

MINUTES OF MEETINGS OF THE COMMISSION

(1)

MINUTES OF THE FIRST MEETING HELD ON 23RD MARCH, 2000

The first meeting of the Commission was held at 10.00 A.M. on 23rd March, 2000 in the Committee Room No.1 of India International Centre to discuss agenda items as circulated to the members. The meeting was chaired by Hon'ble Justice Shri M.N. Venkatachaliah and was attended by all the members. The list of the participants is at annex.

2. The Chairperson, at the outset, extended his warm welcome to all the members. In his opening remarks he emphasised the significance and importance of the work of the Commission and the procedural aspects which need to be kept in mind. After the opening remarks of the Chairperson, agenda items were taken up for discussion.

Agenda Item No.(VI): Procedure for the meetings etc.

3. The meeting started with the discussion on the Agenda Item No.(VI) which was taken up first inasmuch as it related to the procedure for meetings of the Commission. After some discussion the members were of the view that for the present a verbatim records/tape recording of the entire proceedings of each meeting may not be necessary but comprehensive minutes of the meeting should be prepared and circulated to the members. It was also decided that, generally, a notice of two weeks should precede the date of future meetings of the Commission.

Agenda Items No. (II):Scope and amplitude of the terms of reference of the Commission and agenda Item No. (III): Identification of the areas and topics to be considered by the Commission

4. The meeting thereafter discussed items II and III of the agenda. Taking note of the terms of the reference of the Commission, it was observed that its terms of reference do not require it to "re-write" the Constitution as, indeed, the name of the Commission itself indicated the function is to "review the working of the Constitution" and not to re-write the Constitution and that the recommendation of the Commission were essentially advisory in nature.

5. In regard to the areas where the working of the constitution over the past 50 years needed to be reviewed, it was unanimously felt that the constitutional aspirations for raising the living conditions of the poor and the deprived and ensuring them an adequate means of livelihood was one such important area. It was unanimously emphasised that protection of the constitutional rights of Scheduled Castes, Scheduled Tribes and Other Backward Classes and the minorities required to be effectively ensured and improved.

6. It was decided to examine the working of the present provisions of the Constitution and the applicable laws and practice to consider how the constitutional objectives in the aforesaid areas could be better achieved.

7. The meeting identified certain areas of immediate contemporary concern and proposed to look into those areas in the first instance. The areas identified were:

- I. Strengthening the institutions of Parliamentary democracy and their accountability; the grave and persisting menace of un-principled defections.
- II. Constitution and pace of socio-economic change and development: promoting literacy; generating employment; ensuring social security and removal of poverty.
- III. Union-State relations:
Working of Article 356; appointment and removal of Governors.
- IV. Decentralisation and devolution of powers; strengthening of Panchayati Raj Institutions.
- V. Fundamental Rights:
Enlargement of the Fundamental Rights in Part-III
of the Constitution by specific incorporation of the Freedom of the Media, Right to Compulsory
Elementary Education, Right to Privacy and Right to Information.
- VI. Effective enforcement of the Directive Principles of State Policy in Part IV of the Constitution in order to achieve the goals enshrined in the Preamble and for good governance.
- VII. Fundamental Duties under Part-IVA of the Constitution.
- VIII. Fiscal and Monetary Policies; size of government and of government expenditure. Efficacy of public audit mechanisms.

8. Further, as aforesaid and subject to the terms of the reference, the meeting decided to invite public suggestions regarding other areas, if any, that the Commission may be required to examine in the course of its work of reviewing the working of the Constitution.

Agenda Item No. (IV): Constitution of panel of expert advisers.

9. It was decided to associate reputed experts and research institutions in each of the above areas to function as advisory panels. For the purposes of identifying such experts, resource institutions/persons, the meeting decided to constitute a sub-committee consisting of the following members:

- (i) Hon'ble Justice Shri Jeevan Reddy.
- (ii) Shri Soli J. Sorabjee.
- (iii) Shri K. Prasaran.
- (iv) Shri Abid Hussain.
- (v) Shri Subash Kashyap.

10. In regard to the procedure and methodology in evaluating the working of the Constitution in the areas identified, it was also decided that a 'consultation paper' on each of the aforesaid areas along with a Questionnaire formulated in an appropriate format, shall be circulated to all the political parties; Constitution and Statutory Commissions such as, National Commission for Scheduled Castes and Scheduled Tribes; National Commission for other Backward Classes; National Commission for Minorities; National Human Rights Commission; National Commission for Women and other similar bodies; Trade Unions; Representative Bodies of Trade and Industry; Bar Associations; Universities and Colleges; Academicians; research institutes; Media and NGOs. It was also decided to place the consultation paper and Questionnaire on the Commission's Website on the Internet for access to the general public. The Commission also decided that recommendations or proposals to make shall be put to public debate before finalising them.

Agenda Item No.(I): Notification relating to constitution of the Commission.

11. It was noted that the notification constituting the Commission has been amended to provide that in case of the Chairperson, his condition of service shall be the same as applicable to a serving Chief Justice of India. It was also noted that the said notification has also been amended to provide that a member of the Commission, who is a Member of Parliament, shall not be entitled to any remuneration or allowance other than the allowance as defined in clause (a) of section 2 of the Parliament (Prevention of Disqualification) Act, 1959. The meeting was informed that the Chairperson has decided to accept a notional honorarium of Re. 1 per month. Most of the members also responded by saying that they would also not claim allowance of Rs. 1,000/- for attending the meetings of the Commission.

Agenda Item No. (V): Accommodation for the office of the Commission

12. In respect of agenda item No.(V), the meeting was informed that accommodation for the Commission is likely to become available very soon in Vigyan Bhavan Annexe.

Agenda Item No. (VII): Other subjects:

(i) Spokesperson of the Commission

13. The meeting of the Commission requested Hon'ble Justice Shri B.P. Jeevan Reddy to act as spokesperson of the Commission in relation to the Press. Justice Shri Jeevan Reddy graciously accepted.

(ii) Next meeting of the Commission

14. It was decided that the next meeting of the Commission shall be held on 22nd April, 2000 at 10.00 A.M. The meeting would be extended to the next day, if necessary.

(iii) Commencement of the term of the Commission.

15. In the meeting it was observed that as certain formalities relating to amendment of the Resolution constituting the Commission could only be completed with the publication of Government of India Notification No.A-45012(2)/98-Admn.III (LA) dated the 17th March, 2000, the Commission could hold its first meeting today only, that is, 23rd March, 2000. In view of this, the members felt that the term of the Commission may be deemed to have commenced with effect from the date of its first meeting. It was also decided to apprise the Government accordingly.

16. The meeting ended with a vote of thanks to the Chair.

(Dr. Raghbir Singh)
Secretary

LIST OF PARTICIPANTS OF THE FIRST MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri B.P. Jeevan Reddy
3. Justice Shri R.S. Sarkaria
4. Justice Dr. Kottapalli Punneyya
5. Shri P.A. Sangma, M.P.
6. Shri Soli J. Sorabjee, Attorney General
7. Shri K. Parasaran

8. Dr. Subhash C. Kashyap
9. Shri C.R. Irani, Editor in Ch. & MD., Statesman
10. Dr. Abid Hussain
11. Smt. Sumitra G. Kulkarni
12. Dr. Raghbir Singh, Secretary

(2)

MINUTES OF THE SECOND MEETING HELD ON 22ND APRIL, 2000

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The second meeting of the Commission was held at 10.00 A.M. on 22nd April, 2000 in the Committee Room 'C' of Vigyan Bhawan Annexe. The meeting was chaired by Hon'ble Justice Shri M.N.Venkatachaliah and was attended by all the members. The list of the participants is at Annex-I.

2. The Chairperson welcomed the members and briefly explained the issues to be discussed in various agenda items. The meeting thereafter took up agenda items for discussion.

Agenda Item No. 1: Confirmation of the minutes of the first meeting

3. The minutes of the First meeting of the Commission held on 23rd March, 2000 were read and confirmed.

Agenda Item No. 2: Report of the Sub-committee constituted for identifying resource persons and institutions

Agenda Item No. 3: Preparation and finalisation of consultation papers and Questionnaires

4. The meeting decided to take up Agenda items 2 and 3 together. With regard to the report of the Sub-committee, in view of certain procedural formalities, the meeting decided that the Sub-committee may kindly meet afresh after lunch and finalise its recommendations. It was also decided that the terms of reference of the Sub-committee be expanded so as to include the consideration as to which of the members, having regard to their expertise in specific areas, are to be associated with the work of Advisory Panels in an appropriate manner. It was further decided that the Sub-committee may also make selection of experts or institutions for the preparation of consultation papers along with Questionnaires in an appropriate computer-friendly format which will enable the ledgerising and classification of the data collected in the responses to the questionnaires. It was also decided to request Shri C.R. Irani to be a member of the Sub-committee. Agenda Item No. 2 was thereafter deferred and taken up later in the day after the Sub-committee finalised its recommendations.

4.1. The report (copy at Annex II) finalized by the Sub-committee was placed before the Commission for its consideration. The Sub-committee has proposed that the contents and subject matter of the eight topics be spread over into ten areas and for each area a Member of the Commission may function as "Member in charge". The Sub-committee has also suggested expert/Advisory Panels in respect of each of the ten areas. The Sub-Committee has also recommended that the "Member in charge" may, in consultation with the Chairperson, nominate additional members to his panel. The "Member in charge" will, in consultation with the Chairperson, also identify research/resource institutions or persons to prepare the Consultation Paper.

4.2. In respect of item No. 3, the Chairperson emphasized the importance and significance of Consultation Papers and Questionnaires and the need for extensive and authentic research back-up for their preparation. The issue was discussed. The Commission reiterates the decision taken in the first meeting to tap the talent in the reputed research Institutions/experts for the preparation of Consultation Papers and Questionnaires. It was noted that the Institute of Social and Economic Change, Bangalore and some other institutions were doing impressive research work in their respective areas of specialization and that it would be useful to utilise the services of such institutions. The Chairperson mentioned that he had a wide-ranging discussions with the Institute of Social and Economic Change at Bangalore and had also addressed its faculty as to the scope and significance of the Commission's work. The Commission also proposed to have widest possible participation of various sections of Indian society in the work of the Commission.

Agenda Item No. 4 : Progress Report in setting up of the Commission's office

5. Chairperson informed the Members regarding the progress made so far in setting up of the Commission's office. The Members were informed that vacant possession of the accommodation allotted to the Commission was obtained and expressed the hope that Commission's office would be ready in a couple of weeks.

Agenda Item No. 5 : Procedure for inviting suggestions from public.

6. The Commission discussed the mode of inviting suggestions from public. The earlier decision of the Commission to invite suggestions from the public though mentioned in the Press Note dated on 23rd March, 2000, had not received sufficient publicity. It was, therefore, decided that an appropriate advertisement through electronic and print media be issued to invite public suggestions. Dr. Subhash C. Kashyap and Shri C.R. Irani were requested to prepare a draft of the proposed advertisement. The advertisement, it was felt, should make it clear that the Commission does not propose to entertain any suggestion affecting the basic structure of the Constitution, parliamentary system of democracy and Rights of the minorities, Scheduled Castes, Scheduled Tribes and Other Backward Classes under the Constitution.

Agenda Item No. 6 : Discussion of the further areas in respect of which working of the Constitution needs examination.

7. Some further areas for consideration of the Commission were suggested by some members, but no decision was taken in this regard.

Agenda Item No.7: Other subjects:

(i) CD Rom on Constitution and Amendments

8. The meeting was informed that Legislative Department of the Ministry of Law, Justice and Company Affairs has brought out a CD Rom, which contains all constitutional amendments carried, so far, along with Statement of Objects and Reasons pertaining to the amendments. This software was also capable of tracing any phrase or word used in the Constitution. It was decided that every Member might be provided with a CD Rom.

(ii) Next meeting of the Commission.

9. It was decided that the next meeting of the Commission shall be held on 16th May, 2000.

10. The meeting ended with a vote of thanks to the Chair.

(Dr. Raghbir Singh)
Secretary to the Commission

To
All Members of the Commission

LIST OF PARTICIPANTS OF THE SECOND MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri B.P. Jeevan Reddy
3. Justice Shri R.S. Sarkaria
4. Justice Dr. Kottapalli Punayya
5. Shri P.A. Sangma, M.P.
6. Shri Soli J. Sorabjee, Attorney General
7. Shri K. Parasaran
8. Dr. Subhash C. Kashyap
9. Shri C.R. Irani, Editor in Ch. & MD., Statesman
10. Dr. Abid Hussain
11. Smt. Sumitra G. Kulkarni
12. Dr. Raghbir Singh, Secretary

(3)

MINUTES OF THE THIRD MEETING HELD ON 8TH AND 9TH JULY, 2000

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The third meeting of the Commission was held in the Conference Room of the office of the Commission in Vigyan Bhavan Annexe at 10.00 AM on 8th and 9th July, 2000. The meeting was chaired by Hon'ble Justice Shri M.N. Venkatachaliah. The list of the participants is at Annex-I.

2. The Chairperson welcomed the Members and the meeting thereafter took up the agenda items for consideration.

Agenda Item No. 1: Confirmation of the minutes of the second meeting

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3. The meeting took note of the advertisement of the Commission published in various newspapers and in view thereof, it felt that the last sentence in para 6 (Item No.5) of the minutes of the last meeting beginning from "The advertisement....." and ending with "under the Constitution" be omitted. It further decided that at the end of para 7 (Agenda Item No. 6), the following sentence be added.

"The Commission would take into account the areas suggested by the Members while considering further areas, if any, that are required to be examined and considered by it."

4. Subject as aforesaid, the minutes of the second meeting of the Commission held on 22.4.2000 were taken as read and confirmed.

5. In regard to the decision taken at the Commission's second meeting for supply to each member of a CD Rom containing Constitutional amendments (para 8, Agenda Item No.7) the Secretary pointed out that, CD Rom presently available contained amendments enacted only upto the Constitution (Seventy ninth Amendment) Act and it was likely to take a few months for NIC to update it by including two subsequent amendments and that if Hon'ble Members so desired, the available CD Rom could be

made available to them. It was, decided that the available CD Rom with hard copies of subsequent amendments be made available to the each Member.

**Agenda Item No. 2: Constitution of the 'Projects And Finance Committee';
And**

Agenda Item No. 6: Scale and limit of expenditure and guidelines for incurring expenditure on TA/DA to the Chairperson and Members of the Advisory Panels and on holding their meetings and payment of professional fees to Research Institutions/Experts

6. The meeting took up Agenda Items 2 and 6 together. They were discussed. It was decided that a Committee called "Projects and Finance Committee" be constituted. The Committee was requested, to consider the following :

- (i) Monitoring the quality assurance of the "Consultation Papers" and "Questionnaires" so as to ensure uniformity and eliminate possibilities of duplication or repetition resulting from the overlapping areas in the subjects or topics to which they relate.
- (ii) Making suitable recommendations for the apportionment and allocation of consolidated funds earmarked for the following :
 - (a) Consultation or professional fees for the preparation of the 'Consultation Papers' and 'Questionnaires';
 - (b) the expenses for the meetings of the Advisory Panels and on TA/DA of the Chairperson and Members of these panels;
 - (c) holding of seminars; and
 - (d) other related purposes; and to
- (iii) lay down broad guidelines and procedures for the passage of the 'Consultation Papers' and 'Questionnaires' through the various stages.

7. The meeting left it to the Chairperson to decide on the Members of the Committee^Y. The committee would evolve its own procedure in respect of holding its meetings and conduct of its business.

Agenda Item No. 3 : Consideration of the requests for participation in or association with the work of the Commission

8. The meeting noted that the requests received for participation in or association with the work of the Commission broadly fell into two categories – (i) the requests from the individuals; and (ii) requests from the institutions. It was decided that all such persons and institutions be requested to send their considered views and suggestions to the Commission, informing them that their suggestions would be duly considered by the Commission at the appropriate time.

9. The meeting, however, took note of the request of Indian Law Institute, New Delhi in this regard and decided to suitably associate it with the work of the Commission. It left it to the Chairperson to decide on the area in which the services of the Institute could be so utilised.

Agenda Item No.4 : Holding a meeting of the leading Journalists and NGOs to explore possibilities of their association with the work of the promotion of awareness of the Commission's remit

10. It was felt that there was a need to dispel misconceptions and apprehensions in certain sections of the society with regard to the nature of exercise being done by the Commission. On the issue of associating leading journalists and NGOs etc. for promoting awareness of the Commission's remit, the

meeting, however, after taking note of the views of Shri C.R. Irani as expressed in his letter dated July 6, 2000 addressed to the Hon'ble Chairperson and of Shri Sangma who were of the view that the Commission may take note of possibility of counter productivity of such a step and after deliberating on its possible implications, came to a view that it would not be beneficial at this stage, to associate journalists or NGOs with any awareness campaign.

11. The meeting noted with satisfaction and appreciation that some of the members particularly Dr. Subhash C. Kashyap and Shri P.A. Sangma were already contributing towards creating public awareness about the true nature of the work of the Commission. It felt that the Members of the Commission should themselves, by making use of the material already made public by the Commission through press notes etc., endeavour to dispel any misgivings or doubts in the public mind in regard to the work of the Commission, whenever they had an opportunity to do so. The Press notes and the advertisement of the Commission have, it was noted, already helped in dispelling some of the doubts and apprehensions in the minds of certain sections of the public. It was felt that ultimately the work of the Commission should be allowed to speak for itself. It was felt that the advertisement issued by the Commission inviting suggestions might also be published through the electronic media at the prime time in order to achieve greater public participation.

Agenda Item No. 5^s: Evolving a broad time frame for the various stages of the work of the Commission

12. The meeting agreed with the suggestion of the Hon'ble Chairperson that there was a need to evolve a broad time frame for completion of the various stages of the work of the Commission and to make every endeavour to adhere to it. Dr. Subhash C. Kashyap was requested in the meeting to evolve a time frame. *"The time frame evolved by Dr. Subhash C. Kashyap was considered and it was unanimously accepted. The time-frame, as accepted, is at Annex-III. It was clarified that if any stage in respect of any topic/area was completed earlier to the last date specified for its completion, action for the next stage for that topic/area might be initiated immediately on completion of that stage itself. The Hon'ble Chairperson also emphasised on the need of identifying at this stage itself the persons/bodies/institutions to whom 'Consultation Papers' and 'Questionnaires' would have to be sent; the agencies that would print them; the number of copies that would be required etc. as it would result in saving of time.*

Agenda Item No.7: Review of the progress in the preparation of 'Consultation Papers' and 'Questionnaires'

13. The meeting considered the 'status note' indicating progress made so far in preparation of 'Consultation Papers' and 'Questionnaires' in the areas initially identified by the Commission. . It was noted that Institutes/Experts had already been identified for preparation of the 'Consultation Papers' and 'Questionnaires' (in all but one area) and the work was in different stages of completion. Initial drafts on topics for 'Pace of Social and Economic Change in India': 'The Question of Poverty', 'Literacy, Employment and Social Security' and 'Enlargement of Fundamental Rights' had already been received. The initial drafts of the papers on other subjects were also expected to be received shortly. It was decided in the meeting that initial draft of the consultation paper would be scrutinised by the Member-in-Charge and the Advisory Panel on the subject and after modifications and changes as may be considered necessary were incorporated and draft approved by the Advisory Panels, it would be placed before "The Projects and Finance Committee" of the Commission which would ensure uniformity in the quality of the papers and a holistic view of the issues dealt with in the papers. Thereafter, it would be considered by the Commission. However, after the 'Projects and Finance Committee' finalises the procedure, that procedure shall be followed.

