to the Sindhi community as such or to consider any request for carving out a separate territory as a Sindhi state or a Sindhi region. However, the Commission is convinced that the Sindhi community do have a linguistic identity of their own and as such they are entitled to all the rights as a linguistic minority that are available to any other such minorities. It would be appreciated that except as a linguistic minority, the members of the Sindhi community cannot at all be considered as socially, educationally or economically backward or disadvantaged. Thanks to their own abilities, Sindhis are among the socially, educationally and economically advanced citizens of India.

27. The Commission adopted the recommendations (iii), (iv) and (v) mentioned in the note of Dr. Kashyap which are indicated as (b), (c) and (d) below:

b The Commission may like to recommend to the Government steps that may be found necessary for better protecting and promoting Sindhi language and culture. In this connection, setting up of a Centre of Sindhi Language and Culture may be encouraged by the State providing necessary facilities for the same.

c Sindhi community may be recognized as a special linguistic minority if such further recognition is specifically considered necessary.

d Difficulties faced by the Sindhi migrants may be examined and corrective measures taken administratively to facilitate grant of citizenship as per the existing law.

Sikh Organisations - S.No. (vi) to (ix)

28. It was noted that one of the demands of the Sikh Organisations related to their identity, which was accepted while considering the topic on fundamental rights. The Commission had agreed to amendment of article 25 (2)(b) and deletion of Explanation II under the said article (This stands already reflected in the minutes of the 14th meeting of the Commission). The Commission agreed that the recommendation on the demands might be as under:

"The Commission has carefully considered all representations made by the Sikh Organisations and the demands made therein have been accepted to the extent indicated in the chapter on Fundamental Rights."

Mithilanchal Organisation- S.No. (x)

29. After carefully considering the demands contained in the representation made by Shri Tara Kant Jha on behalf of the Mithilanchal Vikas Manch For inclusion of Maithili in the Eighth Schedule of the Constitution, the Commission decided that no recommendation was considered necessary in this regard.

Coorg Organisations – S.No. (xi) to (xii)

30. The Commission considered memoranda submitted by Shri N.U. Nachhappa on behalf of the Coorg National Council and Shri N.S. Devi Prasad on behalf of Kodagu Prejavedike (about Coorgis) and appreciated the contribution made by the Coorgis to the national causes and felt that the nation should recognize it. The Government may consider nomination of a member from amongst the people from the region to the Rajya Sabha/ State Legislature to the extent possible. The Government could also consider having a Sainik School in the area and setting up of a Development Board for them. The Commission did not favour the demand for a separate State or to the granting of Union Territory status for the area.

STATUTORY AUTHORITIES

Union Public Service Commission – S.No. (xiii)

31. The Commission considered the report of a Group of Members consisting of Shri K. Parasaran and Dr. Subhash C. Kashyap who had examined the memorandum submitted by the UPSC. After detailed discussions, the Commission agreed to the recommendation made by the Group of Members that no Constitution amendments were necessary in regard to the provisions concerning the UPSC and other Public Service Commissions.

Central Administrative Tribunal – S.No. (xiv)

32. The Commission considered the memorandum received from the Central Administrative Tribunal, New Delhi. Some of the members were in favour of abolition of the Tribunal as it had not been able to come up as an alternative to the regular courts for resolution of the disputes/grievances of the Government employees. It was, however, decided that Dr. Abid Hussain would have a meeting with the Chairman of the CAT to have a first hand account about the working of the CAT and to know the trend in the number of cases filed before the various benches of the Tribunal, the number of cases disposed, the number of decisions challenged before the High Courts and the trend in the decision of the High Courts in the appeals against the CAT decisions.

1209 LJ&CA/2002—25A

North-East Organisations – S.No. (xv) To (xxxii)

33. Shri P.A. Sangma, the Member In-charge of the subject informed that he had taken all the representations into consideration while finalizing the draft report on 'Empowering And Strengthening of Panchayati Raj Institutions/ Autonomous District Councils/ Traditional Tribal Governing Institutions In The North-East India'. The Commission agreed that no further discussion was necessary at that stage.

Item 6

(i) **Letters received from Justice Shri J. Eswara Prasad, Chairman, Appellate Tribunal for Forfeited Property, New Delhi, regarding:**

i. **Proposal for amendment of Section 2(2) (c) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA) to include the Public Servants in possession of properties disproportionate to their known sources of income or convicted under the Prevention of Corruption Act, 1988, and**

ii. **Amendment of article 348(1)(a) of the Constitution of India by including "National Appellate Tribunals and Commissions" after "Supreme Court and in every High Court" in article 348(1)(a).**

34. With reference to the first proposal mentioned above the Commission decided that if necessary, the Prevention of Corruption Act, 1988 may be amended to provide for confiscation of the property of the public servants in possession of properties disproportionate to their known sources of income and convicted under this Act for the said offence.

