

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

-- SUMMARY OF RECOMMENDATIONS

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CHAPTER 11
SUMMARY OF RECOMMENDATIONS

[Of the various recommendations, 58 recommendations involve amendment 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 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.

[Para 3.27.3]

(23) 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.

[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]

(27) 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.

[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 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 antithetical 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]

⇒ › Resolution of Disputes

(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:-

v He should be eminent in some walk of life.

v He should be a person from outside the State.

v He should be a detached figure and not too intimately connected with the local politics of the State.

v 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]

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]

(170) 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]

(171) 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]

(172) 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]

(173) 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]

(174) 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

(175) 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]

(176) 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]

(177) 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]

(178) 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]

(179) 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]

(180) 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]

(181) All local authorities may be allowed to borrow from the State Government and financial institutions.

[Para 9.8.6]

(182) 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]

(183) 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]

(184) 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]

(185) 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

(186) Whenever a Municipality is superseded, a report stating the grounds for such dissolution should be placed before the State Legislature.
[Para 9.13]

(187) 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]

(188) 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]

(189) 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 9.16.2]

(190) The functions and responsibilities of delimitation, reservation and rotation of seats and matters connected therewith should be vested in a delimitation Commission constituted by law by the appropriate legislature and not in the SEC.
[Para 9.16.2]

(191) 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]

(192) 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]

(193) State laws should specify that changes in the administrative boundaries of districts, subdivisions, taluks, police stations, etc., should not be made within six months prior to a panchayat or a municipal election.

[Para 9.17.4]

(194) 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]

(195) 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]

(196) 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]

(197) 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

(198) 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.

[Para 9.22.3]

(199) 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)]

(200) 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)]

(201) 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)]

(202) 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)]

(203) 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)]

(204) 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)]

(205) 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)]

(206) 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)]

(207) 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]

(208) 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 Auto-nomous 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]

(209) As regards Meghalaya, –

(1) 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.

(2) 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]

(210) 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]

(211) 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]

(212) 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

(213) 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]

(214) 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]

(215) 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]

(216) 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]

(217) 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]

(218) It should be mandatorily stipulated in the Memoranda of Understanding (M.O.U.s.) 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]

(219) 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]

(220) 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]

(221) 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]

(222) 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]

(223) 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]

(224) 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]

(225) 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]

(226) 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]

(227) 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]

(228) 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]

(229) 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]

(230) 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]

(231) 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]

(232) 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]

(233) 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]

(234) 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]

(235) 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]

(236) 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]

(237) 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]

(238) 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]

(239) 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]

(240) 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]

(241) 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]

(242) 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 denotified 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]

(243) 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]

(244) 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]

(245) 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]

(246) 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]

(247) 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]

(248) 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]