Agenda Item No. 8^s: Holding of regional seminars for discussing the 'Consultation Papers' and 'Questionnaires' and public responses thereto and identification of the Institutions and Agencies to conduct seminars.

14. It was decided that after the 'Consultation Papers' and 'Questionnaires' had been prepared and circulated and the responses thereto obtained, the various issues raised in those papers should be discussed in a series of five regional seminars and finally at a national seminar at Delhi. It was further decided to ensure participation of representatives of a wide cross-section of the society, viz. people's representatives, Jurists, Journalists, Academicians, NGOs, Trade Union leaders, Panchayati Raj Institutions, Administrators, Industrialists, Leaders of Cooperative Movements etc. in these seminars. *#The Commission also decided to identify the NGOs/Institutions which would be entrusted with holding of seminars at this stage itself so that the organisers have sufficient time for ensuring meaningful and wide participation of different sections of the society. Shri P.A. Sangma, Dr. Subhash C. Kashyap and Shri C.R. Irani were requested in the meeting to identify the nodal agency/institution or agencies/institution for conduct of these seminars.*

Agenda Item No. 9: Consideration of a programme for interaction and consultation with the Political Parties, the National Commission for the Scheduled Castes and the Scheduled Tribes, the National Human Rights Commission, the National Commission for Minorities, the National Commission for Women.

15. The Commission decided to interact at an appropriate time with the political parties, the National Commission for the Scheduled Castes and the Scheduled Tribes, the National Human Rights Commission, the National Commission for Minorities, the National Commission for Women etc.

Agenda[#] Item No.10: Consideration of responses received so far, in response to recent advertisement of the Commission.

16. *The meeting noted the procedure that was being adopted by the Secretariat of the Commission in acknowledging the suggestions that were being received in response to the advertisement of the Commission. It noted that till date over 1100 responses had been received and most of them had already been acknowledged. It was felt in the meeting that the work of summarising/ ledgerising of the responses, should also be simultaneously undertaken and completed early.*

Agenda Item No. 11: Any other item

Next meeting of the Commission

17. *It was decided that the next meeting of the Commission might tentatively be fixed on 26th and 27th August, 2000.*

18. The meeting thereafter ended with a vote of thanks to the Chair.

**(Dr. Raghbir Singh)
Secretary to the Commission**

To

All the Members of the Commission.

ANNEX I

LIST OF PARTICIPANTS OF THE THIRD MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Hon'ble Justice Shri B.P. Jeevan Reddy
3. Hon'ble Justice Shri R.S. Sarkaria
4. Hon'ble Justice Shri Kottapalli Punneyya
5. Shri P.A. Sangma
6. Shri Soli J. Sorabjee

7. Dr. Subhash C. Kashyap
8. Shri C.R. Irani (attended meeting only on 9.7.2000)
9. Smt. Sumitra G. Kulkarni
10. Dr. Raghbir Singh, Secretary

ANNEX II

COMPOSITION OF THE 'PROJECTS AND FINANCE COMMITTEE'

1. Shri Soli J. Sorabjee - Convenor
2. Justice Shri B.P. Jeevan Reddy
3. Shri P. A. Sangma
4. Dr. Abid Hussain
5. Dr. Subhash C. Kashyap

[Constituted by the Hon'ble Chairperson in pursuance of the authority conferred on him by the Commission in its meeting held on 8th and 9th July, 2000]

ANNEX III

PROGRAMME OF WORK AND BROAD TIME-FRAME

SL. NO.	PROGRAMME	TIME-FRAME	REMARKS
1.	Preliminary Meetings; setting-up of Expert Panels on ten subject areas; nomination of Chairpersons and Members of the Panels	23-4.2000 to 15.7.2000	
2.	Identifying Resource Institutions/Persons for preparation of Consultation Papers and Questionnaires ; setting the outlines of work and terms of remuneration/fees etc.	23.4.2000 to 20.7.2000	
3.	Convening the Expert Panels for Consideration of the Consultation Papers and Questionnaires etc;	1.8.2000 to 1.9.2000	
4.	Consultation Papers and Questionnaires to be ready.	15.9.2000 to 15.10.2000	
5.	Processing of responses in regard to identifying additional areas, if any, for review and commission's decision thereon and laying down schedule for preparing consultation papers, etc.	1.6.2000 to 30.8.2000	
6.	Scrutiny and approval of the Consultation Papers and Questionnaires by the Commission	15.9.2000 to 1.11.2000	

7.	Consultation Papers and Questionnaires to be distributed and released to the public.	By 15.11.2000	These are to be sent to all MPs, MLAs, Political Parties, Universities All India Service Officers' Association, Trade Unions, Industrial and Commerce Associations and Groups like FICCI, ASSOCHAM etc; Students' Organisations, Bar Associations, Leading Lawyers, important NGOs, Chairpersons and Members of all National Commissions, Judges of the Supreme Court and the High Courts, Speakers and former Speakers of the Lok Sabha, Deputy Chairperson of the Rajya Sabha, Speakers and former Speakers of State Assemblies, Chief Ministers and former Chief Ministers, Governors and former Governors, former Prime Ministers, Chief Editors of major News-Papers, prominent Journalists, Educationists and Academicians etc;.
8.	Responses to be received	By 31.12.2000	

(4)

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**MINUTES OF THE FOURTH MEETING OF THE COMMISSION HELD ON
26TH AUGUST, 2000**

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The fourth meeting of the Commission was held in the Conference Room of the office of the Commission in Vigyan Bhavan Annexe at 10.00 AM on the 26th August, 2000. The meeting was chaired by Hon'ble Justice Shri M.N. Venkatachaliah. The list of the participants is at Annex – I.

2. The Chairperson welcomed the Members and the meeting thereafter took up the agenda items for consideration.

Agenda Item No. 1: Confirmation of the minutes of the third meeting.

3. The minutes of the third meeting of the Commission held on 8th and 9th July, 2000 were read and confirmed.

Agenda Item No. 2: Consideration of the recommendations of the Projects and Finance Committee.

4. The Secretary read out his report on the recommendations made by the Projects and Finance Committee, a copy of which is at Annex – II. There was a brief discussion on the report and thereafter the recommendations of the Committee contained in the Report were accepted.

Agenda Item No. 3: Review of the progress made in the preparation of 'Consultation Papers' and 'Questionnaires'.

5. The Chairperson explained the reasons why the preparation of 'Consultation Papers' and 'Questionnaires' has been entrusted to the various Research Institutions of repute in the country and not to the Research Wing of the Commission. It was felt that the copyright of the 'Consultation Papers' and

'Questionnaires' prepared by the Institutes should vest in the Commission so that the Commission can make necessary modifications in the same before releasing it to the public. The meeting decided that the Member-in- Charge of the Advisory Panel may write to the Institute concerned and get a confirmation from it in writing about the copyright being vested in the Commission. Members explained the present status of the preparation of 'Consultation Papers' and 'Questionnaires' relating to the subject under their charge.

Agenda Item No. 4: Requests for grant of extension of time for sending suggestions.

6. The meeting was informed that requests had been received from certain State Governments, political parties, associations and individuals seeking extension of time for sending suggestions in response to the advertisement of the Commission inviting suggestions from public. The Commission agreed that the suggestions received after 31st July, 2000, which was stipulated as the last date in the advertisement, may also be considered.

Agenda Item No. 5: Paper 'Public Audit and the Comptroller and Auditor General of India – Reforming the Institution' by Dr. B.P.Mathur.

7. The meeting was informed that this paper had been prepared by Dr. B.P. Mathur, Director of the National Institute of Financial Management, Faridabad who is a retired Deputy Comptroller and Auditor General of India. Brief comments were made on the Paper by the Chairperson and certain Members. Dr. Abid Hussain, who is the Member-in-Charge of the Advisory Panel to which the subject of the paper relates, suggested that it would be appropriate that this Paper is considered by the Advisory Panel so that its content and form could be looked into and suitably modified to make it more understandable by public. The meeting agreed with the suggestion of Dr. Abid Hussain.

Agenda Item No. 6: Uniformity in the design of 'Consultation Papers' and 'Questionnaires'.

8. The Chairperson emphasized the need to have a uniformity in the design of 'Consultation Papers' and 'Questionnaires', which are being drafted by different Institutes. The meeting agreed that there has to be certain amount of uniformity in 'Consultation Papers' and 'Questionnaires' and the same have to be of a very high quality and presentable. It was decided that help of experts in the field may be taken for the purpose and the experts may be identified by the Projects and Finance Committee. The meeting agreed that the format of the Questionnaires has to be computer friendly so that the responses to the same could be machine readable. It was also decided that the 'Questionnaires' may have to be accompanied with self addressed envelopes when these are sent to the individuals for response.

Agenda Item No. 7: Any other item.

9. Dr. Abid Hussain suggested that copies of important articles/news items published in the reputed magazines and newspapers relating to the subject matter concerning a member may be supplied to him by the Commission's Secretariat. The meeting agreed to this suggestion.

10. There was some discussion on the issue 'whether the Commission may hold discussions with senior political leaders, leading journalists and NGOs on certain important issues of national interest'. However, there was no final decision in this regard.

11. The meeting thereafter ended with a vote of thanks to the Chair.

(Dr. Raghbir Singh)
Secretary to the Commission

To
All the Members of the Commission

ANNEX-I

LIST OF PARTICIPANTS OF THE FOURTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri B.P. Jeevan Reddy
3. Justice Shri R.S. Sarkaria
4. Justice Dr. Kottapalli Punneyya
5. Shri P.A. Sangma, M.P.
6. Shri Soli J. Sorabjee
7. Shri K. Parasaran
8. Dr. Subhash C. Kashyap
9. Shri C.R. Irani
10. Dr. Abid Hussain
11. Dr. Raghbir Singh, Secretary

ANNEX II

**REPORT OF THE SECRETARY ON RECOMMENDATIONS MADE BY THE PROJECTS
AND FINANCE COMMITTEE AND ACTION PROPOSED THEREON**

The 'Projects and Finance Committee' of the Commission held its first meeting on 27.07.2000. The Committee, *inter-alia*, has made the following recommendations:-

- (i) Earmarking of the amounts specified below towards meeting expenses on finalization of consultation papers etc.:
 - (a) Rs.20 lakh to meet the expenses on preparation of consultation papers and questionnaires in all the ten areas identified by the Commission;
 - (b) Rs.13 lakh for meeting expenses on travel, etc. of the Chairperson and Members of all the ten Advisory Panels.
 - (ii) The ceiling on fee for final preparation of a paper and questionnaire on a topic be kept at Rs.1 lakh. Cases involving payment of higher amounts would be considered by the Committee on merit.
 - (iii) The fee payable is to be released to research institutions in three instalments as under:
 - (a) The first instalment of 25% of the total fee payable to be released when the institution was identified and asked to commence the work;
 - (b) The second instalment of 25% of the total fee payable to be released when the initial draft of the consultation paper and questionnaire were received from it;
 - (c) Balance 50% of the total fee payable to be released after the consultation paper and the questionnaire were finally approved.
2. With regard to payments to be made to individual institutions for preparation of consultation papers and questionnaires, the following recommendations have been made by the Committee:
- (i) Payment of Rs.1 lakh to the Centre for Policy Research for final preparation of each of the four consultation paper along with questionnaire, which that Centre had been asked to prepare.

- (ii) Payment of Rs.1.5 lakh to the Institute of Constitutional and Parliamentary Studies for final preparation of the consultation paper and questionnaire on "Party System in India: An Agenda for Reforms".
3. Funds to the Centre for Policy Research and the Institute of Constitutional and Parliamentary Studies on the lines of the recommendations made by the Committee are proposed to be released after the Commission has accepted the recommendations of the Committee. Funds to other institutions would be released in instalments as recommended by the Committee as soon as the fee payable to them was settled.

(Dr. Raghubir Singh)
Secretary
21.08.2000

(5)

MINUTES OF THE FIFTH MEETING HELD ON FRIDAY, THE 29TH DECEMBER, 2000

The Fifth meeting of the Commission was held in the Conference Room of the Office of the Commission in Vigyan Bhawan Annexe, at 10.00 a.m. on 29th December, 2000. The meeting was chaired by Hon'ble Justice Shri M.N. Venkatachaliah. The list of participants is at Annexure.

The Hon'ble Chairperson extended a warm welcome to the Members and requested the Secretary to take up the Agenda.

Item 1: Confirmation of the minutes of the fourth meeting

The minutes of the fourth meeting of the Commission held on 26th August, 2000 were taken as read and confirmed.

Item 2: Consideration whether the Consultation Papers on "Review of Election Law, Processes and Reform Options" and "Review of Working of the Political Parties specially in relation to Elections and Reform Options" which are presently for consideration before the Projects and Finance Committee could be taken up by the Commission itself as all the Members of the Projects and Finance Committee are Members of the Commission".

The meeting discussed the two Consultation Papers in depth and thereafter authorized the Hon'ble Chairperson and the Member-in-charge, Dr. Subhash C. Kashyap to finalise the Papers in the light of the observations made by the members in the meeting.

Item 3: Consideration of the Consultation Paper on "Treaty-making Power under our Constitution".

The discussion on this item began with the Hon'ble Chairperson explaining the various provisions of the Constitution on the subject and giving a brief background of the Consultation Paper. Thereafter, the meeting discussed and approved the Consultation Paper and it was decided that a questionnaire should be prepared and attached to the Paper before its release for public debate.

Item 4: Consideration of the Consultation Paper on “Liability of the State in Tort and Sovereign Immunity”

The Hon'ble Chairperson explained in brief the background of the Consultation Paper and pointed out that the provisions of the Paper are relatable to article 300 of the Constitution and may necessitate a suitable amendment to that Article in view of the developments that had taken place in the area over 50 years since the commencement of the Constitution. The Paper was approved for release for public debate. However, it was decided that an appropriate questionnaire should be prepared and appended to the Paper before it is released for public debate.

Item 5: Consideration of the Consultation Paper on “All-India Judicial Service”

Justice Shri B.P. Jeevan Reddy explained the provisions of the Consultation Paper. Thereafter the paper was discussed in detail in the meeting and was approved subject, however, that an appropriate questionnaire be drafted and appended as part of the Consultation Paper before it is released for public debate.

Item 6: Consideration of the Consultation Paper on “Immunity of Legislators – What do the words ‘In respect of anything said or any vote given by him’ in article 105(2) signify?”

The meeting discussed this Consultation Paper in detail. The members emphasized that any proposed scheme of change of law should not impinge on the privileges and rights of the members of legislatures. The meeting approved the paper subject to certain modifications on these lines. It was also decided that an appropriate questionnaire be prepared and appended to the Consultation Paper before it is released for public debate.

Item 7: Consideration of the Consultation Paper on “Public Audit and the Comptroller and Auditor General of India – Reforming the Institution”

After discussing the Consultation Paper in detail, the meeting approved the same and decided to release it for public debate.

It was, however, made clear that in respect of all the five Consultation Papers at items 3, 4, 5, 6 and 7, the views expressed or suggestions contained therein did not reflect the final views of the Commission but the Consultation Papers were meant for the sole purpose of generating a public debate and discussion.

Item 8: Consideration of the progress made in regard to the Consultation Paper on “Pace of Socio-Economic Change under the Constitution”

The Hon'ble Chairperson explained the provisions of the draft Consultation Paper. The meeting then discussed the Paper in depth and approved the same in principle. It was noted that the Consultation Paper was presently being examined by the Expert Advisory Panel. The Consultation Paper could be released for public debate only after taking into consideration the views of the Expert Advisory Panel.

Item 9: To reconsider the schedule of the work of the Commission and to review the progress so far made

The Commission made a comprehensive review of the progress of the work and took note of the notes on agenda prepared and circulated by the Secretary.

Dr. Abid Hussain informed the meeting that four Consultation Papers were being prepared in relation to the Advisory Panel under his charge and these papers would be finalized by the end of January, 2001.

Shri Soli J. Sorabjee informed that Consultation Paper on "Enlargement of Fundamental Rights" was under preparation and would be finalized soon.

The meeting decided that preparation of the Consultation Paper on "Effectuation of Fundamental Duties" might be entrusted to the Citizenship Development Society, New Delhi, after consultation with the Member-in-charge, Shri C.R. Irani.

Item 10: Consideration of the Report of the Secretary on the meetings of various Advisory Panels and Projects and Finance Committee

The Commission took note of and placed on record the Report of the Secretary.

Item 11: Any other item:

The Hon'ble Chairperson informed the meeting that Dr. A.P.J. Abdul Kalam, Principal Scientific Advisor to the Government of India intends to interact with the members and the Chairperson of the Commission and was also desirous of making a presentation. It was decided that the Chairperson could invite Dr. Abdul Kalam to meet with the members of the Commission at the next meeting of the Commission.

The Hon'ble Chairperson also informed the meeting that the members of the Minorities Commission intend to have a meeting with the Members of the Commission. It was decided that a meeting with the Members of the Minorities Commission could be fixed to be held in the forenoon of 1st February, 2001.

The meeting was informed by the Hon'ble Chairperson that a number of representations relating to certain matters like the protection of the interests of the Sindhi Community; the inclusion of Maithili language in the Eighth Schedule; demands from the various Sections of Akalis; issues relating to Coorgis of Karnataka State; problems of the Denotified Tribes, etc. have been received and needed to be examined.

The Commission was of the view that these representations may be allocated to Members who, after examining the matter and after such enquiry as they may consider proper, may formulate what, in their opinion, should be the view they should commend themselves to the Commission and place them before the full Commission. The representations/petitions that need to be taken up are the following:

- (i) Representation dated 25.8.2000 presented by Justice I.S. Israni on behalf of Sindhi Rights Committee;
- (ii) Representation dated 20.4.2000 received from Shri K.T. Rohra on behalf of the International Sindhi Forum;
- (iii) Representation dated 13.7.2000 received from Shri Ram Tolani on behalf of Sindhu Bhartiya Samata Sangathan;
- (iv) Representation dated 26.5.2000 received from Shri J.T. Wadhvani on behalf of Bhartiya Sindhu Sabha;
- (v) Representation received from Dr. Nanakram Israni, President, All India Sindhi Samaj;
- (vi) Representation dated 31.7.2000 received from Ms. Mahashweta Devi, on behalf of De-Notified and Nomadic Tribals Rights Action Group;
- (vii) Representation dated 4.10.2000 received from Shri Tarakanth Jha on behalf of Mithilanchal Vikas Manch for inclusion of Maithili in the Eighth Schedule of the Constitution;
- (viii) Representation dated 25.7.2000 submitted by Shri Teja Singh on behalf of Sardar Kapur Singh Memorial Trust;

- (ix) Memorandum submitted by Shri Prakash Singh Badal, CM of Punjab, on behalf of Shiromani Akali Dal;
- (x) Representation dated 25.9.2000 received from Maj. General Narindar Singh on behalf of the Institute of Sikh Studies;
- (xi) Memorandum dated 31.7.2000 submitted by Shri Gurcharan Singh Tohra, MP, on behalf of Sarb Hind Shiromani Akali Dal;
- (xii) Memorandum submitted on 21.11.2000 by Shri N.U. Nachhappa on behalf of the Coorg National Council;
- (xiii) Representation dated 28.12.2000 received from Shri N.S. Deviprasad on behalf of Kodagu Prajavedike (about Coorgis);
- (xiv) Memorandum submitted on 13.10.2000 by the Chairman, UPSC;
- (xv) Note dated 21.12.2000 received from the Registrar on behalf of the Central Administrative Tribunal, New Delhi;
- (xvi) Representation dated 4.9.2000 submitted by Shri Ramvao Longkham on behalf of the Sixth Schedule Demand Committee, Manipur.
- (xvii) Representation dated 17th April, 2000, received from Dr. Mumtaz Ahmed Khan, Chairman, All India Muslim Educational Co-ordination Committee;
- (xviii) Representation dated 23.6.2000 received from Dr. M. Ejaz Ali, National Convenor, All India Backward Muslim Morcha.