35. The Commission though appreciated the difficulties mentioned in the second proposal yet it was not inclined to accept the suggestion to recommend amendment of article 348 (1) (a) of the Constitution.

(ii) **Consideration of the request from Justice Shri M.C. Jain, Lokayukta, Rajasthan, emanating from the Resolution passed in Sixth All-India Conference of Lokayuktas and Upa-Lokayuktas, 2001, for conferment of constitutional status on the Institution of Lokayuktas and Upa-Lokayuktas.**

36. The suggestion for conferring a Constitutional status on the Lokayuktas and Upa-Lokayuktas made in the Sixth All India Conference of Lokayuktas and Upa-Lokayuktas was carefully considered by the Commission but not found acceptable. Regarding the second suggestion made by the Conference that there should be a uniform law regarding Lokayuktas and Upa-Lokayuktas, the Commission felt that the Conference might take up the matter with the State Governments.

(iii) **Representation dtd. 31.7.2000 received from Ms. Mahasweta Devi on behalf of De-Notified And Nomadic Tribals Rights Action Group.**

37. This matter was carefully considered by the Commission and it was decided that the Government, Ministry of Social Justice and Empowerment may be requested to examine the suggestions made by the organizations, preferably through a Commission, which may forward its recommendations to the Government for appropriate action.

(iv) **Letter dated 25.4.2001 from Ather Farouqi, Secretary Linguistic Minorities Guild suggesting insertion of an explanation under Article 347 regarding Special provision relating to language spoken by a section of the population of State to the effect that in this Article "substantial" means "not negligible".**

38. After careful consideration the Commission did not consider it necessary to suggest any amendment to Article 347 as suggested in the representation.

1209 LJ&CA/2002—25B

(v) Letter dated 14th December, 2001 from Cap. Jai Narain Pd. Nishad, Member of Parliament (Lok Sabha) containing demands adopted in the Electoral Reforms Maha Rally, held on 2.12.2001 at Ramlila Grounds, New Delhi.

39. The Commission considered the suggestions made regarding electoral reforms and requested the Drafting and Editorial Committee to suitably incorporate them in the report, wherever found feasible.

(vi) Letter dated 9th November, 2001 from Smt. Arti Shrivastava suggesting direct election of the Chief Minister by the people of the State and direct election of the Prime Minister by the people of the country.

40. The Commission found that the suggestions made are beyond the terms of reference of the Commission and hence they could not be considered.

(vii) Letter dated 28th November, 2001 from Shri N.P. Singh, IAS (Retd) containing his response to the Consultation Paper on 'Treaty-Making Power under our Constitution'.

41. It was noticed that the suggestions made have already been taken into consideration while finalizing the Draft Final Report on the topic.

(viii) Representation of All India Backward Muslim Morcha through Its National Convenor (Dr. M. Ejaz Ali) requesting for inclusion of dalit Muslims in the Scheduled Castes Order issued by the President under article 341 of the Constitution.

42. The Commission decided that the suggestion would be considered by the Drafting and Editorial Committee at the time of finalisation of the Draft Final Report on the topic of 'Pace of Socio-Economic Change'.

Any other item:

43. The issue of citizenship was considered in detail. There was difference of opinion. It was decided that the matter would be taken up again in the next meeting of the Commission. For the time being, the Commission decided not to make any recommendation on the issue.

44. With the permission of the chair, the Commission discussed the news items published in the daily, 'The Hindu' on 18th and 19th December, 2001 titled "Statute panel releases new paper on electoral reforms" and "Delete anti-defection law, says panel" respectively and the news item published in the daily, 'The Times of India' on 21st December, 2001 titled "Statute review panel to give Kashyap's paper a quiet burial". The meeting was informed that a clarification was sent to the Hindu through the PIB on 19.12.2001 that no new Consultation Paper was released by the Commission on the topic. After discussing the matter, the Commission decided that the following categorical denial of the contents of the report be issued to the Times of India immediately:

> "The earlier Consultation Papers were approved by the Advisory Panel of the Commission on the subject and also by the Commission as a whole and these were issued for eliciting public opinion. Dr. Subhash C. Kashyap was member-in-charge of these papers.
>
> "The Commission would like to point out that no Consultation Paper was issued in addition to, or in substitution of, the Consultation Papers issued in the first instance on the subject of *Electoral Reforms*. The question of giving "a quiet burial" to the earlier Consultation Papers is totally unfounded and the news in this behalf is misleading and regrettable. The statement that the Chairperson was not happy with the earlier Consultation Papers is unfounded inasmuch as the Consultation Papers had been approved by the Commission under his Chairpersonship."

45. The Commission discussed the issue of the safe custody, proper indexing and transfer of the complete records and research papers to the appropriate Department after the Commission is wound

up. The Commission decided that action in this behalf may be initiated in the right earnest and requested the Secretary to monitor the progress.