The Hon'ble Chairperson informed that a Delhi based organization known as '*People First, instituting good governance*' wants to have interaction with the Commission. It was decided that a meeting with them might be fixed according to mutual convenience.

The meeting decided that the Consultation Papers and Questionnaires on the subjects mentioned at item numbers 2 to 7 should be released on 8th January, 2001 both in paper print and on the website of the Commission for generating public debate and discussion.

It was decided to hold the next meeting of the Commission on 31st January, 2001 at 2.30 p.m., and on the subsequent day/days depending on the exigencies of work.

The meeting thereafter ended with a vote of thanks to the Chair.

(Raghibir Singh)
Secretary to the Commission

To

All the Members of the Commission.

ANNEXURE

LIST OF THE PARTICIPANTS OF THE FIFTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Hon'ble Justice R.S. Sarkaria
3. Hon'ble Justice Shri B.P. Jeevan Reddy
4. Hon'ble Justice Shri Kottapalli Punnayya
5. Shri Soli J. Sorabjee
6. Shri K. Parasaran
7. Dr. Abid Hussain
8. Dr. Subhash C. Kashyap
9. Smt. Sumitra G. Kulkarni
10. Dr. Raghibir Singh, Secretary

**MINUTES OF THE SIXTH MEETING OF THE COMMISSION HELD ON
WEDNESDAY, THE 31st JANUARY, 2001**

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The sixth meeting of the Commission was held in the Conference Room of the Office of the Commission in Vigyan Bhawan Annexe, at 2.30 p.m. on 31st January, 2001. The meeting was chaired by Hon'ble Justice Shri M.N. Venkatachaliah. The list of participants is at Annexure.

2. The Hon'ble Chairperson extended a warm welcome to the Members and requested the Secretary to take up the Agenda.

Item 1: Confirmation of the Minutes of the Fifth Meeting

3. The Minutes of the Fifth Meeting were taken as read and confirmed subject to the modification of the Minutes under item No. 6. Modified version of the confirmed minutes is as under:

“Item 6: Consideration of the Consultation Paper on “Immunity of Legislators – What do the words ‘in respect of anything said or any vote given by him’ in article 105(2) signify?”.

The meeting discussed this Consultation Paper in detail. The meeting approved for circulation the paper subject to certain modifications. It was also decided that an appropriate questionnaire be prepared and appended to the Consultation Paper before it is released for public debate.”

Item No. 2: Consideration of the progress made in finalization of the Consultation Papers.

4. The Commission made a comprehensive review of the progress in regard to the finalization of the following Consultation Papers:

- i) Pace of Socio-economic Change under the Constitution.
- ii) Parliamentary Reforms.
- iii) Article 356 of the Constitution.
- iv) Institution of Governor under the Constitution.
- v) Remedies for Misfeasance in Public Office.
- vi) Constitutional Response to Good Governance and Macro-economic Management.
- vii) Legal Control of Monetary and Fiscal Policy.

5. It was noted that the Consultation Paper at Sl. No. (i) was discussed in detail in the meeting of the Advisory Panel held on 30th January, 2001 under the Chairpersonship of Justice Dr. K. Ramaswamy and that the Advisory Panel is likely to finalize the Consultation Paper in its next meeting to be held during the third week of February, 2001.

6. The meeting was informed that the Consultation Papers at Sl. Nos. (ii) to (v) above were at advanced stages of scrutiny and would be finalized very soon.

7. The meeting was informed that draft Consultation Paper in respect of topic at Sl. No. (vi) had been received from Shri N.L. Mitra, former Director, National Law School of India, Bangalore, and would be placed before the Advisory Panel.

8. In respect of the Consultation Paper at Sl. No. (vii), the Commission was informed that the initial draft had been received and the final draft would be forwarded by the Chairperson of the Advisory Panel very soon.

Item 3: Review of the progress of preparation of other Consultation Papers and Questionnaires.

9. Secretary made a presentation about the progress in respect of other Consultation Papers and Questionnaires. The meeting was informed that the Consultation Paper & Questionnaire on 'Municipalities' was being prepared by the All India Institute of Local Self Government (Nagarpalika Network), New Delhi, and the Institute had informed on 29th January, 2001 that the draft would be submitted to the Advisory Panel within a few days.

10. The Consultation Paper & Questionnaire on 'Panchayats' was being prepared by the Institute of Social Sciences, New Delhi. The Institute has informed on 30th January, 2001 that the draft would be sent by 15th February, 2001.

11. The Commission was also informed that the Consultation Paper and Questionnaire on "Enlargement of Fundamental Rights" would be finalized by the Advisory Panel within three weeks. Regarding the Consultation Paper and Questionnaire on "Effectuation of Fundamental Duties", the meeting was informed that a communication had been received on 31.1.2001 from the Citizenship Development Society, indicating their willingness to undertake the assignment. The question of entrustment of preparation of the Consultation Paper & Questionnaire to the Society and the consultation fee to be fixed, etc., would be discussed and finalized very soon. The meeting was also informed that Shri Shiv Visvanathan of the Centre for the Study of Developing Societies, Delhi, who has been asked to prepare the Consultation Paper and Questionnaire on "Effectuation of Directive Principles and Achievement of Preambular Objectives of the Constitution", met the Member-in-charge of the Advisory Panel and the Chairperson of the Commission on 31.1.2001 and has promised to send the draft of the Paper within six weeks. The Projects and Finance Committee will be requested to take-up the question of the quantum of the consultation fee.

Items 4 & 5: Consideration of the request of the Minorities Council, Aligarh dated 16th January, 2001 requesting for interaction with the Commission and representation dated 13th January, 2001, from Smt. Bader Sayeed, Advocate, Chennai.

12. The Meeting took up item Nos. 4 and 5 together. It was decided that a list of all the prominent organizations which had submitted representations for interaction with the Commission be compiled and submitted before the Commission so that a decision could be taken thereon.

Item 6: Any other item

13. With the permission of the Hon'ble Chairperson the following Papers were circulated during the meeting :

- (i) 'Peoples' Awareness of the Indian Constitution and the Review Process' received from the Commonwealth Human Rights Initiative, New Delhi and
- (ii) 'Working of Parliament and Need for Reforms' submitted by Dr. Subhash C. Kashyap .

The Secretary was requested to forward item (ii) above to Dr. Jayaprakash Narayan who is finalizing the Consultation Paper on 'Working of the Legislatures'.

14. The meeting agreed to the suggestion that Hindi version of the Summary of Consultation Papers may also be made available for making the public debate/ discussion more meaningful.

15. The Office was asked to tabulate the responses and suggestions received from the public in response to the Consultation Papers and Questionnaires and circulate the same amongst Members.

16. It was decided that the next meeting shall be held in the last week of February, 2001. The Hon'ble Chairperson was authorized to decide about the exact date of the meeting of the Commission.

The meeting thereafter ended with a vote of thanks to the Chair.

(Ragbir Singh)
Secretary

To

All the Members of the Commission

ANNEXURE

LIST OF PARTICIPANTS OF THE SIXTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Hon'ble Justice Shri B.P. Jeevan Reddy
3. Hon'ble Justice Shri R.S. Sarkaria
4. Hon'ble Justice Shri Kottapalli Punneyya
5. Shri Soli J. Sorabjee
6. Shri K. Parasaran
7. Dr. Subhash C. Kashyap
8. Shri C.R. Irani
9. Dr. Abid Hussain
10. Smt. Sumitra G. Kulkarni

(7)

**MINUTES OF THE SEVENTH MEETING OF THE COMMISSION HELD ON THE
31ST MARCH AND 1ST APRIL, 2001**

The seventh meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, at 10 a.m. on 31st March and 1st April, 2001. The meeting was chaired by Hon'ble Justice Shri M.N. Venkatachaliah. The list of participants is at Annexure.

2. The Hon'ble Chairperson extended a warm welcome to the Members and requested the Secretary to take up the Agenda.

Item 1: Confirmation of the Minutes of the Sixth Meeting

3. The Minutes of the Sixth Meeting were taken as read and confirmed.

Item 2: Consideration of the Consultation Paper on "Pace of Socio- Economic Change under the Constitution".

4. The Commission was informed that the Advisory Panel had thoroughly considered the Consultation Paper in the two meetings held on 16.2.2001 and 29.3.2001 and had approved it in principle; however some editorial modifications and some elaborations were still to be carried out. All the Members endorsed that it was a good Paper. Some of the Members expressed their views on the Paper. It was generally felt that the box at the bottom of the title page of the Paper needed slight modification and the words "*are not the final views of the Commission but*" need to be deleted and thereafter the contents of the said box should read "*The views expressed and suggestions contained in this Paper are intended for the sole purpose of generating a public debate and eliciting public responses.*" The meeting

agreed that the Secretariat of the Commission would carry out the necessary modifications consequent to the deliberations of the Advisory Panel and then circulate the Paper to all the Members of the Commission for their comments/suggestions, who may convey them to the Secretary within a period of 15 days. These suggestions would be suitably incorporated in the Paper before the Hon'ble Chairperson finally approved it for being released for public debate and eliciting public responses. Subject as aforesaid, the Consultation Paper was approved for release.

Item 3: Consideration of the Consultation Paper on "The Institution of Governor under the Constitution and Article 356 of the Constitution";

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5. This Paper was discussed at the meeting and it was generally agreed that it was well drafted. However, a few Members informed that they had not been able to study the Paper in detail. The meeting, therefore, agreed that the Members may submit their comments/suggestions, if any, on the Paper to the Secretary within a period of 15 days. These would be incorporated in the paper. Subject to this procedure, the Consultation Paper was approved for release.

Item 4: Consideration of the Consultation Paper on "Enlargement of Fundamental Rights"

6. The meeting was informed that this Paper had been approved by the Advisory Panel in its meeting held on 16.2.2001. The salient features of the Paper were explained and it was pointed out that the majority of the rights contained in the Paper were deducible from or merely emanations of the judgments of the Supreme Court of India and some of them had already been found in the international covenants, to which India was a signatory. The meeting discussed the Paper in detail. A note containing some comments on this Paper was circulated at the meeting. The meeting agreed that any Member desirous of submitting his comments/suggestions on the Paper might send the same to the Secretary within a period of 15 days so that it could be suitably incorporated in the Paper before the Hon'ble Chairperson finally approved it for being released for public debate and eliciting public responses. Subject as aforesaid, the Consultation Paper was approved.

Item 5: Consideration of the progress made in regard to finalization of the Consultation Papers on (i) Parliamentary Reforms and (ii) Local Self-Government: Municipalities

7. **Parliamentary Reforms:** The meeting was informed that two drafts – one prepared by Centre for Policy Research (Shri A. Surya Prakash) and second prepared by Dr. Jayaprakash Narayan, of Lok Satta, who is also a Member of the Advisory Panel have been received. The Hon'ble Chairperson felt that both the drafts fell short of the requirements as Consultation Papers which touched certain imperatives that made the parliamentary system in India meaningful. It was also felt that the Papers overlapped the Consultation Papers on Electoral Reforms. The meeting decided to request the Secretary of the Commission to have the fresh Consultation Paper drafted by 22nd April, 2001 and place the same before the Commission.

8. **Decentralisation And Devolution : Consultation Paper on "Local Self-Government: Municipalities":** The meeting was informed that the draft Paper prepared by the Nagarpalika Network of the "All India Institute of Local Self Government" was discussed in the meeting of the concerned Advisory Panel held on 22.3.2001, when in addition to the Members of the Advisory Panel, Shri George Mathew, Director of the Institute of Social Sciences which was entrusted with the work of preparation of the Consultation Paper on 'Panchayats', was also present as a special invitee. The Advisory Panel proposed to merge the papers on 'Local Self-Government: Municipalities' and 'Panchayats' and trifurcate the same into three papers, namely, first relating to the election aspects, the second relating to functional domain and the third relating to the planning aspects of Panchayats and Municipalities. However, the Secretary explained that at the instance of the Advisory Panel, all State Governments have been requested to intimate the present status of implementation of the 73rd and 74th Amendments of the Constitution, for the purpose of preparation of the Consultation Papers. The Chief Secretaries of the

States in the North-East have also been addressed separately asking for the information about the working of the Sixth Schedule of the Constitution and the Panchayats (Extension to the Scheduled Areas) Act, 1996. In both the above said communications, the States have been requested to furnish the information by 30th April, 2001. It was also explained that unless replies were received from the State Governments, the Advisory Panel may not be able to finalise the draft of the Consultation Paper. The meeting agreed that it may not be possible to wait for the responses from all the State Governments beyond a period of time and the Advisory Panel should finalise the Consultation Paper at the earliest so that the same was available to the Commission by 15th May, 2001. It was decided that the Commission endorsed the idea of three papers instead of two as originally planned, provided that it had no additional financial implications and the drafts of all the papers were available to the Commission by 15th May, 2001.

Item 6: Review of the progress of preparation of other Consultation Papers and Questionnaires; total number of Consultation Papers to be finalized and approved:

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9. The Secretary submitted a statement indicating the present status of all the Consultation Papers. The meeting took on record the statement and discussed in detail the progress regarding drafting of each of the Consultation Papers.

10. Regarding the Consultation Paper on 'Literacy; Employment and Social Security', the meeting was informed that the draft from the Institute for Social and Economic Change fell short of the requirements. Later Dr. N. C. Saxena, Secretary, Planning Commission, and member of the concerned Advisory Panel gave some inputs. The meeting emphasized that immediate steps need to be taken by the Member-in-Charge to ensure that the Consultation Paper was finally ready by 15th May, 2001.

11. The meeting considered the six proposed Consultation Papers under the subject 'Union-State Relations'. The topic was redesignated "Union- State Relations under the Constitution : Working of the Federal Text". After a brief discussion, it was agreed that there was no need to have a separate Consultation Paper on the topic 'Sarkaria Commission: 15 Years on'. The meeting noted that it had already considered the Consultation Paper on the 'Institution of Governor Under the Constitution and Article 356 of the Constitution'. The meeting agreed that there was need to finalise the other Consultation Papers latest by 15th May, 2001.

12. The meeting was informed that the Citizenship Development Society, New Delhi, had entrusted the work of drafting the Consultation Paper on 'Effectuation of Fundamental Duties' to a team headed by Shri P.P. Rao and Justice Shri Shiv Dayal. The draft, it was mentioned, was likely to be finalized within about a week. The Advisory Panel would be able to meet thereafter and finalise the Consultation Paper by the end of April, 2001.

13. Regarding the Consultation Paper on 'Effectuation of Directive Principles', the meeting was informed that Shri Shiv Visvanathan of the Centre for the Study of Developing Societies had promised to send the draft by 31.3.2001. The meeting agreed that Shri Visvanathan might be requested to finalise the draft soon so that the Advisory Panel could meet and discuss it.

14. The progress in the preparation of other Consultation Papers and Questionnaires was also considered by the Commission.

Item 7: Consideration of the pattern of release of the report of the Commission - whether it may be released in instalments – topic wise:

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15. There was a detailed discussion on the subject and different views were expressed. The meeting came to the conclusion that even though the report had to be in several parts and finalized topic-wise in stages, these might all be released together at the final stage.

Item 8: Consideration of the requests of prominent organizations for interaction with the Commission:

16. A list of all the prominent organizations, who have made requests for interaction with the Commission was circulated to all the Members. The Hon'ble Chairperson referred to his proceedings dated 3.1.2001 whereby he had allocated some petitions/representations to the Members/groups of Members for their consideration and suggesting a course of action to be taken by the Commission thereon. He suggested that the representations from the various organizations could similarly be assigned by the Chairperson to the Members/group of Members for considering the requests and recommending the course of action thereon. The meeting endorsed the suggestion.

Item 9: Consideration of the request from Justice Shri M.C. Jain, Lokayukta, Rajasthan, for conferment of constitutional status on the Institution of Lokayuktas and Upa-Lokayuktas.

1. The meeting agreed that the issue of conferment of constitutional status on the Institution of Lokayuktas and Upa-Lokayuktas was a larger issue and the Commission would take it up at the appropriate time. It was decided that the papers received in this regard may be forwarded to the Member-in-charge of the Advisory Panel I.

Item 10: Presentation by Dr. A.P.J. Abdul Kalam, Principal Scientific Advisor to the Government of India:

18. Dr. A.P. J. Abdul Kalam made a presentation on the **India Millennium Missions 2020** at 11.30 hours on 31.3.2001. After the presentation, Dr. Kalam also had a brief discussion on the points raised by the Members.

Item 11: General discussion on the broad objectives and purposes of the review of the working of the Constitution so as to integrate the exercise with the vision of new India of future:

19. There was a general discussion. The Members expressed their views indicating the vision, objectives and purposes of the Constitution which the founding fathers had envisaged and how far these aims and objectives had been achieved in the working of the Constitution during the last 50 years. The meeting also discussed the reasons which were responsible for non-achievement of the aims of the founding fathers – whether these were institutional inadequacies or the persons manning the institutions had not come up to the expectations. The Members were requested to send in writing, their views as this important aspect of the vision and objectives of the review of the Constitution's working so that they could be had in mind while drafting the report.

Item 12: Report of Secretary about the responses to the Consultation Papers and Questionnaires, received so far from the State Governments/Political Parties, etc.

20. The Report submitted by Secretary on the item was taken on record. The meeting desired that all the responses received in the Commission may be ledgerised and summarized for circulation amongst the Members by the 15th April, 2001.

Item 13: Any other item, with the permission of the Chair.

- (i) With the permission of the Chair, the Secretary raised the issue of payment of professional fee for preparation of the Consultation Paper on 'Decentralization in the Tribal Context'. The meeting was informed that, with the approval of the Projects and

Finance Committee, it was decided to pay a fee of Rs. 50,000/- to the North-East Hill University (NEHU) for this Paper. Prof. Apurva K. Baruah, Deptt. Of Political Science, NEHU was to prepare the Paper and a sanction order was accordingly issued by the Commission in favour of NEHU. The meeting was informed that the Chairperson of the Advisory Panel had recommended that the sanction order may be modified and made in favour of "North-East Indian Social Science Congress (NEISSCONG)" which is presided over by Prof. Mrinal Miri, Vice Chancellor, NEHU, Prof. Baruah being its General Secretary. The meeting approved the proposal as the Member-in-charge of the Advisory Panel had endorsed it.

- (ii) With the permission of the Chair, the meeting discussed the question of prescribing time limit for all the Advisory Panels/institutions/experts to finalise the Consultation Papers so that the Commission was able to consider the same and complete its task within time. The Meeting decided that letters of request may be sent to the Members-in-charge, Chairpersons of the Advisory Panels, resource-institutions/experts to the effect that the Consultation Papers should be made available to the Commission latest by the 15th May, 2001 as else it might not be possible for the Commission to keep-up its time-schedule.
- (iii) The meeting nominated the Secretary as the Member-Secretary of all the Advisory Panels, in order to facilitate quick finalisation of the Consultation Papers.
- (iv) The meeting also considered the question of drafting of the topic wise draft paragraphs of the Report on the Consultation Papers based on the responses received so far thereon. It was emphasized that this work had to be commenced in right earnest so that the draft Report was available by 15th September, 2001 for the detailed scrutiny of the Commission. The Secretary was requested to work out a frame work as regards the classification of topics to be covered by the parts of the final report.

The meeting thereafter ended with vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary

To

All Members of the Commission

ANNEXURE

LIST OF PARTICIPANTS OF THE SEVENTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Hon'ble Justice Shri R.S. Sarkaria (Present only on 31.3.2001)
3. Hon'ble Justice Shri Kottapalli Punnayya
4. Shri Soli J. Sorabjee
5. Shri K. Parasaran (Present only on 31.3.2001)
6. Dr. Subhash C. Kashyap
7. Dr. Abid Hussain (Present only on 31.3.2001)
8. Smt. Sumitra G. Kulkarni
9. Dr. Raghbir Singh, Secretary

MINUTES OF THE EIGHTH MEETING OF THE COMMISSION HELD ON THE 8TH AND 9TH JUNE 2001

The Eighth meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, at 10.00 a.m. on 8th and 9th June, 2001. The meeting was chaired by Hon'ble Justice Shri M.N. Venkatachaliah. The list of participants is at Annexure.

2. The Hon'ble Chairperson extended a warm welcome to the Members and requested the Secretary to take up the Agenda.

Item: 1. Confirmation of the minutes of the seventh meeting of the Commission held on 31st March, 2001 and 1st April, 2001

3. Dr. Subhash C. Kashyap pointed out that in the Seventh Meeting, while considering item No. 5 of the Agenda relating to the progress made in regard to the finalization of the Consultation Paper on 'Parliamentary Reforms', it had been decided that the Paper submitted by him on the subject in the 6th meeting on 31.1.2001, should also be taken into consideration while redrafting the Consultation Paper on 'Parliamentary Reforms'. This fact had not been brought out in the Minutes.

4. Accordingly, it was decided that paragraph 7 of the aforesaid Minutes shall be treated as modified and the following sentence shall be deemed to have been incorporated in the minutes: -

"While getting the fresh consultation paper drafted, the Paper submitted by Dr. Subhash C. Kashyap on the subject, which was circulated during the 6th meeting of the Commission on 31.1.2001, shall also be taken into account".

Subject to the above, the Minutes of the seventh meeting of the Commission were taken as read and confirmed.

Item 2: Consideration of the Consultation Paper on "Probity in Governance"

5. Before the Consultation Paper was taken up for consideration, Dr. Subhash C. Kashyap made a point that there should, as far as possible, be uniformity in the format of the Consultation Papers. He pointed out that a few Consultation Papers released earlier had provided for the acknowledgements in the preface and in some of the others, a reference was made to the composition of the Advisory Panel also.

6. The meeting decided that the Consultation Papers should have uniformity and should mention the names of the Members of the Advisory Panel and the name of its author, in case the same had not been prepared in-house. The meeting then took up the Consultation Paper on "Probity in Governance" and approved the same in principle. It was also decided that an appropriate Questionnaire might also be prepared and annexed to the Consultation Paper.

7. However, minor editorial modifications and formatting of the Consultation Paper may be carried out before the Chairperson finally approved it for being released for public debate and eliciting public responses. Shri Soli J. Sorabjee and Shri K. Parasaran were also requested to discuss some policy issues arising out of the paper before sending it to the Chairperson.

Item 3: Consideration of the Consultation Paper on "Effectuation of Fundamental Duties"

8. The Secretary informed that the Consultation Paper had been discussed thoroughly in the meeting of the Advisory Panel held on 15.5.2001. The meeting considered the Paper in detail. It was decided that the paragraph 3.3.8 of the Paper needed to be modified by deleting the sub-Para thereunder mentioning the difference of opinion on whether the contribution of the Citizenship Development Society, New Delhi to the cause of Citizenship Development

should be included in the Paper or not. The Meeting was of the view that the said aspect need not be included in the Consultation Paper and this was endorsed by Shri Irani, Member-in-Charge.

9. The meeting considered paragraph 3.5.1 of the Consultation Paper regarding the suggestions received for amendment of the Constitution to ensure full implementation of the Fundamental Duties and decided that the three suggestions should be re-worded as under:-

- (i) The opening words of article 51A should be reworded as follows:
“Every citizen of India shall implement in daily life the following duties”
- (ii) Article 51A should be shifted to Part II (Citizenship) of the Constitution;
- (iii) Suitable Changes may be carried out to make Fundamental Duties to form a compendium with Fundamental Rights.

10. Subject to the above, the meeting approved the Consultation Paper and Questionnaire in principle. However, minor editorial modifications and formatting of the Consultation Paper were allowed to be carried out before the Chairperson finally approved it for being released for public debate and eliciting public responses.

Item 4: Consideration of the Progress made in regard to the four Consultation Papers

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Appointments to the Superior Judiciary

11. The meeting was informed that Justice Shri B.P. Jeevan Reddy had prepared the initial draft. The meeting decided that no separate Consultation Papers were needed to be prepared on the topics of judicial delays and judicial reforms but the final report may have a separate chapter containing all aspects of judicial reforms.

Parliamentary Reforms

12. The meeting was informed that Prof. Aswini K. Ray of the Department of Political Studies, Jawaharlal Nehru University, had undertaken the work on this Paper.

Effectuation of Directive Principles

13. It was noted that the draft Consultation Paper on the topic received from the Centre for Developing Societies, New Delhi, was not up to the expectations of the Commission. The meeting decided that in view of the time constraints, it would not be advisable to undertake a redrafting of the Paper. Therefore, the meeting decided not to take any further action on the said Paper.

14. The meeting noticed that many elements of the Directive Principles had already been covered in the Consultation Paper on ‘Pace of Socio-Economic Change under the Constitution’, which was released for generating public debate and eliciting public response by the Commission 11.5.2001. The meeting, therefore, decided that while drafting the final Report, all the elements of the Directive Principles might be taken into consideration.

15. Justice Shri B.P. Jeevan Reddy was requested to draft the said report and for the purpose he could take the required assistance from Justice Shri M. Jagannadha Rao, Vice-Chairman of the Law Commission who is also a Member of the Advisory Panel on “Enlargement of Fundamental Rights”, and of Shri Raju Ramachandran, Member of the Advisory Panel on “Effectuation of Directive Principles”.

16. As Smt. Sumitra G. Kulkarni, Member-in-charge of this subject could not attend the meeting, it was decided that before action on the above lines is initiated, her consent be obtained.

Constitutional Mechanisms for the Settlement of Inter-State Disputes

17. The meeting discussed the Consultation Paper in detail. It was noticed that article 139A of the Constitution of India provided, inter alia, for transfer of cases to the Supreme Court if the cases involving same or substantially the same question of law are pending before two or more High Courts. The meeting decided that the Consultation Paper should contain an alternative suggestion that if a case challenging a central legislation on grounds of lack of legislative competence was pending even before a single High Court, there should be a provision for withdrawal of the case to the Supreme Court, as such an issue would bear upon the larger question of distribution of legislative powers between the Union and the States.

18. Subject to the above, the meeting approved the Consultation Paper in principle. However, minor editorial modifications and formatting of the Consultation Paper were allowed to be carried out including a reference to the nature of issues arising in cases under Article 131 now pending before the Supreme Court before the Chairperson finally approved it for being released for public debate and eliciting public responses.

Item 5: Review of the progress of preparation of other Consultation Papers and Questionnaires

19. The statement indicating the status of the progress made in each Consultation Paper, submitted by the Secretary, was taken on record.

20. The meeting took notice of delay in the finalisation of the Consultation Papers on the topics relating to the Advisory Panel on Legal Control of Fiscal and Monetary Policies. It was decided that draft final reports might be prepared on the following three topics: -

- (i) Legal Control of Monetary and Fiscal Policy;
- (ii) Standards in Public Life: For a corruption free governance;
- (iii) Reforms in Administrative System.

For the purpose, the Member-in-charge (Dr. Abid Hussain) will hold a meeting on 12.6.2001 with the various experts including Dr. E.A.S. Sarma, on the subject.

21. The meeting noticed the discussions held by Dr. K.V. Raman, Director, P.V. Rao Centre for Sustainable Food Security, Chennai, with the Hon'ble Chairperson and Shri K. Parasaran on 23.5.2001 at Bangalore. It was decided to request Dr. Raman to prepare draft final reports on the two topics, namely, 'Literacy' and 'Social Security'. The meeting also decided to pay an amount of Rs. 60,000/- to Dr. Raman for preparation of each draft report, as suggested by the Secretary pursuant to discussions had with Dr. Raman.

Item 6: Report of Secretary about the responses to the Consultation Papers and Questionnaires, received so far from the Central/State Governments/Political Parties, etc.

22. The Report submitted by Secretary on the item was taken on record.

Item 7: Holding of Seminars on the Consultation Papers

23. The meeting noticed that a Committee of Shri P.A. Sangma, Dr. Subhash C. Kashyap and Shri C.R. Irani, constituted by the Commission in its third meeting held on 8th and 9th July, 2000, had suggested the names of the IIPA, New Delhi, and the ICPS, New Delhi, for holding of the Seminars.

24. In view of the fresh offers and the discussions held by the various representatives of National Law Schools and Central Universities, etc., the meeting decided that the following ten institutions may organize seminars and provide the necessary feed back to the Commission:

1. National Law School of India University, Bangalore

2. West Bengal National University of Juridical Sciences, Kolkatta
3. National Law School of India University, Bhopal
4. National Law School of India University, Hyderabad
5. Centre for Political Studies, Jawaharlal Nehru University, New Delhi
6. Mangalore University, Mangalore
7. Central Law College, Salem
8. Guru Nanak Dev University, Amritsar
9. North East Hill University, Shillong
10. Banaras Hindu University, Varanasi

25. The meeting agreed that the Commission's contribution towards each seminar would be Rs. 40,000/-. The institution itself will incur the rest of the expenditure for organizing the seminar. The seminars will be in the form of 'informed public debates' i.e., public will also be involved in controlled conditions to have public interactive sessions for discussing the various consultation papers released and the subjects identified by the Commission. The meeting also decided that major emphasis should be laid in the seminars on Electoral, Judicial, and Parliamentary Reforms, being the subjects, which are of larger public interest. It was also decided to suggest to the Universities that emphasis should also be on public interaction and the events should be made in the nature of public inter-active sessions or informed public debates.

26. The meeting also noticed that out of the ten institutions mentioned above, four had already agreed and had been requested to proceed with the arrangements for the seminars in the month of July, 2001 and the necessary financial sanctions had also been issued.

Item 8: Consideration of the Format for the Final Reports

27. The draft format for the Final Reports was placed before the Meeting. After considering the same, the meeting decided to constitute a committee consisting of Shri K. Parasaran, Dr. Abid Hussain, and Dr. Subhash C. Kashyap to look into it and suggest the final format for consideration of the Commission.

28. The Meeting continued on 9th June, 2001 also and the additional agenda items were taken up as under:

Item 1. To consider whether the remaining consultation papers which are at various stages of finalisation may now be prepared in the shape of the draft final report.

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29. The meeting was informed about the delay in finalisation of the remaining Consultation Papers (other than those Consultation papers released by the Commission on 8.1.2001 and 11.5.2001 and those to which approval in principle was granted by the Commission on 8.6.2001) and the limited time available for preparation of the final reports. In the circumstances, the meeting decided that instead of preparing the Consultation Papers, finalizing them and releasing the same for public debate and discussion and eliciting public responses on the topics, draft final reports on the relevant topic be prepared and placed before the Commission for consideration. The meeting also decided that the above decision would not apply to the four Consultation Papers relating to the Advisory Panel on "Decentralization and Devolution; Empowerment & Strengthening of Panchayati Raj Institutions" and the Consultation Paper on "Appointments to the Superior Judiciary", all of which should be finalized at the earliest and released in the traditional form as Consultation Papers as per the earlier procedure.

Item 2: Consideration of the letters dated 6.6.2001 received from Justice Shri J. Eswara Prasad, Chairman, Appellate Tribunal for Forfeited Property.

30. The meeting considered the letter containing proposals for amendment of section 2(2) (c) of the Smugglers and Foreign Exchange Manipulators (Forfeiture

of Property) Act, 1976. It was decided that the topic contained in the proposal would be suitably discussed in the Consultation Paper on "Probity in Governance". The second letter containing proposal for amendment of article 348(1)(a) of the Constitution was deferred to be taken up at the next meeting.

The meeting thereafter ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary

To

All Members of the Commission

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ANNEXURE

LIST OF PARTICIPANTS OF THE EIGHTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri B.P. Jeevan Reddy
3. Hon'ble Justice Dr. Kottapalli Punneyya
4. Shri Soli J. Sorabjee
5. Shri K. Parasaran
6. Dr. Subhash C. Kashyap
7. Shri C.R. Irani
8. Dr. Abid Hussain
9. Dr. Raghbir Singh, Secretary

(9)

**MINUTES OF THE NINTH MEETING OF THE COMMISSION HELD FROM THE
20TH TO 22ND JULY 2001**

The Ninth meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, at 11.00 a.m. on 20th, 21st and 22nd July, 2001. Hon'ble Justice Shri M.N. Venkatachaliah chaired the meeting. The list of participants is at Annexure.

2. The Hon'ble Chairperson extended a warm welcome to the Members and requested the Secretary to take up the Agenda.

Item: 1. Confirmation of the minutes of the Eighth meeting of the Commission held on 8th and 9th June, 2001

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3. The modified Minutes of the Eighth Meeting of the Commission held on 8th and 9th June, 2001 were taken as read and confirmed.

Item 2: Review of the progress of public interactive sessions/seminars being organized by the National Law Schools/Universities

4. Secretary explained that the Commission had identified ten Universities/institutions during the eighth meeting for organizing seminars. Thereafter, Aligarh Muslim University also agreed to organize a seminar. An amount of Rs. 40,000/- being the contribution of the Commission for each seminar has already been released in respect of seven institutions. In respect of the remaining institutions, the amounts will be sanctioned as soon as confirmations are received. The meeting was also informed that the West Bengal National University of Juridical Sciences, Kolkata conducted public interactive seminar on 7th and 8th July, 2001. The official report from the University has not yet come. Reportedly, it achieved a high degree of success in presenting the work of the Commission in proper perspective.

Item 3: Review of the Progress made in regard to the four Consultation Papers

- (i) **Local Self-government: Municipalities**
- (ii) **Panchayats**
- (iii) **Decentralization in the Tribal Context**
- (iv) **73rd Amendment of the Constitution, where applied in the North-East**

5. The meeting was informed that the draft Consultation Papers had been received on the topics mentioned at (i) and (ii) above and the same were discussed in the third meeting of the Advisory Panel held on 20.6.2001. Shri P.A. Sangma, Member-in-charge of the Advisory Panel, informed the meeting that he would make all efforts to ensure that the Advisory Panel finalizes the Consultation Papers by 30.7.2001.

Item 4: Consideration of the Background Papers on (i) Concurrent Powers of Legislation under List III of the Seventh Schedule; and (ii) Article 262 and Inter-State Disputes Relating to Water

6. The meeting discussed these Papers in detail and approved the same in principle subject to editorial modifications and formatting. It was agreed that these would not be required to be released for discussion and public debate, being background papers. When the draft final report on the subject of Union-State Relations comes up for discussion, these background papers, to the extent the Commission may approve, could be integrated into the basic theme of the report and would again be discussed.

Item 5: Review of the progress in drafting of the Background Papers.

7. The meeting was informed of the present status of drafting of all the background papers. The meeting agreed that in view of the limited time available with the Commission for completing its task, all the background papers should be ready latest by 10th August, 2001.

Item 6 & 7: Review of the progress in drafting of Volumes I and II of the Final Report

8. The meeting was informed of the present status of drafting of Volumes I and II of the Final Report. A time schedule for preparation of the draft final report containing the contents, estimated length of the topic, Consultation/Background Papers to be reflected in writing the topic, the name of persons to prepare the report on each topic and the date of completion of drafting of the report on the topic was circulated at the meeting. The meeting generally agreed with the broad design and proposed contents of the two volumes. Regarding the estimated length of the topics, it was agreed that the limits mentioned could be varied depending on the requirements. The meeting decided that in the column indicating the name of the persons responsible for the preparation of the report, only the names of Members-in-charge of the subject be mentioned and the names of other persons who would assist in drafting them, should find a place in the column under the heading 'Remarks'. It was agreed that each Member-in-charge should take the responsibility for the draft final report relating to the topic under his area.

The meeting decided that there was need to have uniformity of approach in the structure of the various chapters of the final report since the drafts are to be prepared by different Members. After a brief discussion, it was agreed that a chapter on each topic should first, mention the relevant constitutional

provisions in brief; secondly, discuss as to how the same have worked during last fifty-one years - whether any problems have arisen in their working; thirdly, evaluate what the various options available to tackle the said problems are and finally, make the recommendations.

Item 8: Consideration of the letter dated 6.6.2001 received from Justice Shri J. Eswara Prasad, Chairman, Appellate Tribunal for Forfeited Property.

9. The issues arising out of the letter regarding inclusion of "National Appellate Tribunals and Commissions" after "Supreme Court and in every High Court" in article 348(1)(a) were discussed. The meeting decided that the issue basically related to the Government's policy on official language. No specific decision was taken.

Item 9: Consideration of the letter dated 26.6.2001 received from Justice Shri M.C. Jain, Lokayukta, Rajasthan, regarding the Model Lokayukta Bill.

10. The meeting decided that the issues raised in the letter were relatable to the topic of 'Probity in governance' as well as the area of 'Union-State Relations' and as such these should be taken up for discussion while considering draft final reports on these subjects.

Item 10: Consideration of the letter received from The India Country Office of UNICEF regarding "Enlargement of Fundamental Rights".

11. The letter was taken note of by the meeting and it was decided that the issues raised in the letter could be considered by the Commission while considering the draft final report on the topic relating to "Enlargement of Fundamental Rights."

Items 11 & 12: Consideration of the letters dated 18th June, 2001 from Shri Syed Shahabuddin and dated 20th June, 2001 from Shri Dawa Lama, M.P.

12. The issues brought out in these two letters relating to the rights of religious minorities were considered by the meeting. The Chairperson explained the background of the matter in brief. Shri Soli J. Sorabjee, the Member-in-charge of the subject 'Enlargement of Fundamental Rights' informed the meeting the reasons why the Advisory Panel had not discussed the subject in the Consultation Paper on the topic that had been approved by the Commission and released for public debate and discussion on 11th May, 2001. However, as Shri Syed Shahabuddin was to be invited to meet the Commission, the matter could be discussed further.