The meeting ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary
Tele: 3022079,3022080

To

All Members of the Commission

ANNEXURE

LIST OF PARTICIPANTS OF THE FIFTEENTH MEETING

1.	Hon'ble Justice Shri M.N. Venkatachaliah	(In Chair)
2.	Justice Shri B.P. Jeevan Reddy	(except 8th January)
3.	Justice Shri R.S. Sarkaria	(except 6th and 7th January)
4.	Justice Dr. Kottapalli Punnayya	(except 6th and 7th January)
5.	Shri P.A. Sangma	(except 5th January)
6.	Shri Soli J. Sorabjee	
7.	Shri K. Parasaran	
8.	Dr. Subhash C. Kashyap	
9.	Dr. Abid Hussain	(except 7th January)
10.	Smt. Sumitra G. Kulkarni	

Shri Gopi K. Arora, Consultant
Dr. Raghbir Singh, Secretary

(16)

MINUTES OF THE SIXTEENTH MEETING OF THE COMMISSION HELD FROM 25th February, 2002 TO 1st March, 2002

The Sixteenth meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, New Delhi from 25th February, 2002 to 1st March, 2002. Hon'ble Justice Shri M.N. Venkatachaliah chaired the meeting. The list of participants is at Annexure I.

2. The Hon'ble Chairperson extended a warm and respectful welcome to the Members and requested the Secretary to take up the Agenda.

Item 1 **Confirmation of the Minutes of the Fifteenth Meeting of the Commission held on 5th to 8th January, 2002.**

3. The Minutes of the Fifteenth Meeting of the Commission held from 5th to 8th January, 2002 were taken as read and confirmed subject to the following amendments suggested by Justice Shri K. Punnayya in his letter dated 14.2.2002:

Justice Shri K. Punnayya in his aforesaid letter pointed out that para 24 of the minutes at pages 30-31 (on his note dated 18.12.2001 regarding the 'First–Past–The–Post-System) was partly correct and partly incorrect. He stated that from the consensus of the opinion, he gained the impression that all the members of the Commission agreed with his dissenting note against the second election to be held after taking into consideration the votes polled in favour of the first two candidates in the first election as proposed by the Advisory Panel on the subject, while accepting the suggestions of introducing compulsory voting in elections and increasing the percentage of votes polled for the recognition of political parties to be 10%.

Obviously the latter two suggestions were made by him as the alternatives to the second election proposed by the Advisory Panel for obtaining 50 % of the votes.

Item 2 Discussion and adoption of Draft Report Volumes-I and II

4. Before taking up for consideration of the individual chapters of the Report, the Commission passed a resolution appreciating the completion of the monumental work done by the Drafting and Editorial Committee within the shortest possible time. A copy of the resolution is annexed as Annexure-II to these minutes.

5. At the outset, the Commission decided the format of Volume-I of the Report as under:

(i) Each Chapter should begin with a content sheet with an index of para numbers.
(ii) The report should be in one and a half space instead of single space.
(iii) The font size should be increased to 12.
(iv) The Chapter on 'Summary of Recommendations' should at the top indicate:
  (a) the total number of recommendations made by the Commission;
  (b) the number of recommendations pertaining to the provisions of the Constitution and requiring amendments thereto and
  (c) the number of recommendations that require statutory amendments or executive action.

Each Chapter should make a reference to the Consultation Papers and Background papers giving a reference to Volume-II of the Report.

6. The Commission considered various chapters of the Final Report on the dates indicated below:

Date	Chapter No.	Name of the Chapter
25.02.2002	1	1. Introduction
	2	2. Basic Approach and Perspective
	3	3. Fundamental Rights, Directive Principles and Fundamental Duties
26.02.2002	3	1. Fundamental Rights, Directive Principles and Fundamental Duties
27.02.2002	7	1. The Judiciary
	4	2. Electoral Processes and Political Parties
28.02.2002	5	1. Parliament and State Legislatures
	6	2. Executive and Public Administration
01.03.2002	8	1. Union-State Relations
	9	2. Decentralisation and Devolution
	10	3. Pace of Socio-economic Change and Development

As regards Chapters 1 and 2, the members agreed that these were within the exclusive prerogative of the Hon'ble Chairperson and accordingly requested that these chapters may be finalized by the Hon'ble Chairperson himself. The Hon'ble Chairperson requested Shri K. Parasaran to take into account all the available material, including the initial drafts prepared by him and redraft these two chapters with the assistance of the Secretary.

7. Chapter 3 regarding **'Fundamental Rights, Directive Principles and Fundamental Duties'** was discussed in detail and approved by the Commission after incorporating certain changes. The suggestions of the Hon'ble Chairperson regarding recommendations relating to article 347, constituting an 'Inter-faith Commission' by entrusting the functions to the National Human Rights

Commission by amendment of the Protection of Human Rights Act, 1993 and deletion of paragraph No. 3.22.2 in the draft report regarding articles 29-30 were agreed to in the meeting. Smt. Sumitra G. Kulkarni presented her views regarding the need to expand the 'Fundamental Duties' for greater stability, oneness and united strength of the country. It was decided that the chapter as finalized on the basis of the deliberations would be submitted by the Secretariat to Shri Soli J. Sorabjee, who would see the changes made and approve the same before this chapter is incorporated into the draft final report to be placed before the Commission at its next meeting for final approval and adoption. The meeting decided that the points raised by Smt. Kulkarni would be looked into while finalizing Chapter 3. It was also decided that certain miscellaneous issues discussed in Chapter 3 would be transferred to a new Chapter, say Chapter 11 titled "Miscellaneous Matters".