Item 13: Report of the Secretary about the responses to the Consultation Papers and Questionnaires.

13. The report submitted by the Secretary on the item was taken on record. A gist of the responses to the Consultation Papers and Questionnaires received so far from the Central/State Governments/UT Administrations and Political Parties etc. was circulated to the Members during the meeting.

Item 14: Interaction with prominent persons.

14. A list of the prominent persons proposed to be invited for interaction with the Commission was circulated in the Meeting. The meeting felt that there was need to prescribe some broad norms informing the preparation of the list of invitees. It was, however, agreed that the list might include the names of former Presidents, former Prime Ministers, former Chief Justices of Supreme Court, former Speakers, former editors of the national dailies, Chairpersons of the statutory Commissions. It was also agreed that former Governors, whose number may be in the neighborhood of three, based on their seniority, be invited. Similarly three to five senior serving Governors could also be invited.

Item 15: Any other item, with the permission of the Chair.

15. No item was taken up under this agenda item.

Item 16: Letter received from Shri P.A. Sangma in the matter of entitlement of persons of foreign origin to hold public offices.

16. The various issues raised in the letter of Shri Sangma were discussed by the meeting.

Item 17: Letter received from the Counselor, High Commission of India, Nairobi, suggesting visit of the Chairperson and other Members of the Commission to Nairobi.

17. The meeting discussed the letter under consideration. The meeting authorized the Hon'ble Chairperson to take appropriate decision in the matter.

Item 18: Review of the progress in the disposal of representations from organizations and bodies in respect of various issues.

18. The meeting was informed that in pursuance of the decision of the Commission taken in its fifth meeting held on 29.12.2000, the Hon'ble Chairperson had, vide his proceedings dated 3.1.2001, allocated certain representations to the Members/Group of Members for examination and recommending to the Commission the course of action to be taken thereon. The Hon'ble Chairperson requested the concerned Members to take action on priority basis so that action could be completed on the representations. If the Members so desired, they could hear the representationists before taking a view thereon.

Item 19: Consideration of the cover design for the final Report;

19. The meeting decided to request Shri C.R. Irani to have a few samples of cover design for the final report prepared and place the same for consideration of the Commission. Shri Irani agreed to do so and requested the Secretary to send a few samples that were submitted before the Commission so that he could have an idea of the content part of it.

Item 20: Constitution of an "Editorial Committee" for processing of final Report on day-to-day basis.

20. The Meeting agreed to request Dr. Subhash C. Kashyap to Chair the Editorial Committee proposed to be constituted. It was left to the Hon'ble Chairperson to decide about the other Members/Experts to be included in the Committee in consultation with Dr. Kashyap.

Item 21: Consideration of the proposal to fix dates for two meetings each month for at least four days each in the months of August, September and October 2001.

21. The Hon'ble Chairperson explained the need to have regular meetings in the next three months in order to complete the task in hand. The Meeting left it to the Hon'ble Chairperson to decide the dates and duration of the meetings.

The meeting thereafter ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary

To

LIST OF PARTICIPANTS OF THE NINTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri B.P. Jeevan Reddy
3. Justice Shri R.S. Sarkaria (not present on 21st and 22nd July)
4. Hon'ble Justice Dr. Kottapalli Punnayya
5. Shri P.A. Sangma
6. Shri Soli J. Sorabjee (not present on 22nd July)
7. Shri K. Parasaran
8. Dr. Subhash C. Kashyap
9. Shri C.R. Irani (not present on 20th July)
10. Dr. Abid Hussain
11. Smt. Sumitra G. Kulkarni
12. Dr. Raghbir Singh, Secretary

(10)

**MINUTES OF THE TENTH MEETING OF THE COMMISSION HELD FROM THE
23rd TO 25th AUGUST 2001**

The Tenth meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, at 10.00 a.m. from 23rd to 25th August 2001. Hon'ble Justice Shri M.N. Venkatachaliah chaired the meeting. The list of participants is at Annexure.

2. The Hon'ble Chairperson extended a warm welcome to the Members and requested the Secretary to take up the Agenda.

Item: 1. Confirmation of the minutes of the Tenth meeting of the Commission held from 20th to 22nd July, 2001

3. The meeting decided that the minutes under Item 16 might be substituted with the following:
"There was a brief discussion on the issue raised in the letter of Shri Sangma. Further discussion on the issue was deferred."

Subject to the above, the Minutes of the ninth Meeting of the Commission held from 20th to 22nd July 2001 were taken as read and confirmed.

Item 2: Review of the progress in the preparation of the following Papers on Judiciary:

- (i) Consultation Paper on 'Procedure for appointment of Judges of Supreme Court and High Courts';
- (ii) Background Paper on 'Financial Autonomy of the Judicial Branch of the State'.

4. The meeting was informed that the Consultation Paper on item No. (i) above has been drafted and the same has been circulated amongst the Members of the Advisory Panel on 25th July, 2001. The meeting was also informed about the progress in the drafting of the Paper on Item (ii) above. The meeting desired that the two Papers should be finalized before the next meeting and placed before the Commission for consideration at the next meeting.

5. The Members were generally of the view that the two Papers would not cover a comprehensive review of the working of the Judiciary in the country, such as the quality of the trial systems, judicial delays, cost of litigation, docket-explosion, the quality of judgments, lack of uniform procedures in the High Courts, etc. It was decided that there was need to prepare a Paper covering all these aspects.

6. The meeting accordingly decided that Prof. N.R. Madhava Menon or, if for any reason his services are not available, some one else with comprehensive knowledge of the working of the judicial branch may be requested to prepare a Paper covering all the above mentioned aspects also taking into account all the existing Reports/studies available on the subject in the country. The meeting left it to Shri K. Parasaran and Dr. Subhash C. Kashyap to discuss with Prof. Madhava Menon and persuade him to undertake the work.

7. The meeting also indicated that the above Paper should encompass 'Systemic and Procedural Reforms' of Judiciary and Shri K. Parasaran and Dr. Subhash C. Kashyap were requested to supervise the work and thereafter prepare a draft final report on the topic.

Item 3: Consideration of the following Consultation Papers on 'Decentralisation and Devolution; Empowerment and Strengthening of Panchayati Raj Institutions':

- (iii) **Panchayats**
- (iv) **Municipalities**
- (v) **Empowerment and Strengthening of Local Self-Government in Cantonments**

8. The meeting discussed these three Consultation Papers in detail and approved the same in principle. However, the requisite editorial modifications and formatting were authorized to be carried out before the Chairperson finally approved these for being released for public debate and eliciting public response.

Item 4: Consideration of the Background Papers on:

- (vi) **Literacy**
- (vii) **Employment and Social Security**

9. The meeting discussed these Papers in detail and approved the same in principle. However, the requisite editorial modifications and formatting of the same were allowed to be carried out before the Chairperson finally approved these for being released as Consultation Papers for public debate and eliciting public response.

Item 5. Review of the progress in the preparation of other Background Papers

10. The progress in drafting of all the remaining background papers was intimated to the meeting. The meeting desired that the following background papers might be finalized and placed before the Commission in its next meeting for approval:

- (i) Parliamentary Reforms
- (ii) Standards in Public Life and Reforms in Administration
- (iii) Constitutional Response to Good Governance and Macro Economic Management
- (iv) Legal Control of Monetary and Fiscal Policy

11. The meeting was informed that the draft of the Paper on 'Barriers to Inter-State Trade and Commerce' had been received from Prof. M.P. Singh only a day earlier. The meeting desired that this Paper might be referred to the Advisory Panel concerned for consideration at the earliest.

12. The meeting was informed that the Paper on 'Financial Relations amongst the Union and States' was being prepared by Shri P.N. Mittal, a retired Member of the Central Board of Direct Taxes and the draft was likely to be received shortly.

Item 6: Review of the progress of public interactive sessions/seminars being organized by the National Law Schools/Universities

13. The meeting was informed that the seminars had already been conducted/proposed to be conducted as per the following programme:

- (i) West Bengal National University of Juridical Sciences, Kolkatta on 7-8 July, 2001
- (ii) Mangalore University, Mangalore on 30-31 July, 2001
- (iii) NALSAR University, Hyderabad 25-26 August, 2001
- (iv) Aligarh Muslim University, Aligarh 6-7 September, 2001

The other Universities had again been requested to expedite the seminars. The meeting was also informed that in addition to the National Law Schools/ Universities identified earlier, Assam University, Silchar had also agreed to organize the seminar and it was proposed to pay the Commission's contribution (Rs. 40,000) to them for the proposed seminar. The meeting endorsed the proposal. The meeting also desired that the Secretariat should follow up with the North East Hill University for organization of the seminar and there would be no objection if there were more than one seminar in the NE region of the country.

Item 7: Consideration of the Cover Design for the Final Report

14. The meeting discussed the Cover Design for the Final Report as prepared and sent by Shri C.R. Irani and desired to have some more designs, particularly in relation to the colour combination as well as the content and size of the font.

Item 8: Review of the progress in drafting of Volume I of the Final Report

15. A draft compilation of volume I of the Final Report was circulated at the meeting with the request that suggestions, if any, may be made after the Members went through the draft, so that the same could be improved.

Item 9: Review of the Progress in drafting of Volume II of the Final Report

16. The meeting discussed the format and broad contents of Volume II of the Final Report. The Hon'ble Chairperson suggested that a small chapter on 'Secularism' might be added at an appropriate place in the Report. The meeting agreed to the suggestion.

Item 10: Report of the Secretary about the responses to the Consultation Papers and Questionnaires, received so far from the Central/State Governments/Political Parties, etc.

17. The report of the Secretary on the subject was taken on record. A summary of the suggestions and responses to the Consultation Papers and Questionnaires received up to 17th August, 2001, duly ledgerised, was circulated amongst the Members during the meeting.

Item 11: Review of the progress made in interaction with prominent persons

18. The meeting reviewed the progress made. The meeting deliberated upon the desirability of using a tape recorder for recording the interaction with the prominent persons for facilitating preparation of the

record of discussions. There was no consensus on the issue. The meeting decided that the draft of summary of discussions prepared by the Secretariat should first be sent to the dignitary concerned for his approval. After such approval of the draft, the same should be circulated amongst the Members of the Commission and can be appropriately used for the purposes of the Report.

Item 12: Any other item, with the permission of the Chair.

19. With the permission of the Chair, a copy of the letter dated 6th August, 2001 received from Professor Iqbal A. Ansari, Secretary General of the Minorities Council, New Delhi forwarding there with his note of the discussion of the interaction with the Commission in the meeting held on 22nd July, 2001 was circulated. The meeting was of the view the note of discussion sent by Prof Ansari contained his version of the discussions. The meeting, however, decided that a reply might be sent to Prof. Ansari acknowledging his letter and informing him that the Secretariat of the Commission had prepared their own record of the discussions for being placed before the Commission.

20. It was generally agreed that the next meetings of the Commission might be held from 6th to 12th September and from 17th to 30th September, 2001. However, the Hon'ble Chairperson was authorized to fix the actual dates for the meetings after ascertaining the convenience of the members. The Chairperson stressed the importance of the presence and participation of all the Members at the future meetings, which were crucial to the quality of the Final Report.

The meeting thereafter ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary

To
All Members of the Commission

LIST OF PARTICIPANTS OF THE TENTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri B.P. Jeevan Reddy (not present on 25th August)
3. Justice Shri R.S. Sarkaria (not present on 25th August)
4. Justice Dr. Kottapalli Punayya
5. Shri P.A. Sangma (not present on 24th and 25th August)
6. Shri Soli J. Sorabjee (not present on 23rd and 24th August)
7. Shri K. Parasaran
8. Dr. Subhash C. Kashyap
9. Shri C.R. Irani (not present on 23rd August)
10. Dr. Abid Hussain (not present on 25th August)
11. Smt. Sumitra G. Kulkarni
12. Dr. Raghbir Singh, Secretary

(11)

**MINUTES OF THE ELEVENTH MEETING OF THE COMMISSION HELD ON 15TH,
17TH AND 18TH SEPTEMBER, 2001 (AS REVISED IN 12TH MEETING)**

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The Eleventh meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, at 10.30 a.m. on 15th, 17th & 18th September 2001. Hon'ble Justice Shri M.N. Venkatachaliah chaired the meeting. The list of participants is at Annexure.

2. The Hon'ble Chairperson extended a warm welcome to the Members and requested the Secretary to take up the Agenda.

Item 1. Confirmation of the Minutes of the Tenth Meeting of the Commission held from 23rd to 25th August 2001;

3. The Minutes of the Tenth Meeting of the Commission held from 23rd to 25th August 2001 were taken as read and confirmed.

Item 2. Consideration of the following Consultation Papers on Judiciary:

- (viii) Superior Judiciary;
- (ix) Financial Autonomy of the Indian Judiciary.

4. The Meeting discussed these two Consultation Papers in detail. Dr. Subhash C. Kashyap desired to know as to whether the concerned Advisory Panel had approved the Consultation Papers. He also desired to know as to whether the Projects and Finance Committee, which had been constituted to consider all the Consultation Papers before their submission to the Commission, had approved the Consultation Papers. The Secretary informed the meeting that the Consultation Papers had the approval of the Advisory Panel but in view of the time constraint and the Papers being in-house preparations, these had not been placed before the Projects and Finance Committee. The Hon'ble Chairperson decided that the Papers be placed before the Projects and Finance Committee in the first instance and only after its approval the Consultation Papers be placed before the Commission.

5. The Consultation Papers were, accordingly, placed before the P&F Committee immediately. The Papers as approved by the P&F Committee on 18.9.2001 were again placed before the meeting of the Commission.

6. Dr. Subhash C. Kashyap stated that according to the earlier decision of the Commission three complete and integrated Consultation Papers were required to be prepared on the working of - (i) The Executive, (ii) The Legislature and (iii) The Judiciary but so far no such complete and integrated Consultation Paper had been prepared on any of the three topics. The two Consultation Papers relating to the Judiciary under consideration of the Commission did not, according to the Member, give the complete picture regarding the working of the Judiciary during the last 51 years. If these papers were released for eliciting public responses it might invite criticism that the Commission had omitted to consider the various other important aspects about the working of the judiciary.

7. The Chairperson explained that Prof. N.R. Madhava Menon was requested to prepare a Paper on many other aspects relating to the working of the judiciary. This project was to be under the guidance of Dr. Subhash C. Kashyap and Shri K. Parasaran. In the very nature of things, the issues relating to the appointments, transfer and removal of judges of the Supreme Court and the High Courts, the financial autonomy of the superior courts have their own distinct features and that at least, at the stage of invoking a public debate, they need to be dealt with distinctly.

8. Dr. Subhash C. Kashyap made the following suggestions about the judiciary for being taken up for discussion by the Commission at the appropriate time: -

- (i) Intensive training and orientation programmes should be organized for the members of the Judiciary at all levels at the time of their entry.
- (ii) There should be refresher courses for upgradation of training and orientation programmes at regular intervals during the service for judicial officers from the lowest to the highest courts.

- (iii) Similar training camps need to be organized for the lawyers for improving their professional skills and responsibilities.
- (iv) There should be regulation of fee of the lawyers on the basis of their classification as categories, say A, B, C, etc.
- (v) Cash payment of professional fees to the lawyers should be made illegal.
- (vi) Limits should be prescribed on adjournments in courts.
- (vii) The Judgments given by the Courts should not be unduly lengthy. Plurality and prolixity of judgments should be discouraged.
- (viii) There should be only one judgment, whether unanimous or by a majority. There need not be any concurring or dissenting judgments.
- (ix) Written arguments should be permitted and encouraged.
- (x) The judges should not make laws or amend the Constitution by interpreting the same. The function of working of the Constitution and applying its provisions has been entrusted to various functionaries such as Speaker, Police and Magistrates, in addition to the Judges.
- (xi) There should not be any summer or winter vacations for courts as these are colonial legacies.
- (xii) A minimum of 220 days of working of the courts should be ensured in a calendar year.
- (xiii) Fixed time schedules should be prescribed for clearing the arrears of cases.
- (xiv) There should be time bound disposal of the cases.
- (xv) The age limit for retirement should be increased for the judges of High Court and Supreme Court uniformly, say 70 years or 75 years and simultaneously judges should not be allowed to take up any paid appointments after their retirement.
- (xvi) There should be increased use of alternative modes of resolution of disputes.
- (xvii) Lawyers should encourage out-of-court settlement of disputes.
- (xviii) There should be better use of the latest technological devices in the working of the courts.
- (xix) The court procedures have to be made more citizen friendly.
- (xx) The accountability to people applies as much to the judiciary as to the legislators.
- (xxi) Neither the Parliament nor the Supreme Court is supreme under our Constitution as the duties and powers of each organ have been defined and delimited under the Constitution. In case of any doubt about the supremacy, it has to be vested in Parliament, which represents the will of the people.

9. Smt. Sumitra G. Kulkarni also made a suggestion for consideration that cases involving women, children and persons of the weaker sections should be adjudicated by special courts and should be decided within a period of six months.

10. It was generally agreed that all the issues pertaining to the working of the judiciary would be discussed while considering the draft final report. The meeting agreed that in view of the importance of the issues raised in the two Papers and the need for eliciting public responses, it would be appropriate to release them for public debate. Thereafter, the meeting approved the two Papers in principle. However, the requisite editorial modifications and formatting were authorized to be carried out before the Chairperson finally approved these for being released for public debate and eliciting public response.

Item 3. Review of the progress in the preparation of other Background Papers.

11. The progress in drafting of the Background Papers was intimated to the meeting. The meeting decided that there should not be any further delay in finalisation of the remaining Papers.

Item 4. Review of the progress of public interactive sessions/seminars being organized by the National Law Schools/Universities.

12. The meeting was informed that the seminars/public interactive sessions have already been conducted at six places and the programme at the following three places had also been finalized: -

- (i) Centre for Political Studies, Jawaharlal Nehru University, New Delhi (20.9.2001)
- (ii) Central Law College, Salem (6-7 October 2001)
- (iii) Guru Nanak Dev University, Amritsar (13-14 October 2001)

13. It was decided that all the Central Universities/Law Schools may be asked to send the reports on the seminars to the Commission at the earliest so as to enable the Commission to take them into consideration at the time of finalisation of its recommendations. The meeting considered the proposal received from the Dean, Faculty of Law, Dr. B.R. Ambedkar University, Agra for organizing a seminar at Aligarh. Since the Aligarh Muslim University had already conducted a seminar at Aligarh, the meeting decided that the Commission might not sponsor any further seminar at Aligarh.

Item 5 & 6 Consideration of draft Volume I of the Final Report, circulated to Members during the Tenth Meeting of the Commission held from 23.8.2001 to 25.8.2001 and

Review of the Progress in drafting of Volume II of the Final Report.

14. Items 5 & 6 were taken up for consideration together. A revised draft Volume I of the Final Report was circulated at the meeting. The meeting decided to nominate Shri K. Parasaran and Dr. Abid Hussain as Members of the Editorial Committee to be chaired by Dr. Subhash C. Kashyap. The drafting Committee was requested to meet at the earliest during the week to start its deliberations. Meeting also decided that a request may be sent to all the Members in-charge to send the drafts of the respective portions of Volume II of the final Report by 2nd October 2001.