8. The Commission thereafter took up for consideration Chapter 7 relating to **'The Judiciary'.** Detailed discussions were held on certain topics such as proposed National Judicial Commission, retirement age of the Judges of the High Courts and the Supreme Court. The Commission also considered, as part of systemic changes in the justice delivery mechanism issues such as plea-bargaining, need for setting up of a Digital Legal Information System, institutionalizing mediation and conciliation as mandatory pre-trial procedures in certain class of cases etc.

9. It was noticed that the issue regarding setting up of National Judicial Commission was discussed in its fourteenth meeting held on 14-15 and 17-18 November, 2001 and fifteenth meeting held from 5–8 January, 2002. Though there was a broad consensus as to the need and desirability of setting up of a National Judicial Commission for the appointment of judges, no consensus could, however, be arrived at on the question of the composition of the National Judicial Commission. As a result, the Commission then took the view that no change in the existing system of appointment of judges need be recommended.

10. Consequent to further discussions held on 27th February, 2002, it was broadly agreed that the composition of the National Judicial Commission should be as follows:

(i) The Chief Justice of India, Chairperson;
(ii) Two senior most judges of the Supreme Court;
(iii) Union Minister for Law and Justice;
(iv) One eminent person nominated by the President after consulting the Chief Justice of India.

The Commission was strongly of the view that if a National Judicial Commission was to be established, it was essential that its composition should be as indicated above and that the recommendation in this behalf be treated as a package of both the concept as well its actual composition in view of the need to preserve judicial independence.

11. The Commission also decided to recommend that the age of retirement of the judges of High Courts be enhanced to 65 years and that of Supreme Court judges to 68 years.

12. It was decided that the Chapter 7 as finalized on the basis of the deliberations would be submitted by the Secretariat to Shri K. Parasaran, who would examine the changes made and approve the same before this chapter was incorporated into the final report and placed before the Commission in its next meeting for final approval and adoption.

13. The Commission thereafter took up for consideration Chapter 4 on **'Electoral Processes and Political Parties'.** The chapter was discussed in detail. On the question of 'representational-legitimacy', after detailed deliberations, it was decided that the recommendation on the issue might be as under:

> *The Government and the Election Commission should examine this issue in all its aspects, consult various political parties and formations and take the views of all sections of the society and initiate appropriate measures in this behalf. The Commission recommends a serious examination of this issue by the Election Commission and the Government.*

The Commission declined to recommend that voting being made compulsory, under pain of sanctions as suggested in paragraph No. 4.17 of the draft report. The members also agreed to delete the paragraph No. 4.24 of the draft report regarding 'proxy voting for armed forces personnel'.

14. It was decided that Chapter 4 as finalized would be submitted by the Secretariat to the Hon'ble Chairperson, who would see the changes made and approve the same before this chapter was incorporated in the final report and placed before the Commission in its next meeting for final approval and adoption.

15. The Commission thereafter took up for consideration the Chapter 5 on **'Parliament and State Legislatures'.** After detailed discussions, the chapter was approved with certain changes. It was decided that the Chapter, as finalized, would be submitted by the Secretariat to Dr. Abid Hussain, who would examine the changes made and approve the same before this chapter was incorporated into the final report and placed before the Commission at its next meeting for final approval and adoption.

16. The Commission thereafter took up for consideration Chapter 6 on **'Executive and Public Administration'.** The issues relating to the institution of the Prime Minister, confiscation of properties of corrupt public servants, Whistle Blower Act, conferment of constitutional status to the Lok Pal and Lokayuktas were discussed in detail. After discussions, the chapter was approved with certain changes. It was decided that the chapter as finalized would be submitted by the Secretariat to Dr. Abid Hussain, who would examine the changes made and approve the same before this chapter was incorporated into the final report and placed before the Commission at its next meeting for final approval and adoption.

17. The Commission thereafter took up for consideration Chapter 8 on **'Union-State Relations'.** The issues relating to the Inter-State Water Disputes, Concurrent Powers of Legislation, etc. were discussed in detail. Smt. Sumitra G. Kulkarni desired that the administration of the Inter-State rivers should be entrusted to statutory authority in larger national interests. After discussions, the chapter was approved with certain changes. It was decided that the chapter as finalized would be submitted by the Secretariat to Shri K. Parasaran, who would examine the changes made and approve the same before this Chapter was incorporated into the final report and placed before the Commission in its next meeting for final approval and adoption.

18. The Commission thereafter took up for consideration the Chapter 9 on **'Decentralisation and Devolution'.** After discussion, Shri P.A. Sangma was requested to give a final shape to the chapter and to make available the final copy to the Secretariat before this chapter is incorporated into the final report and placed before the Commission in its next meeting for final approval and adoption.

19. The Commission thereafter took up for consideration the Chapter 10 on **'Pace of Socio-economic Change and Development'.** After discussion, Justice Shri K. Punnayya was requested to give a final shape to the chapter and to make available the final copy to the Secretariat before this chapter was incorporated into the final report and placed before the Commission in its next meeting for final approval and adoption.

20. The Commission decided to have its next meeting on 6th March, 2002 so as to finally approve and adopt the Report before it being presented to the Government (Prime Minister) on a convenient day.

The meeting ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary to the Commission

All the Members of the Commission

ANNEXURE I

LIST OF PARTICIPATNS OF THE SIXTEENTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri B.P. Jeevan Reddy (except on 28th February and 1st March, 2002)
3. Justice Dr. Kotfapalli Punnayya
4. Shri P.A. Sangma (except on 25th and 28th February, 2002)

5. Shri Soli J. Sorabjee (except on 25th February, 2002)
6. Shri K. Parasaran
7. Shri C.R. Irani
8. Dr. Abid Hussain (except on 1st March, 2002)
9. Smt. Sumitra G. Kulkarni
10. Dr. Raghbir Singh, Secretary

ANNEXURE-II

NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

RESOLUTION

The Draft Final Report Volumes 1 and 2, as prepared by the Drafting and Editorial Committee, were placed before the Commission.

2. At the outset, the Members felt it their duty respectfully to acknowledge and express their immense sense of gratitude to the "Drafting and Editorial Committee" for the monumental work that they had done in the shortest possible time, pouring hours of hard-work into the job and making the Volumes of the Report comprehensive and reflective of the voluminous material in the Consultation Papers, Background Papers and discussions on the various topics covered by the draft report. The Commission expressed its sense of indebtedness to Dr. Subhash C. Kashyap, Chairman of the Drafting and Editorial Committee, to Shri K. Parasaran and Dr. Abid Hussain, Members for the enduring value of the services rendered by them. The Chairman was requested to send an appropriate letter of appreciation and thanks to the Chairman and the Members of the Drafting and Editorial Committee reflecting the sentiments of the Commission in this behalf.

3. The Commission also placed on record its appreciation of the services of Dr. Raghbir Singh, Secretary and Shri Gopi K. Arora, Honorary Consultant. The Chairman was requested to write to them conveying the appreciation of the Commission. The Commission also placed on record its sense of appreciation for the services rendered by Shri N.K. Nampoothiry, Additional Legislative Counsel, Shri Dinesh Bhardwaj, Deputy Research Officer, Shri K. Shankar, Deputy Research Office and their supporting staff for the assistance provided to the Drafting and Editorial Committee. The Drafting and Editorial Committee has referred to the valuable assistance rendered by these gentlemen in the task of preparation of the Draft Report. The Secretary is requested to convey the appreciation of the Commission to the three members of the staff.

(M.N. Venkatachaliah)
Chairperson
25.02.2002

(17)

MINUTES OF THE SEVENTEENTH MEETING OF THE COMMISSION HELD FROM 6th MARCH, 2002 TO 9th March, 2002

The Seventeenth meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, New Delhi from 6th March, 2002 to 9th March, 2002, Hon'ble Justice Shri M.N. Venkatachaliah chaired the meeting. The list of participants is at Annexure.

2. The Hon'ble Chairperson extended a warm and respectful welcome to the Members and requested the Secretary to take up the Agenda.

WEDNESDAY, 6TH MARCH 2002

Item 1 **Confirmation of the Minutes of the Sixteenth Meeting of the Commission held from 25th February, 2002 to 1st March, 2002.**

3. The Minutes of the Sixteenth Meeting of the Commission held from 25th February, 2002 to 1st March, 2002 were taken as read and confirmed.

Item 2 Discussion and adoption of Draft Report Volumes-I and II.

4. Chapter 3 regarding **'Fundamental Rights, Directive Principles and Fundamental Duties'** was taken up for consideration. One of the Members suggested that the recommendation regarding 'right to education' contained in paragraphs 3.19.1 and 3.19.2 may be modified so as to confer the right to education on the girls and members of the Scheduled Castes and the Scheduled Tribes until they complete the age of 21 years as a fundamental right. The Member also suggested that the right to rural wage employment for a minimum of 80 days in a year proposed to be included in the Directive Principles (as per para 3.25.8 of the Draft Chapter) should be included as a Fundamental Right in Part III of the Constitution.