Item 7. Report of the Secretary about the responses to the Consultation Papers and Questionnaires, received so far from the Central/State Governments/Political Parties, etc.

15. The report of the Secretary on the subject was taken on record. A summary of the suggestions and responses to the Consultation Papers and Questionnaires received upto 14.9.2001, duly ledgerised, was circulated amongst the Members at the meeting.

Item 8. Review of the progress made in interaction with prominent persons.

16. The meeting was informed of the progress made in interaction with prominent persons. It was also intimated that the summary of discussions sent by the Secretariat to Shri P.V. Narasimha Rao and Shri I.K. Gujral, former Prime Ministers, had been received, duly approved by them and were circulated amongst the Members at the meeting.

Item 9. Consideration of the payment of professional fee to Shri P.M. Bakshi for drafting of Consultation Papers/Background Papers and for rendering assistance in preparation of certain parts of the draft Final Report.

Item 10. Consideration of the payment of professional fee to Shri S.S. Sohoni and Prof. Aswini K. Ray for preparation of Background Papers on "Parliamentary Reforms".

Item 11. Consideration of payment of professional fee to Shri S.S. Sohoni for preparation of a Paper on 'Secularism'.

17. The Meeting took up items 9, 10 and 11 together for consideration. After detailed discussions, the meeting decided that these matters be placed before the Projects and Finance Committee again for consideration and decision.

Item 12. Consideration of the letter dated 14.8.2001 received from Ministry of Agriculture, Department of Agriculture & Cooperation regarding inclusion of "Management of disasters and emergencies, natural or man-made" in List III of the Seventh Schedule to the Constitution of India.

18. The meeting took notice of the proposal received from the Ministry of Agriculture and decided that it might be considered at the time of consideration of the draft final Report on the subject. Shri Sangma suggested that Shri Sharad Pawar, Member of Parliament who is heading a body constituted by the Central Government on Disaster Management could be requested to give his valuable views in the matter. The suggestion was approved.

Item 13. Any other item, with the permission of the Chair.

19. The Commission considered the communication dated 11.9.2001 received from the Department of Legal Affairs regarding proposal of the Ford Foundation for a grant by it of US\$ 1,50,000 to the Commonwealth Human Rights Initiative, New Delhi, (CHRI) was brought to the notice of the meeting for consideration. The Commission felt that the matter under consideration was a proposal of a foreign Non-Governmental foundation to afford financial assistance to another Non-Governmental organization, viz, CHRI in the latter's endeavours to review the working of the Constitution. The Commission was of the view that it would be inappropriate for the Commission to offer any comments on the proposal. Indeed the Government of India had set up the present Commission to do that work. The meeting decided that a reply might be sent to the Department of Legal Affairs accordingly.

20. The meeting was informed of the letter dated 10.9.2001 from M/s J.M. Jaina & Brothers, New Delhi, offering their services for printing, publishing and marketing of the Consultation Papers and Report of the Commission. The meeting considered the offer and decided that no action need be taken as the printing and publishing of the Report was to be decided by the Government and the Commission is expected to send the Report, generated through Computers, to the Government at the appropriate time.

21. Smt. Sumitra G. Kulkarni desired that copies of all the important representations received from the organizations in the North-East should be sent to her.

The meeting ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary
Tele: 302 2079, 302 2080

To

All Members of the Commission

LIST OF PARTICIPANTS OF THE ELEVENTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri B.P. Jeevan Reddy (not present on 15th September)
3. Justice Shri R.S. Sarkaria (not present on any day)
4. Justice Dr. Kottapalli Punneyya
5. Shri P.A. Sangma (not present on 15th September)
6. Shri Soli J. Sorabjee (not present on 15th & 18th September)
7. Shri K. Parasaran
8. Dr. Subhash C. Kashyap (not present on 15th September)
9. Shri C.R. Irani (not present on any day)

10. Abid Hussain
11. Smt. Sumitra G. Kulkarni
12. Dr. Raghbir Singh, Secretary

(12)

MINUTES OF THE TWELFTH MEETING OF THE COMMISSION HELD ON 1ST OCTOBER, 2001

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The Twelfth meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, New Delhi at 10.30 a.m. on 1st October, 2001. Hon'ble Justice Shri M.N. Venkatachaliah chaired the meeting. The list of participants is at Annexure.

2. The Hon'ble Chairperson extended a warm welcome to the Members and requested the Secretary to take up the Agenda.

Item 1. Confirmation of the Minutes of the Eleventh Meeting of the Commission held on 15th, 17th and 18th September, 2001;

3. Dr. Subhash C. Kashyap suggested the following changes in the Minutes:

- (i) In paragraph 7 (page 2), the spelling of his name may be corrected.
- (ii) In paragraph 8 (i) (page 3), after the word 'Judiciary', the words 'at all levels' may be added and the words 'into judicial service' may be deleted.
- (iii) In paragraph 8 (ii) (page 3), after the word 'refresher', the word 'and' may be deleted and words 'courses for' may be added. In the same paragraph, after the words 'judicial officers' the words 'from the lowest to the highest courts' may be added.
- (iv) In paragraph 8 (iv) (page 3), the word 'classifications' may be replaced by the word 'classification'.
- (v) In paragraph 8 (x) (page 3), the sentence should end after the word 'same'. In the same paragraph the word 'other' appearing after the word 'various' may be deleted.
- (vi) In paragraph 8 (xxi) (page 4), the word 'limited' appearing in the third line may be replaced by the word 'delimited'.
- (vii) In paragraph 18 (page 7), at the end of the paragraph, the words 'The suggestion was approved' may be added.

4. Smt. Sumitra G. Kulkarni pointed out that in the last meeting she had desired that copies of all the important representations received from the organizations in the North-East should be sent to her. This had not been reflected in the minutes. The Hon'ble Chairperson desired that immediate action be taken to send the copies of representations to Smt. Kulkarni along with a brief purport of the representations.

5. The meeting agreed to the modifications of the minutes as suggested by Dr. Kashyap and Smt Kulkarni in the preceding paragraphs.

Item 2 Consideration of the issue relating to the entitlement of the persons of foreign origin to hold high offices in the country.

6. The issue was discussed in the meeting but the discussion remained inconclusive.

Item 3 Review of the progress in the preparation of the Consultation Papers and Background Papers

7. The position regarding the preparation of the Consultation Papers and Background Papers was explained by the Secretary to the Members. It was intimated that a Background Paper on the remaining issues regarding 'Working of Judiciary' was being prepared by Professor N.R. Madhava Menon. The Paper on Parliamentary Reforms was entrusted to Shri S.S. Sohoni, who had been requested to take into consideration the material available on the subject in the Commission. The Secretary stated that Shri Sohoni had been requested to prepare a comprehensive Background Paper along with material for preparation of draft final report on the topic.

8. Dr. Subhash C. Kashyap desired that some time limit should be fixed by which all the Papers should be available to the Commission so that the Commission could adhere to its time schedule.

9. Dr. Abid Hussain informed that the four Papers relating to the areas under his Advisory Panel were in advanced stage of finalisation and he also had the benefit of discussion of the drafts with the Hon'ble Chairperson, who had made some very valuable suggestions. He stated that he would be able to submit the draft Papers to the Commission by 20th October, 2001.

10. The meeting also discussed the preparation of a Paper on North-East. Shri Sangma explained that he had been working on the Paper and hoped to submit the same to the Commission by 8th October, 2001.

Item 4 Consideration of revised draft Volume I of the Final Report, circulated to Members during the Eleventh Meeting of the Commission.

11. The meeting was informed that the Editorial Committee had met on 20th September, 2001 and finalized the procedure and methodology to be followed for editing the Report of the Commission. As per the procedure finalized by the said Committee, the draft Chapters as finalized by the Members-in-Charge, would first be placed before the Commission for approval and only thereafter, these would be sent to the Editorial Committee for editing etc.

12. The meeting, however, discussed whether Volume I of the Final Report and the Introductory Chapter in Volume II (both of which are not expected to contain any definitive recommendations) should be taken up by the Editorial Committee before the Commission could consider them. It was agreed that Volume I (except the summary of recommendations, which would be prepared after finalisation of Volume II) and the introductory part of Volume II should be placed before the Editorial Committee, as they did not contain any views/ recommendations of the Commission. After the Editorial Committee edits these parts of the Volumes, they could be placed before the Commission for final approval/adoption.

13. The rest of the contents of Volume I viz. consolidated list of recommendations and the contents of Volume II (except the introductory part) should first come-up before the Commission for full discussion and thereafter be passed on to the Editorial Committee.

14. It was decided accordingly.

Item 5 Review of the Progress in drafting of Volume II of the Final Report.

15. The meeting agreed as mentioned earlier that the procedure outlined in the preceding paragraph may also be followed in respect of such portions of Volume II of the Final Report, which do not contain any views/recommendations of the Commission, such as introduction, areas of concern etc.,

16. The meeting also discussed the question of finalisation of various chapters of Volume II of the Final Report. It was agreed that there was an urgent need for all the Members concerned to submit the draft chapters concerning them to the Commission at the earliest. The Secretariat of the Commission has been asked to follow-up and coordinate with the concerned Members in this regard.

Item 6 Any other items, with the permission of the Chair.

17. With the approval of the Hon'ble Chairperson, the Main Report (Volume – I) of the Advisory Panel on 'Decentralisation and Devolution' (prepared by Shri L.C. Jain, Chairperson of the Advisory Panel) was circulated to the Members of the Commission for consideration. The meeting appreciated the work done by the Advisory Panel. It was agreed that the Member-in-Charge (Shri P.A. Sangma) and the Commission would consider all the material and suggestions made in the said Report while finalizing the recommendations/Report on the topic.

The meeting ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary
Tele: 302 2079, 302 2080

To

All Members of the Commission

LIST OF PARTICIPANTS OF THE TWELFTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri B.P. Jeevan Reddy
3. Justice Shri R.S. Sarkaria
4. Justice Dr. Kottapalli Punneyya
5. Shri P.A. Sangma
6. Shri Soli J. Sorabjee
7. Dr. Subhash C. Kashyap
8. Dr. Abid Hussain
9. Smt. Sumitra G. Kulkarni
10. Dr. Raghbir Singh, Secretary

(13)

**MINUTES OF THE THIRTEENTH MEETING OF THE COMMISSION HELD FROM
24TH NOVEMBER, 2001 TO 29TH NOVEMBER, 2001**

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The Thirteenth meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, New Delhi from 24th November, 2001 to 29th November, 2001. Hon'ble Justice Shri M.N. Venkatachaliah chaired the meeting. The list of participants is at Annexure.

2. The Hon'ble Chairperson extended a warm welcome to the Members and requested the Secretary to take up the Agenda.

Item 1 Confirmation of the Minutes of the Twelfth Meeting of the Commission held on 1st October 2001

3. The Minutes of the Twelfth Meeting of the Commission held on 1st October 2001 were taken as read and confirmed.

Item 2 Consideration of the Consultation Paper on “Empowering And Strengthening Of Panchayati Raj Institutions/ Autonomous District Councils/ Traditional Tribal Governing Institutions In The North-East India”

4. The meeting was informed that after the Advisory Panel had approved the Paper, the Projects and Finance Committee also approved this Paper by circulation. The Hon'ble Chairperson emphasized the importance of this Paper. After discussing the Paper, the meeting approved the same and authorised its release to the public for eliciting response and evoking debate thereon. However, the requisite editorial modifications and formatting were authorized to be carried out before its release. In view of the nature of the subject, it was agreed that the Consultation Paper should be sent to the targeted group of persons having special knowledge of the North-East so that the Commission is benefitted by the response in this crucial area. In view of the limited time available with the Commission, it was also decided that a draft report on the subject might be prepared by the Member-in-Charge simultaneously without waiting for the responses. The responses received in the meanwhile could be suitably incorporated in the report later before its final adoption by the Commission.

Item 3 Review of the progress in the preparation of the Consultation Papers and Background Papers

5. The Secretary explained the status of preparation of the various Consultation Papers and Background Papers. It was intimated that Professor N.R. Madhava Menon was preparing a Background Paper on 'The Need for Systemic and Procedural Reforms in The Judiciary'. Shri K. Parasaran and Dr. Subhash C. Kashyap are incharge of the topic. The Paper was likely to be finalized by him shortly.

6. The Paper on 'Parliamentary Reforms' prepared by Shri S.S. Sohoni, which also contained some suggestions, was circulated to the Members.

Item 6 To consider the recommendations of the Editorial Committee contained in the minutes of its third meeting held on the 20th November 2001.

7. This item was taken up before item 4. The minutes of the third meeting of the Editorial Committee were circulated. In the aforesaid minutes, the Committee mentioned that it would be possible for it to discharge its responsibilities only if the Members could finalise drafts of their full chapters (not piecemeal portions) at their level and the Commission could consider, discuss and approve all the chapters latest by the first week of December, 2001. The Committee had also desired that the time schedule should be placed before the Commission. The aforesaid views of the Committee were discussed and generally agreed to by the Commission. However, it was decided that the draft chapters should be finalized by the Commission by middle of December, 2001 so that the same could be transmitted to the Editorial Committee. The Hon'ble Chairperson was requested to write to the Members concerned to send the Draft Final Report on the Chapter/Topics entrusted to them by 10th December, 2001 so that it could be taken up by the Commission in the next meeting proposed to be held from 12th December, 2001 onwards.

8. The members agreed that the Editorial Committee would be at liberty to make an appropriate formulation in respect of each recommendation and also make additional recommendation(s), which might be necessary in furtherance of main recommendation(s). The Editorial Committee was authorized accordingly.

9. Regarding the suggestion of the Editorial Committee that Members should finalise draft of the full chapters, the meeting noted that some of the chapters of Volume II of the Final Report comprised of many topics and pertained to different Members. It was, therefore, necessary to segregate the topics that could be discussed together. In Chapter 2 relating to 'Effectuation of Fundamental Rights, Directive Principles and Fundamental Duties', topics 1 (Vision of Socio-economic change through the Constitution) and 3 (Directive Principles of State Policy and Pace of Socio-Economic Change) could be discussed together; topics 2 (Fundamental Rights), 4 (Fundamental Duties) and 5 (Literacy) could be discussed together and topic 6 (Employment and Social Security) could be discussed separately. This was approved.

Item 4 Consideration of the topics of Volume II of the Final Report as indicated in Appendix 'B'

10. The meeting decided to take-up for discussion Chapter 4 relating to `Legislative Institutions, as the draft report and Papers on all the three topics under this Chapter were available for discussion.

Parliament And State Legislatures At Work (Chapter 4, Section 1)

11. The meeting discussed the recommendations contained in the paper on 'Parliamentary Reforms' prepared by Shri S.S. Sohoni, which was circulated. After deliberations, it was decided that the recommendations contained in the write-up titled "Working of Parliament and Need for Reforms" prepared by Dr. Kashyap may be taken as the recommendations of the Commission and the same may be transmitted to the Editorial Committee for preparation of the Final Report. The recommendations approved by the Commission in this regard are as under:

PARLIAMENT AND STATE LEGISLATURES AT WORK

For Parliament, it is of the utmost importance constantly to review and refurbish its structural-functional requirements and from time to time to consider renewing and reforming the entire gamut of its operational procedures to guard against putrefaction and decay.

2. The overriding guiding norm and purpose of all parliamentary reforms should be to make both Government and Parliament more relevant to meet the challenges of the times and the changing national needs in the context of the objective of faster economic growth.

3. Some serious thinking is called for in the matter of reforming the budget procedure in Parliament and bringing it closer to the needs and constraints of the new situation.

4. It would, therefore, be wise to reduce to the barest minimum the number of days on which voting by division is considered imminent. Also, the time may be fixed by agreement and announced in advance with appropriate whips issued and attendance ensured otherwise.

5. ***Nodal Standing Committee on Economy:*** It may be advisable to have a nodal Standing Committee on national economy with specific subject-oriented study groups aided by experts and concerned with economic policy formulation and implementation.

6. In its own long-term interest, Parliament as an institution cannot afford to place itself beyond all scrutiny by anyone. There is every need for a parliamentary Ombudsman.

7. Deliberate and concerted efforts are needed also at the professional level to rebuild Parliament's image as the supreme institution of the people.

8. To give a faithful and complete picture of what actually happens in the Houses of Parliament, it is necessary to telecast nationally all important debates live.

9. Improving the quality of Members: It is the primary duty of every Member irrespective of his party affiliations to maintain and project a good image of Parliament by his own conduct both inside and outside the Houses. Members of important parliamentary committees need to lay down a strict code of conduct for themselves, never to ask the senior Government officers appearing before the Committee for personal favours, avoid Committee tours unless really necessary and never accept any gifts, dinners, free transport, five star hospitality and the like while on tours.

10. Institutionalized arrangements are necessary to provide the much needed professional training and orientation to every newly elected Member irrespective of his ideological or party affiliations. The curriculum should include, among other things, adequate knowledge of the political system, the Constitution, the Rules of Procedure and Conduct of Business, the practices and precedents, mechanisms and modalities of the working of the Houses and the Parliamentary Committees, the do's and don'ts for Members, the rules of parliamentary etiquette and the like. The emphasis should be on the practical know-how, the technicalities and the operational realities and the concrete situations and not the rule book.

11. There is need to drastically slash parliamentary spending under various heads. Even if the resultant economy in the context of the overall national budget may not seem very large, the psychological impact is bound to be massive.

12. A strict limit needs to be placed on the number of Ministers and equivalent posts both at the Union level and in the States

13. Instead Of depending almost entirely on published documents – which are almost always outdated and - other official sources, Parliament must build its own independent national information reservoir with a network of feeding and retrieval points. Even if no other parliamentary reform was brought about, the single step of developing an infrastructure of information support system in Parliament would have been profound effect on revitalizing and transforming the institution of Parliament.

14. An essential prerequisite for any such assistance being available in satisfactory measure would be the presence of highly qualified and competent staff in the Library, Research and Reference Services of the Secretariats of Parliament.

15. **Planning Legislation and improving its Quality:** There is need for a dynamic – not mechanical – approach to legislative engineering and systematic programmatic of laws which may be proposed for enactment over a period of time. This can be done by:

- (i) streamlining the functions of the Parliamentary and Legal Affairs Committee of the Cabinet;
- (ii) making greater use of the Law Commission;
- (iii) setting up a new Legislation Committee of Parliament to oversee and coordinate legislative planning; and
- (iv) referring all Bills to the newly set-up Departmental Standing Committees for consideration and scrutiny, consulting concerned interest groups and finalization of the second reading stage in the relaxed atmosphere of Committees aided by experts thereby reducing the burden of the House without impinging on any of its rights and improving the quality of drafting and content of legislation.

16. **Setting up a Constitution Committee:** The proposed involvement of Parliament and a *priori* scrutiny can be achieved through the device of a Constitution Committee of Parliament which may be constituted by resolution or otherwise as a standing joint Committee of the two Houses. The members of the Committee may be elected by the respective Houses.