5. The Commission agreed to both the above suggestions and the draft chapter was accordingly modified.

6. Thereafter, the Commission took up draft Chapter 9 relating to **'Decentralisation and Devolution'** as modified on the basis of the suggestions of the Member-in-charge. Recommendation contained in the draft chapter in paragraph 9.6.2 (amendment of article 243K) was discussed in detail and it was decided that a separate clause (1-A) should be added instead of amending the existing clause (1) so as to provide that the State Election Commissions should perform their functions under the superintendence, direction and control of the Election Commission of India. Similar amendment was decided to be carried out in respect of article 243 ZA

7. The Commission discussed the proposed clause (3) of article 275 as contained in para 9.8.3 of the draft chapter. It was felt that the proposed sanctions if a State failed to constitute a Finance Commission in accordance with the provisions of article 243-I or failed to comply with the recommendations of the Finance Commission were too harsh. It was agreed that a revised formulation for the mechanism to be evolved would be worked out by Shri Soli J. Sorabjee and Shri K. Parasaran.

8. The Commission thereafter took up for consideration the draft Chapter 4 on **'Electoral Processes and Political Parties'**. The question of eligibility of non-Indian born citizens to hold high offices was discussed. The members agreed that the language of para 4.21 of the draft chapter required modification. Shri P.A. Sangma and Shri Soli J. Sorabjee were requested to prepare new draft formulations of this para and place them before the Commission.

9. The Commission took up for consideration the draft Chapter 7 relating to 'The Judiciary' as the next item. After discussions, the chapter was approved with certain amendments.

THURSDAY, 7TH MARCH 2002

10. On a review, the Commission decided that its decision of 6th March, 2002, referred to in para 4 to make the right to education for the girls and members of the Scheduled Castes and the Scheduled Tribes until they complete the age of 21 years as a fundamental right should be modified so as to confer such right only till the they complete the age of 18 years.

11. The issue of recognition of the political parties (Chapter 4) was again discussed and the Commission decided to make certain modifications in paragraph 4.29, which earlier suggested that 10% of the valid votes polled by the candidates all over the country or in at least one-half of the States be prescribed as recognition criteria.

12. The Commission thereafter took up for consideration the draft Chapter 5 on **'Parliament and State Legislatures'**. After discussion the Chapter was approved with certain modifications.

13. Draft Chapter 6 **(Executive and Public Administration)** was taken up for consideration. There was discussion on various issues brought out in the Chapter. The meeting approved the draft chapter with certain modifications, in the paragraphs, *inter alia*, relating to the 'Institution of the Prime Minister'.

14. The Commission thereafter took up for consideration Chapter 8 on **'Union-State Relations'**. The issues relating to the 'Inter-state Water Disputes' and the 'Assent of the President and the Governor' were discussed in detail. The meeting approved the draft chapter with certain modifications, particularly on the latter issue.

15. The Commission thereafter took up for consideration draft Chapter 10 on **'Pace of Socio-economic change and Development'**, finalised by the Member in-charge with the assistance of the Advisory Panel. The Commission appreciated the draft. However, it was suggested that the draft required certain editorial changes so as to bring coherence in the presentation of the ideas and wherever possible, inviting reference to the background paper and Consultation Paper on the subject (available in Vol. II of the report) so as to make the chapter compact. The Member in-charge agreed to the suggestion. He agreed to place before the Commission a revised draft on 8th March, 2002 for consideration.

16. The Commission thereafter took up for consideration Chapters 1&2 **(Introduction and Basic Approach)** and approved the same.

17. After considering the proposed Chapter **'Miscellaneous Matters'**, the Commission decided that the topics included in this chapter should be reallocated to the relevant chapters.

FRIDAY, 8TH MARCH 2002

18. The revised draft Chapter 10 on **'Pace of Socio-economic change and Development'** as presented by the Member In-charge, Justice Shri K. Punnayya was considered by the Commission and approved the same subject to certain modifications in the Background Paper.

19. The Commission also considered the question of qualification regarding domiciliary requirement for eligibility of candidates to contest elections to the Rajya Sabha from the concerned State Legislatures and decided to incorporate a paragraph in Chapter 5 of the Report.

20. Smt. Sumitra G. Kulkarni suggested that there should be a ban on export of meat and meat products. She also raised the issue of euthanasia. After discussion, the Commission did not consider it feasible.

21. The Commission again discussed the question of eligibility of non-Indian born citizens to hold high offices. The draft paragraph on the said issue was considered in the meeting and provisionally agreed to.

22. The proposed clause (3) of article 275 (referred to in para 7 of these minutes) was again discussed. It was finally decided to restore the original paragraph having regard to the complexity of the proposal in the light of a federal polity.

SATURDAY, 9TH MARCH 2002

23. The draft para relating to the question of eligibility of non-Indian born citizens to hold high offices, was again discussed and the draft paragraph on the said issue was finalized by the Commission.

24. The Commission decided to add a paragraph on "Office of Profit" recommending for empowerment of the Election Commission of India to declare the offices under the Government of India/ State Governments as offices of profit.

25. After a brief discussion it was agreed that a copy of draft report should be sent to Dr. Subhash C. Kashyap, Chairman of the Drafting and Editorial Committee. The Commission also fixed 11th of March, 2002 for adoption and signing of the final report, which would be presented to the Prime Minister at the earliest.

The meeting ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary to the Commission

All the Members of the Commission

ANNEXURE

LIST OF PARTICIPATNS OF THE SEVENTEENTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri B.P. Jeevan Reddy (except on 8th March, 2002)
3. Justice Shri R.S. Sarkaria (except on 7th & 8th March, 2002)
4. Justice Dr. Kottapalli Punnayya
5. Shri P.A. Sangma (except on 7th, 8th and 9th March, 2002)
6. Shri Soli J. Sorabjee
7. Shri K. Parasaran
8. Shri C.R. Irani (except on 6th, 7th & 8th March, 2002)
9. Dr. Abid Hussain (except on 6th & 9th March, 2002)
10. Smt. Sumitra G. Kulkarni
11. Dr. Raghbir Singh, Secretary

(18)

MINUTES OF THE EIGHTEENTH MEETING HELD ON 28TH & 30TH MARCH, 2002

The Eighteenth meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, New Delhi on 28th and 30th March, 2002. Hon'ble Justice Shri M.N. Venkatachaliah chaired the meeting. The list of participants is at Annexure.

28th March, 2002

2. The Hon'ble Chairperson extended a warm welcome to the Members and explained the purpose of convening the meeting.

3. The letter dated 21st March, 2002 received from Dr. Subhash C. Kashyap, the letter dated 26th March, 2002 received from Shri C.R. Irani, the letters dated 27th March, 2002, received from Justice Shri B.P. Jeevan Reddy, Dr. Abid Hussain, Shri K. Parasaran and fax message dated 27th March, 2002 received from Smt. Sumitra G. Kulkarni, in response to the notice dated 25th March, 2002 were circulated to the Members at the meeting. After discussion, it was decided that a communication be sent to all the Members of the Commission, who did not attend the meeting to ascertain their views. The following is the text of the communication, which was finalized during the meeting.

> "At the meeting of the Commission today, the need and desirability of a unanimous Report was felt. During the proceedings of the meeting, Dr. Subhash C. Kashyap stated that the points of divergence between the draft Report and the Final Report be crystallised and there should be an occasion for the Commission to have the benefit of his views in respect of the same. It was specifically agreed that if all or some of the divergent points in the Draft Report are not accepted by the majority of the members, the divergent views would be mentioned in the Final Report. In that event, there would be no occasion for Dr. Subhash Kashyap to decline to sign the Report.

2. Members are kindly requested to signify their views in writing so as to reach the Commission latest by this evening. In case; the majority of members are agreeable to the aforesaid suggestion, it would become necessary to obtain extension of time for submission of the Final Report for the requisite period."

30th March, 2002

4. The minutes of the meeting dated 28th March, 2002 were approved.

5. With a view to achieving a possible unanimity in the Final Report and to persuade Dr. Subhash C. Kashyap to subscribe his signature to the Final Report (with any Note of Dissent, if he had one in mind), a meeting was held on 28th March, 2002 to explore the possibilities in this direction. However, four Members expressed their opposition to any further meetings. The proposal tossed up at the meeting on March 28, 2002 could, therefore, not be pursued since not only the four of the Members who had already appended their signatures to the Final Report expressed their opposition but also some of the Members present at today's meeting expressed their strong reservations as to the proposal. Therefore, the proposal contemplated on March 28, 2002 was given up.

6. The Commission, however, resolved to request Dr. Subhash C. Kashyap to sign the Final Report subject to any Note of Dissent that he may have in mind.

7. Dr.Subhash C. Kashyap raised a general point that pertains to the discipline of the Minutes of Dissent and that any defamatory statements or statements adversely commenting upon matters *sub judice* etc., should not find a place in the notes of Dissent. In the unlikely event of the minutes of dissent containing any defamatory statements or statements which adversely affect the administration of justice, the Commission should not be understood to have subscribed to them. Further, the Secretariat was requested to carry out certain corrections pointed out by Dr. Subhash C. Kashyap in the Final Report before its submission.

8. The Commission decided to proceed with the arrangements to present the Final Report as signed by the Members (except Shri Sangma who has since resigned), tomorrow, i.e., 31st March, 2002. The Secretary is requested to make the requisite arrangements for the presentation of the Report.

9. The Secretary was also authorized to undertake steps for the winding up the affairs of the Commission within two months from 1st April, 2002 with minimum requisite officers and staff assisting him.