17. Also, where an enactment is placed beyond the power of judicial review by being included under the Ninth Schedule, it may be desirable for Parliament itself to provide an alternative forum and remedy by way of review, etc. to any aggrieved citizen. The proposed Constitution Committee may perform this function as well

18. **Department Committees and Improving Accountability:** The setting up of the 17 subject based Standing Committees has been the most historic development in recent years in the area of parliamentary reforms. Seventeen, however, is perhaps too many. Although it may not be easy to reduce the number now, it is strongly felt that 7 to 10 such Committees would be

enough and in fact might prove more effective than the 17. Also, it is important from the angle of reducing the overall costs and need for economy.

19. It is reasonably well established that parliamentary scrutiny over public finance is at present inadequate and patchy and there is need for simplifying presentation of the budget and strengthening executive control and parliamentary scrutiny of expenditure.

20. Working away from the glare of publicity, in a truly corporate sense, free from the normal partisan spirit that often characterizes the debates in the House, the new parliamentary committees could play an important, substantial and useful role. These Committees could provide a potent mechanism for a meaningful multilateral dialogue between the Government and the Members of Parliament enabling a proper appreciation of each other's views, reasonable accommodation of varying viewpoints and harmonization of conflicting interests. In the ultimate analysis, such parliamentary committees alone can ensure that we are making the best use of parliamentary system of Government.

21. Since the functions of every Ministry and Department are covered by the Departmental Standing Committees and also in view of the proposed new Constitution Committee, Legislation Committee and the Committee on National Economy, it does not seem at all necessary to continue the existing Committees on Estimates, Public Accounts, Public Undertakings and Subordinate Legislation. Their functions should also be most appropriately handled by the Departmental Standing Committees. This would rationalize the new Parliamentary Committee structure, streamline the functions of each individual committee, prevent overlapping and duplication of roles and above all lead to greater economy of expenditure under the head of Parliament and various Ministries of the Government.

22. The role of the Committee staff is vital. It should constantly and concurrently monitor the working of the concerned Ministries. The professional staff member should have the necessary competence in his Committee's subject area. He has to scientifically feed the committee with all the relevant information and data. To avoid diffusion of responsibility, there should be just one competent professional staff with one secretarial support in each Committee.

23. **Parliamentary Control Over Borrowing:** For, public borrowing is a charge on the future generations and must be duly controlled. Beyond certain prescribed limits, borrowing proposals should also be subjected to scrutiny by the proposed parliamentary committee on National Economy or the Standing Committee for the Ministry of Finance.

24. **Discussing Committee Reports on the Floor of the House:** It would be most desirable to discuss as a regular feature all important reports of Parliamentary Committees particularly in cases of disagreement between the Committee and the Government.

25. **Codifying Parliamentary Privileges:** The specific parliamentary privileges which may be deemed to be in conformity with contemporary thinking and absolutely necessary for the free and independent functioning of the institution of Parliament should be clearly defined, delimited and simplified. There is a strong case for codifying privileges and ending the necessity of every time referring to the 1950 position in the House of Commons in U.K.

26. Time is now ripe for removing the existing uncertainty and anxiety of the press and the people through early codification. A joint Committee of the two Houses may be set up to lay down the privileges in precise terms and to recommend appropriate piecemeal or comprehensive legislation.

28. Only defeat on a No-Confidence Motion proper may be deemed to be defeat of the Government calling for resignation of the Council of Ministers. This might incidentally reduce the incidence of unprincipled defections and instill a new sense of responsibility, relevance and importance in each member irrespective of ruling party or opposition affiliation.

29. **Other Procedural Reforms**

(i) **Reorganising Parliamentary Time Table:** The floor time ought to be better utilised for major policy matters, matters of vital national interest and important legislative and financial business. There is an urgent need for a reorganisation of the parliamentary timetable and rationalisation of the methods and procedures of the House.

Several items of business like the Questions, Adjournment Motions, Calling Attention Notices, Motions of No-Confidence, etc. initiated by Private Members are at present taken up during the time allocated for Government business and not in the time already reserved for Private Members' business on Fridays. A better alternative would be to allocate time on a weekly basis between the Government and the Private Members and to leave the priorities to be decided within each.

The time during the sessions could be divided in such a way that the Committees have also enough time to meet and complete their task. The forenoons could be reserved for the sitting of the Houses and the afternoons for Committee meetings or there could be a three day week for Parliament, with the Houses sitting on, say, Tuesdays, Wednesdays and Thursdays for 7 hours daily from 11 to 6 without lunch break. The Committees could sit on Mondays and Fridays, if necessary, on Saturdays as well. In the 21-hour week, 11 hours of floor-time could be set apart for government business i.e. legislation and other matters initiated by the Government, and the remaining 10 hours of floor-time could be made available to Private Members for Questions, calling Attention Notices, Private Members Bills and Resolutions, No-Day-Yet-Named Motions, Privilege Issues and other non-official business.

(ii) **Freedom of Expression:** While unparliamentary or objectionable expressions may be expunged from the proceedings of the two Houses of Parliament by their respective Presiding officers under the existing rules, 'shutting off' or 'blinding' the proceedings of any House under the presiding Officer's direction that 'nothing of what is said without his permission would go on record' may be of questionable desirability inasmuch as in that case the reports of the Proceedings cannot really be regarded any more as a faithful record of all that happened.

(iii) **The Petitions Committee:** It needs to be strengthened and put to greater use.

(iv) **The Question Hour:** The necessary top priority given to parliamentary Questions causes serious dislocation of normal work in the Ministries and offices of the Government. All this is not satisfactory and involves considerable waste of public money and parliamentary time.

(v) **Adjournment Motions:** Since, after independence, the device of No-confidence Motion itself has become available, stiff resistance to admitting any Adjournment Motions at all may be perhaps somewhat misplaced, overdone and unnecessary.

Discussions in the House, on a motion of adjournment, of a matter of urgent importance which may in any case, be upper most in the minds of the members and of the people at large outside at a particular time, can do no harm. It may, in fact ease tensions and help to create a better and healthier atmosphere both inside and outside the House.

(vi) **Absenteeism of members:** Absenteeism of Members threatens to become a serious malady. What is required is ensuring better and longer attendance by the Members in the Houses of Parliament. Those Members who are not so present in the House may, therefore, under their own self-regulatory procedures, lose their salary and allowances for the day.

(vii) **Secretariats of Parliament:**

It is most unfortunate that no law has so far been passed under article 98(2). Desirability of doing so at the earliest may be considered and efforts made to reorganise the Secretariats as dynamic instruments with stress on independence, efficiency, economy and promptness. Suitable arrangements may be made on a regular basis for providing to all parliamentary officials special training and orientation in parliamentary political science and legislative management techniques and tools.

29. Parliamentary reforms cannot be effected in a hurry. We must proceed with care and caution and begin by setting up a Parliamentary Reforms Commission or a 'Study of parliament Group' outside parliament as was done in U.K. before the procedural reforms. Finally, of course, the Rules committee or a Special Procedure Committee of the House should report on the matter.

30. Parliamentary reforms, political party reforms, electoral reforms, judicial reforms, etc., all have to be taken up together in an integrated approach to political and economic reforms and as part of the overall review of the working of our Constitution. No single reform can provide a miracle cure and no reforms should be effected in a hurry. We must proceed with utmost care and caution and evolve a national consensus on desirable changes.

12. It was also decided that this write-up might be suitably edited for incorporation of the same as a background paper in Volume-III of the Final Report.

System Stability In Polity (Immunity Of Legislators- What Do The Words 'In Respect Of Anything Said Or Any Vote Given By Him' In Article 105(2) Signify? (Chapter 4, Section 2)

13. After detailed deliberations, the members agreed to all the recommendations made in the draft on the subject as indicated below:

Immunity of Legislators

The Commission recommends enactment/ insertion of four new clauses, viz., clauses (3A), (3B), (3C) and (3D) in articles 105 and similar clauses with necessary modifications in article 194 of the Constitution in the following terms:

- “(3A) Nothing in clauses (1), (2) or (3) shall bar the prosecution of a member of Parliament, in any court of law, for an offence involving receiving or accepting, whether directly or indirectly, and whether for his own benefit or for the benefit of any other person in whom he is interested, any kind of monetary or other valuable consideration for voting in a particular manner or for not voting, as the case may be, in either House of Parliament.
- (3B) No court shall take cognizance of the offence mentioned in sub- clause 3(A), except with the previous sanction of the committee constituted under clause (3C).
- (3C) For the purposes of clause 3B, the President shall constitute a Committee consisting of five members of Parliament drawn from the House of the People and Council of States (in the ratio of 3:2) nominated by the President in consultation with the Speaker of the House of the People and the Chairman of the Council of States.
- (3D) The term of office of the members of the Committee constituted under clause (3C) and the other matters relating to such Committee shall be as the President may, by rule, determine.”

Parliamentary Oversight Over Government Functioning And Public Finance: C&AG (Efficacy Of Public Audit System In India: C&AG – Reforming The Institution) (Chapter 4, Section 3)

14. The members discussed the various recommendations contained in the draft on the subject. There was general consensus on all the recommendations. However, since the Member In-

charge (Dr. Abid Hussain) was not present on 24.11.2001, it was decided to defer the final decision to a day when Dr. Hussain would be present. Accordingly on 28.11.2001, when Dr. Abid Hussain was present, there was a further detailed discussion and it was agreed to accept the recommendations contained in the draft except the one relating to certain qualifications for the post of C&AG. It was agreed that a citizen of India who had proven capacity and experience in public finance should only be appointed to the post. The experience in 'accounting and auditing systems' mentioned in the draft recommendation was agreed to be deleted from the recommendations. The approved recommendations are as under:

The Commission recommends:

1. Constitution of an Audit Board of India, comprising of the Comptroller and Auditor-General of India as the Chairperson and two other Members, in place of the existing institution of the Comptroller and Auditor General of India by suitably amending the Constitution.
2. The Chairman of the Audit Board of India shall be appointed by the President by warrant under his hand and seal on the recommendation of a Committee comprising of the Prime Minister, Union Finance Minister, Speaker of the Lok Sabha, the Leader of the Opposition and the Chairman of the Public Accounts Committee. The C&AG of India shall be only removed from office in like manner and on the like grounds as a Judge of the Supreme Court is removed. The Members of the Audit Board shall be appointed by the President by warrant under his hand and seal on the recommendation of the Committee referred to above. The Members shall be removed from office only in like manner and on the like grounds as a Judge of the High Court is removed.
3. A citizen of India, who has proven capacity and experience in public finance, should only be appointed to the post of Comptroller and Auditor General of India.
4. Need to decentralise the functioning of Comptroller & Auditor General's set-up and give greater authority to State Accountants General so that they are able to perform their duties more efficiently.
5. Incorporation of a provision in the Constitution to the effect that every State shall have an Accountant General who shall exercise such powers and discharge such duties as may be assigned to him by the Audit Board of India.
6. In view of integrated nature of finances of the Central Government and State Governments and need for maintaining uniformity in auditing and accounting standards, there is a need for C&AG of India to exercise general superintendence, direction and control over the work of State Accountants General. Therefore, a provision may be made that Audit Board of India will have powers to give directions to State Accountants General on policy matters including preparation of Audit Reports.
7. In order to maintain independence of audit, the present position (The Indian Audit and Accounts Department is presently a central outfit and its budgetary allocation comes from Union Government and its employees are Central Government servants) need not be changed even if separate constitutional status is given to State Accountants General. Similarly, the current status of Indian Audit and Accounts Service (IA&AS) need not be disturbed and cadre control may remain with C&AG as hitherto and posting of officers in State AG offices may be made on the basis of a policy which may be evolved by mutual consultation.
8. Conferment of quasi-judicial powers, similar to those available under the Commission of Inquiry Act, 1952 on the Accountants General/Principal Directors of Audit and other senior officers of Indian Audit and Accounts department in the country by making a suitable provision in Comptroller and Auditor-General of India's (Duties, Powers and Condition of Service) Act, 1971 for making the audit effective. They may be vested with following powers:
 - (a) powers to summon concerned officers before them to give evidence on oath;
 - (b) where, after giving due opportunity, it is established that loss of money or property has been caused due to default of the public official he should be required to make good the loss;
 - (c) in case the official does not make good the loss, a report be made to the superior authority of the department where the official is working for recovering the money or initiating disciplinary action under the relevant Conduct Rules;

(d) where the action of the public official involves criminal liability, the public prosecutor be informed either by Audit officer or the department where he is working for initiating criminal action under the Indian Penal Code or any other relevant law.

9. Need for a constitutional/legal provision that all bodies which receive public funds will fall within the audit mandate of C&AG. While it may not be possible for C&AG to departmentally conduct audit of all such bodies, he should have powers to lay down accounting and auditing standards for them and exercise general superintendence over their audit.

Local (Third Tier of) Government- Panchayats and Municipalities

10. A constitutional amendment to the effect that State Accountants General (whom we have proposed as separate constitutional authority) or in the alternate C&AG will lay down accounting policies and auditing standards for Panchayats and Municipalities and exercise general superintendence over their audit.

Parliamentary Financial Control- Public Accounts Committee (PAC)

11. In order to strengthen parliamentary control over executive it is necessary to devise a system, which envisages that PAC examines all the reports submitted by C&AG and submits its recommendation to legislature within a time limit of, say 12 to 18 months.
12. Public Accounts Committee be given a suitable status with clearly defined mandate and duties and responsibilities and its recommendations be made binding on the Government. The life of the PAC be made five years co-extensive with the life of Parliament/State legislature with one-third of its members retiring every year. The appropriate legislature could make necessary provisions in this regard.
13. Need for an external audit of C&AG's organisation on the same pattern as in the U.K, to fulfill the canons of accountability.

Political Parties And Electoral Process – Need For Reforms (Chapter 3)

15. As regards this chapter, the Commission discussed the summary of suggestions contained in the Consultation Papers on 'Review Of The Working Of The Political Parties Specially In Relation To Elections And Reform Options' and 'Review Of Election, Processes And Reform Options'. The responses to these Consultation Papers received by the Commission were brought to the notice of the Members during the discussion. The decisions on these two topics are indicated in following paragraphs.

Review of the Working of the Political Parties Specially in Relation to Elections & Reform Options

16. The suggestions mentioned in para 8.1 to 8.17 (page Nos. 37-47) of the Consultation Paper on the subject were taken up seriatim.

17. The meeting decided to drop the following suggestions:

Sl. Nos. 8.7(e), sub-para 1,2, 5 and 6 of 8.16

8.7 (e) Candidates contesting elections should be familiar with the Constitution and should be able to read, write and understand its provisions.

8.16 Party System and Governance

1. As the parties provide the necessary political leadership for governance, it is necessary that the incumbent to public offices must be chosen on the basis of their integrity and capacity to administer. If the political parties have a continuous program of grooming the potential members of their parties for different types of assignments corresponding to the ministries and departments of the government, things would become easier and a smooth

transition of the government could take place. At the same time, the parties could contribute effectively to the processes of policy formulation, implementation and governance even while remaining in opposition.

2. The practice of political parties extending support to the government from the parliamentary floor from outside is an amoral exercise of power without responsibility. This inhibits the process of governance and has been the immediate cause of premature collapse of all the governments since 1989. This must be disallowed, if the coalition governments have to survive and carry on their task of governance.
5. The think tanks in various political parties' organizations should occasionally come out with alternative policy perspectives in the form of a "Green Paper" for want of a better term on some of the crucial issues facing the nation at a given moment and be widely circulated amongst the public, the media, intellectuals and others to elicit alternative opinions on the subject.
6. In times of emergencies, or national calamities, the parties should not eschew taking specific responsibilities in assisting governments in their activities to tie over the crisis.

18. After discussion the Commission decided to adopt the following suggestions with suitable modifications:

Sl. No. *8.7(c) [with a modification that to start with, no candidate should be declared elected unless he/she secures more than 40% (instead of 50%) of the votes cast]*

8.7 (c) Under the present system of "first -past -the -post", candidates can get elected on a minority of votes. No candidate should be declared elected unless he or she secures more than 50% of the votes cast. If no candidate gets 50% of votes in the first run, a second run off election be held immediately the next day of the first ballot. These days of electronic voting and counting make it possible to adopt such a system without incurring heavy expenditure or need for fresh security and administrative arrangements.

19. The Commission accepted the following suggestions in toto:

Sl. Nos. *8.1 to 8.6, 8.7(a), (b), (d), (f), 8.8 - 8.15, sub-para 3 and 4 of 8.16, 8.17*

8.1 *Need for a Legislation governing political parties*

There is a need for a comprehensive legislation (may be named Political Parties (Regulation) Act) regulating the functioning of political parties in India. The legislation should provide conditions for the constitution of a political party and for recognition, registration and de-registration. Until now the recognition and registration of political parties is done only for the limited purpose of allocating symbols. The new law, however, should prescribe not only the conditions for the establishment of the political party, but also provisions for regulating the functioning of political parties after establishment. It should be made compulsory for every political party to get registered under the proposed Act. Any party so constituted under the proposed Act should declare its allegiance to the provisions to the Constitution and the sovereignty and integrity of the nation. The legislation should also prescribe that every political party should abide by the spirit of democracy in its internal management and operation and should observe inner party democracy in its decision making process. It should provide that elections to the various levels of party organs should be held at least once in three years. It should also make it mandatory for political parties to provide for a representation of at least 30 percent of its organizational positions at every level for women. The leaders of political parties should also make sure that at least 30 percent of their party tickets are distributed amongst the women at the time of elections. The legislation should

make it compulsory for the parties to maintain accounts about the receipts of funds and expenditures in a systematic and regular way. The form of accounts of receipt and expenditure and declaration about the sources of funds may be prescribed by an independent body of Accounts & Audit experts, created under this proposed Act. The accounts should also be audited by the same independent body, created under the legislation who should also prepare a report on the financial status of the political party, which should be open and available to public for study and inspection. The proposed law should make it compulsory for the political parties to make their candidates declare their assets and liabilities at the time of their nomination being filed before the returning officers for elections to any office at any level of government. It should provide for limiting the expenditures of the political parties in relation to holding public rallies and large scale demonstrations and protests which hardly serve any effective purpose in these days of high tech electronic media, which is far more effective and economical and causes least inconvenience to public than the very frequent huge public rallies and large protests in capital cities. In this way the political parties would also be spared the burden of huge expenditure on all sorts of illegitimate or dubious means adopted to raise that amount of money for that kind of expenditure. [Malaysia has imposed a total ban on large-scale rallies for political demonstration and/or for election purposes.] The money saved could be more fruitfully employed in other more important activities of political parties, such as educating the voters through door to door contacts and /or sensitizing their own party-men in respect of various controversial issues facing the nation.

Only those parties, which are registered under the proposed Act be allowed to contest elections.

8.2 Criteria for Registration

- (a) The law should define the criteria of registration of political parties. Every political party or a pre-poll alliance of political parties should be compulsorily registered under the proposed Act. The Registration authority can be the Election Commission of India.
- (b) The criteria for registration as a national party be revised to at least securing of 10% of the valid votes polled by all the candidates in at least one half of the states.
- (c) The parties be designated as State parties if they secure the required percentage of at least 10% of total votes cast in any of the states.
- (d) Only parties or a pre-poll alliance of political parties registered as National parties with the Election Commission be allowed to contest for the Lok Sabha. State parties may contest for State Legislatures and the Council of States (Rajya Sabha).