The meeting ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary to the Commission

All the Members of the Commission

ANNEXURE

LIST OF PARTICIPATNS OF THE EIGHTEENTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri R.S. Sarkaria
3. Justice Dr. Kottapalli Punnayya
4. Shri Soli J. Sorabjee
5. Dr. Subhash C. Kashyap
6. Shri K. Parasaran (except on 28th March, 2002)
7. Dr. Raghbir Singh, Secretary

REPORT OF THE DRAFTING AND EDITORIAL COMMITTEE

राष्ट्रीय संविधान कार्यकरण समीक्षा आयोग
विज्ञान भवन एनेक्सी,
मौलाना आजाद रोड,
नई दिल्ली-110011
NATIONAL COMMISSION TO REVIEW
THE WORKING OF THE CONSTITUTION
VIGYAN BHAWAN ANNEXE,
MAULANA AZAD ROAD,
NEW DELHI-110011

REPORT OF THE DRAFTING AND EDITORIAL COMMITTEE

15 February, 2002

From:
Dr. Subhash C. Kashyap
Chairman,
Drafting and Editorial Committee

To
Shri M.N. Venkatachaliah
Hon'ble Chairperson,
National Commission to Review the
Working of the Constitution

Dear Mr. Chairperson,

It is with pleasure and some sense of satisfaction that I present to you, on behalf of the Drafting and Editorial Committee, the **Draft** of the Report of the National Commission to Review the Working of the Constitution.

2. In September, 2001 the Commission appointed an Editorial Committee consisting of myself, Shri K. Parasaran and Dr. Abid Hussain to edit the chapters as finalised by the Members in charge and approved by the Commission. Later, in December 2001, the Committee was renamed Drafting and Editorial Committee in the light of decisions by the Commission. Under your endearing persuasion, the Committee accepted the responsibility with a sense of humility. Shri Gopi K. Arora served as the Consultant to the Committee.

3. The Committee worked out the chapterisation, layout and rules of format and style of presentation of the Report in two volumes - the first volume containing the main report and the second volume (divided in books 1, 2 and 3) containing data and documents. The main report, in draft form, as finalised by the Committee for the consideration of the Commission, consists of 11 chapters.

4. Chapter 1 follows the outline approved by the Commission and narrates the genesis of the Commission, its terms of reference, earlier attempts at review, methodology and procedure adopted by the Commission, interaction with the public and eliciting responses through questionnaires and seminars, deliberations of the Commission, etc.

5. Chapter 2 on the Basic Approach and Perspective is based on your own perceptive and seminal manuscript.

6. Chapters 3 to 9 review the working of the constitution in the most crucial areas of fundamental rights, elections, Executive, Legislature, Judiciary, Union-State Relations, Decentralization, etc.

7. A new chapter on "Pace of Socio-Economic Change" based on the draft prepared by the Member-in-Charge has been added as chapter 10. The draft has been reproduced in full as a Background Paper with minor editorial changes. The last Chapter (chapter 11) contains a summary of recommendations.

8. The Committee had hardly one month's time for the task assigned to it. The Committee Members divided the chapters of the report among themselves for purposes of drafting and editing. In case of almost every chapter several drafts had to be prepared and discussed. Each draft chapter was scrutinized by the Committee before it was finalised to form part of the Draft Report.

9. The attempt of the Committee has been to present a draft that is precise, to the point, thematically coherent and couched in simple and clear language. In case of differences of opinion, the endeavour has been to reflect the views and to integrate and synthesise them. The Commission will, of course, finally consider and decide. Detailed background and arguments in support of recommendations where already given in the Consultation and Background Papers have not been reproduced in the main report.

10. In preparing the Draft, the Committee has naturally followed the decisions taken by the Commission. Where such decisions were not available, the Committee has tried to seek help and guidance from the members in charge and from the consultation papers and responses thereto. There were, however, some matters where the Committee found it necessary and advisable to suggest some modification or to make additional recommendations.

11. The Drafting and Editorial Committee held 15 sessions - some of them lasting for more than one day. Every sitting of the Committee was attended by all the three Members, the Consultant Shri Gopi K. Arora and the Secretary to the Commission Dr. Raghbir Singh. Because of the short time available to the Committee and in its anxiety to adhere to the time-schedule, besides the Committee meetings, I am proud to say, every member of the team, day after day, inevitably worked for long nocturnal hours.

12. I feel happy and privileged to have had the honour of working closely with such distinguished colleagues so committed to the nation. The research team of Shri N.K. Nampoothiry, Shri K. Shankar, and Shri D. Bhardwaj extended full support and willingly put long hours of hard work. The Committee would like to place on record its appreciation for their dedication.

13. I am glad to be able to hereby submit the full Draft Report (Volumes I and II) today the 15th day of February,2002 thereby adhering to the deadline. But, I cannot do so without once again placing on record the fullest admiration of the Committee for the remarkable spirit of mutual cooperation, trust and dedication with which the entire team worked. It is, however, for the Commission to judge whether we have done a reasonably good and generally acceptable job. The Committee is confident of the understanding and generosity of the members of the Commission.

14. With profound regards to you, for your trust and indulgence and to other members of the Commission for their consideration.

Yours sincerely,

Sd/-

(Subhash C. Kashyap)

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