8.3 Criteria for De-Registration

The law should define the criteria and conditions for de-registration of political parties, and the decision of the Election Commission in this respect should be final, subject to the judicial appeal to High Court/Supreme Court on points of law. For example, one of the criteria for de-registration could be the non-adherence to the conditions prescribed for registration or obtaining of registration in the first instance by fraudulent means or wrong declarations.

8.4 Structural requirements

The constitution of the parties submitted for Registration under the law should provide for:

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

- (b) a declaration to shun violence for political gains
- (c) a declaration not to resort to casteism and communalism for political mobilisation, but to adhere to the principles of secularism in the achievement of their objectives
- (d) provision for party conventions to nominate and select candidates for political offices at the grass root and state level
- (e) representation to the women and weaker sections of the society in party offices and candidates for contesting of polls.

8.5 *Educational Training and Developmental Activities*

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

8.6 *Leadership conventions*

Indian parties should seriously consider adopting the leadership convention system, as is practiced in countries like Canada, and the USA. This would have the advantage first, of making the leadership election process more open, democratic, and federal. Second, the people will know in advance of the prospective Prime Ministerial candidates. Third, it would introduce a nationally aggregative mechanism in major parties and curb the tendency of regionalisation and fragmentation. If the national convention is found too expensive, a series of staggered state conventions may be held by major parties with their respective slates of candidates (common for all the states in one party). This will go a long way in making parties aggregative and thus more functional in a parliamentary federal system of governance.

8.7 *Stabilising the Parliamentary System*

Following suggestions may be considered

- (a) Rules of procedure may provide for the election of the Leader of the House by the Lok Sabha along with the election of the Speaker and in the like manner. The Second Ballot system be adopted, in case no candidate secures a majority in the first round. The Leader may then be appointed as the Prime Minister. The same procedure may be followed for the Chief Minister.
- (b) Adoption of a system of constructive vote of no confidence. For a motion of no-confidence to be brought out against a government at least 20% of the total number of members of the House should give notice. Also, the motion should be accompanied by a proposal of alternative Leader to be voted simultaneously.
- (d) Candidates should not be allowed to contest election simultaneously for the same office from more than one constituency.
- (f) The election code of conduct, which should come into operation as soon as the elections are announced, is only a guideline. It should be given the sanctity of law and its violation should attract penal action. Political parties should also evolve their own codes for fair and violence free polls.

8.8 *Curbing Criminalisation of Politics*

The entry of criminals in politics is a matter of great concern. Although it can be prevented by laws, but more than that it is within the powers of political parties to see that no criminals or persons with the reputation of being in criminal activities are selected as candidates. The proposed law on political parties should provide that no political party would be able to sponsor and provide ticket to a candidate who has been convicted by any court for any criminal offences or if the courts have framed criminal charges. In case of conviction, the bar should apply for six

years after the completion of the period of the sentence. If any party violates this provision, the candidate involved should be disqualified and the party deregistered forthwith.

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

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

8.9 *Checking Proliferation of Independent candidates*

Vide the Representation of People (Amendment) Act, 1996, security deposit for independent candidates was enhanced to twenty times of the earlier limit, number of proposers for independent candidates increased and it had been provided that the names of the independent candidates would be listed in the ballot paper below the names of the candidates set up by the political parties. These measures to some extent succeeded in reducing the number of non-serious independent candidates. But, more needs to be done.

In order to check the proliferation of the number of independent candidates and the malpractices that enter into the election process because of the influx of the independent candidates, the security deposits in respect of independent candidates may be raised further.

The security deposits should be doubled progressively every year for those independent candidates who fail to win and still keep contesting every election.

If any independent candidate has failed to get at least five percent of the total number of votes cast in his constituency, he/she should not be allowed to contest as independent candidate for the same office again at least for 6 years.

Any independent candidate who loses election three times consecutively for the same office as an independent candidate should be permanently debarred to contest election to that office.

An independent candidate should be nominated at least by twenty elected members of Panchayats, Municipalities or other local bodies spread out in majority of electoral districts in his constituency.

8.10 *Problem of Party Funding*

The problem of political funding is a complex and undeniable reality, and there are no panaceas to remedy it. In effect, the premise that there are no absolute truths or ideal solutions in electoral matters has gained even more strength with regard to funding for two main reasons. One because of the close link that exists between this issue and the specific characteristics of the political system as a whole, as well as with the characteristics of the political party system in particular. Another reason is the permanent relationship posed by this subject with the values of political culture, which may mean that any solution can be evaluated in completely different ways in different contexts. For instance, whereas in Scandinavian countries the disclosure of electoral expenses and sources of funding is perceived as a violation of the fundamental principle of the right to voter secrecy, in other countries, such as Germany and Canada, these practices are viewed as exactly the opposite, as a guarantee of transparency in political activity and of the citizens' right to be duly informed.

Two other considerations deserve attention. The first one has to do with emphasising the importance of reviewing the funding system, not only in terms of the aims of the reform effort and its desired effects on the political system and system of political parties, but also with respect to the degree of effectiveness of regulations as well as their undesirable or immoral effects. The second expresses the need to insist that not every reform to the funding system must be

analysed separately, but rather as an integral part of political/electoral reforms as a whole. This is so because the consequences of such an analysis affect very important aspects, such as competition among parties, conditions for competition, the system of political parties and, consequently, the very credibility and legitimacy of democracy itself.

Moreover, every reform on this issue must be aimed at achieving greater and improved levels of transparency with respect to party revenues and expenditures. In fact, the issue of transparency and public disclosure is crucial to the fight against political corruption. In principle, this need would seem more fitting with regard to hefty contributions than for small ones, since greater the contribution, the greater the risk of dependence and the greater the danger of corruption. Thus, there is a need for greater transparency and public disclosure in respect of party funding. This demand for transparency must be conceived, rather, as a democratic value in itself, a tool designed to avoid any wrongful influences of money in politics that might lead to corruption.

If laws are intended to be effective with regard to transparency, they should be very general in nature and be enforced with respect to everyone, and not just political parties or candidates, but also to the donors as well. Otherwise, alternate or indirect ways to evade control will be devised. In fact, while it is essential to strengthen regulation, the mechanisms and capabilities of supervision and controlling entities, this only addresses part of the problem. Quite often, funding and commitments do not reach the parties, but rather go directly to the candidate and his/her inner circle of supporters. This is truer today in the context of the image and credibility crisis that partisan organisations have been undergoing, and the emergence of regional leaders due to the decentralisation process. This usually tends to make transactions between donors and beneficiaries become even more secretive. Hence, the main leaders or party members are often not aware of private contributions (many of them dubious in origin and in quite large sums), but only the candidate and his/her inner circle, which frequently consists of private contributors and/or individuals not involved in the party.

Consequently, any proposals for reforms concerning political funding should revolve, among other things, around the following five main objectives: (i) reducing the influence of money by diminishing its impact (by shortening campaigns, establishing ceilings on expenditure and limiting individual contributions); (ii) improving the use of money by investing it on more productive activities for the sake of democracy, and not just squandering it on propaganda and negative campaigns; (iii) stopping, or at least curtailing, as much as possible, current levels of influence peddling and political corruption; (iv) strengthening public disclosure and transparency mechanisms with respect to both the origin and the use of funds; and (v) promoting fairer requirements for elections, particularly concerning access to the media.

8.11 *Regulating political contributions*

There is a need for one comprehensive legislation regarding the regulation of political contributions to political parties and towards election expenses. The various existing provisions in different Acts need to be consolidated into a single law regulating the flow of funds to political parties both from the internal as well as external sources.

Legislation should provide for compulsory auditing of the accounts of all political parties registered with the Election Commission by an independent authority specified under the new law regulating the functioning of political parties, publishing of audited party accounts, and immediate de-recognition and enforcement of penalties for filing false or incorrect election returns. Accounts should be made available for public inspection.

Legislation should also contain provisions for making both donors and receivers of political funds accountable.

Individuals and corporate agency be permitted to make contributions to the political parties upto a certain ceiling higher than the present 5% of profits and an incentive be provided in terms of tax concessions.

The Government should encourage the corporate bodies and agencies to establish an electoral trust, which should be able to finance political parties on an equitable basis at the time of elections.

8.12 *Controlling Electoral Expenditure*

In view of the increasing cost of the election campaigns, it is desirable that the existing ceiling on election expenses for the various legislative bodies be suitably raised to a reasonable level reflecting the increasing costs. However, this ceiling should include all the expenses by the candidate as well as by his political party or his friends and his well-wishers or any other expenses incurred in any political activity sponsored on behalf of the candidate by an individual or a corporate entity. Such a provision should be the part of a legislation regulating political funding in India.

8.13 *Monitoring Election Expenditure*

The Election Commission should devise specific format(s) for filing of election returns by the candidates as well as political parties in such a manner that the fudging of accounts be made difficult. These accounts should be monitored through a system of checking and cross-checking through the income-tax returns filed by the candidates, parties and their well-wishers.

The Election Commission should organize training-cum-orientation workshops for the candidates and party agents to enable them to manage party accounts and election expenses in the format prescribed by the Election Commission, especially on the eve of elections.

A suitable law should be enacted providing penalties against damaging or desecrating public or private property by candidates, political parties or the agents, through painting of slogans or erecting cut-outs and hoarding or putting banners and buntings. The law should also provide for constitutions of special courts to ensure strict compliance of the aforesaid provisions of law, should any dispute arise in respect of the alleged violations of provisions of law by any candidate, political party or his agents and well-wishers.

8.14 *Property of candidates and politicians*

A useful tool in the fight against corruption would be legislation to make it possible to ascertain details about the inherited and self-acquired property of candidates by means of public affidavits reporting on it. Such affidavits should be audited by the Special Authority created by the proposed law on Political Parties. During their term of office, elected officials should also submit audited reports on a yearly basis, as well as a final audited statement at the end of their term of office. This type of measures would serve to keep the public fully informed about the property and lifestyle of politicians before they assume power, during their term of office and at its conclusion, thereby avoiding any unlawful acquisition of wealth.

8.15 *Strengthening of Anti-Defection Measures*

In order to curb the insidious practice of defection, the law should be amended to specifically provide that all persons defecting from the party or the alliance of party, on whose tickets they had been elected, must resign from their parliamentary or assembly seats and must contest fresh elections. In other words, they should lose their membership and the protection under the provision of split etc. should be scrapped. The defectors should also be debarred to hold any

public office of a minister or any other remunerative political post for at least the duration of the remaining term of the existing legislature or until, the next fresh elections whichever is shorter.

8.16 Party System and Governance

3. The practice of bloating the Council of Ministers must be stopped. A ceiling on the number of Ministers in any state or the Union government be fixed at the maximum of 10% of the total strength of the lower house of the legislature.
4. The practice of creating a number of political offices equivalent to the position or privileges of a minister should also be stopped. Any new administrative organization should only be created through regular administrative procedures and only if the provisions have been made in the regular budget estimates of the government concerned.

8.17 Restoring Moral Standards in Public Life

To the question what can be done for the restoration of moral standards and ethical values in public life, there is no simple answer. In the context of the current feeling of resignation to corruption and unethical and criminal practices in public life, and the disposition to consider them as inevitable and, therefore, acceptable, it may be well to remember Gandhiji's observation that "Life is an aspiration...the ideal must not be lowered because of our weakness and imperfections", and the fact of his life long resistance to evil in many forms - from racialism and imperialism to untouchability.

Thus, in addition to measures like the proposed legislation to effectively curb defections and operation of black money, break the nexus between electoral politics, economic resources and criminal support, and establishing the institution of Lok Pal, it is necessary that a rigorous Code of Conduct be drawn for both Ministers/Legislators and important functionaries of all political parties, which should incorporate what the Nolan Committee in the U.K. has suggested as the seven principles of public life-- viz., selflessness, integrity, objectivity, accountability, openness,, honesty and leadership.

A Public Ethics Committee consisting of representatives of all Political Parties and some eminent public persons of impeccable integrity and acceptability may be constituted to oversee, monitor and enforce the adherence to this code.

Review Of Election, Processes And Reform Options (Chapter 3, Section 2)

20. The suggestions mentioned in the summary of the Consultation Paper on the subject were taken up seriatim.

The Gandhian Model

21. It was decided that in the report, it should be brought out that the Commission had considered the Gandhian Model of decentralization of power. However, in the present situation it was not found feasible to be adopted.

22. The meeting considered the following suggestions mentioned in the summary of the Consultation Paper on the subject issued by the Commission and noticed that the points made therein have already been covered in the earlier topic:

Sl. Nos. 2,13,14,15,21,24,29-30,34-37, 40-42, 44-49 and 51.

2. There should be a mechanism for constantly updating these rolls and during each 1st week of April the updated rolls as of 31st December of the previous year should be posted on the web.

13. CEC's suggestion to impose President's rule over all the States for the duration of elections may not be considered logical or feasible.
14. Once charges relating to certain crimes have been framed by a court against a person, he should not be permitted to contest elections unless cleared.
15. A potential candidate against whom the police have framed charges may take the matter to a special electoral court. This court would be obliged to enquire and take a decision in a strictly time bound manner. Basically, this court may decide whether there is indeed a *prima facie* case justifying the framing of charges. If yes, the person should not be allowed to contest.
21. Create special electoral courts for deciding on election petitions. These should be decided in a time bound way within 6 to 12 weeks unlike the present where it can take years by which time they have lost their meaning.
24. Partial state funding of elections through time provided on national media for campaign activities of recognised parties may continue.
29. All political party accounts, much like the accounts of a public company, should be published yearly with complete disclosure under pre-determined account heads. The Election Commission should have these accounts audited.
30. Also make it obligatory for campaign expense accounts – both receipts and expenses - of all candidates to be made public in their constituencies.
34. Let candidates both at state level and parliamentary level win only on the basis of a majority vote meaning 50%+1 of the votes cast. This will create a majority representation and also push political parties and serious contenders to widen their appeal to their electorate.
35. For this let there be a run-off election if required between the top two candidates who get the highest and the second highest number of votes.
36. When using EVMs, have election spread over two days and keep the second day for possible run-offs. This will save considerable resources.
37. If this is not possible have the shortest possible gap between the main election and the run-off. No further campaigning should be permitted.

Defection and The Tenth Schedule

40. Whether by an individual or a group, defections should not be permitted. If a legislator wishes to leave his party or vote against it he should vacate his seat. Let him/her contest on a fresh platform. The vote cast by a defector should also be invalidated. In the alternative, the 10th Schedule should be repealed.
41. As a corollary to this, the role of whip should be reduced. Whip should be allowed to be used only for those votes in the House, which might threaten the life of the government.
42. Defectors should not eligible for any public office until re-election.

Problems of Instability

44. Independent candidates should be discouraged. Permit only those who have a track record of having won any local election.

45. Let only recognised national parties or pre-poll alliances contest elections to Lok Sabha.

46. It should be possible without any constitutional amendment to provide for the election of the Leader of the House (Lok Sabha /State Assembly) along with the election of the Speaker and in like manner under the Rules of Procedure. The person so elected may be appointed the Prime Minister/Chief Minister and the Government constituted by him may be removable only on a constructive vote of no-confidence.

Issues of Public Morality

47. Educate India's masses about their fundamental rights and duties, by driving home the message that political position holders are not "rulers" in the sense of a "mai-baap" or a "maharaja" but are elected into positions of authority to administer and serve the society's needs. Create a strong public opinion against political corruption and by making sure that no one gets to enjoy the fruits of their corrupt actions.

Miscellaneous

48. Debar all legislators from being appointed as chairpersons of various state undertakings, also debar them from any non-ministerial post other than chairmanship of legislative committees.

49. There must be a bar on ministries that are larger than 10% of the house. No other position of profit, executive authority or discretion should be available to legislators.

51. Some policy should be devised to encourage public-spirited "professionals" to contest elections and give to the legislature the benefit of their expertise and experience for a term or two.

23. After discussion the Commission decided that the following suggestions made in the summary of the Consultation Paper might be dropped:

50. There must be a limit of two terms for any political position. So you may be a member of the panchayat for two terms, of state assembly only for two terms even if non-contiguous and MP for two terms.

59. Create multi-member or double-member constituencies to eliminate or at least reduce narrow appeals based on religion or caste.

24. After discussion the Commission decided to adopt the following suggestions with suitable modifications:

Sl. Nos. ***1,8,10,17,18,20,22,43,52,56,58,60 and 61.*** *(The modifications approved by the Commission are indicated in italics below the original suggestion contained in the Consultation Paper)*

1. Electoral roll should be updated at the lowest constituency level with a clear link to the higher constituency levels till the parliamentary constituency.

1 The Electoral Rolls should be easily accessible to the general public, preferably at a public place such as all the Post Offices in the country so that these could be inspected on payment of a nominal fee by any one. Facilities should also be provided to the members of the public at the post offices for submitting their applications for modification of the electoral rolls.

8. Reference section 58A of the Representation of the People Act 1951, give Election Commission the authority to take decision regarding booth capturing not only on the report of the returning officer but even otherwise if it is satisfied.

8 Under section 58A of the Representation of People Act, 1951, the Election Commission should be authorized to take a decision on the report of the Prominent Citizens Groups also.

10. Make booth capturing punishable with more stringent punishment and empower the Election Commission, to investigate booth capturing and other violations of the electoral law, through the Central or State police investigating agency; by the establishment of special electoral courts.

10 The Special Electoral Courts as envisaged under Article 323B(2)(f) of the Constitution should be constituted at the level of High Courts and their decisions should be appealable to the Supreme Court only (in similar way as the decisions of the National Environmental Tribunal).

17. Under Section 8(4), sitting members are not disqualified even when convicted until their appeal is decided. This should be deleted.

18. If an elected representative gets convicted on charges related to specific crimes, he should be required to withdraw from the legislature for six months and if within that period he fails to get an acquittal, he should be disqualified.

17&18 These should be reworded. Section 8 of the R.P. Act, 1951 should be rationalized.

20. Amend current practice that once the High court hands out the judgement on an election petition holding the candidate guilty of corrupt practices, the case goes to the Secretary of the concerned State Legislature or the Secretary General Lok Sabha or Rajya Sabha, as the case may be. It is then forwarded to the President who in turn forwards it to the EC. Only then does the EC get jurisdiction to tender its opinion to the President based on which the disqualification order is issued. Instead of this round about procedure a direct reference between the High Court, the Election Commission and the President should be created to cut unnecessary delay.

20 Pre-1975 position needs to be restored.

22. The basic problem is that the present rules have a significant loophole in the shape of explanation 1 to section 77(1) of the Representation of the People Act 1951, under which the amounts spent by persons other than the candidate and his agent themselves, are not counted in his election expenses. This means that there can be never any violation of the expenditure limits. All extra expenditure, even when known and proven, can be shown to have been spent by the party or by any friends and it remains outside of the enforceable limits. This must be rectified and all expenditure made by or on behalf of the candidate must be included in his expenditure limit as provided under the rules.

22 The explanation 1 to section 77(1) of the RP Act, 1951 should be deleted.

43. Have intra-state delimitation exercise undertaken by the Election Commission to eliminate anomalies like the Chandni chowk Lok Sabha constituency being only 1/7th of the voter size of the Outer Delhi Lok Sabha constituency. The same should be done for assembly constituencies.

43 The delimitation Commission should reflect the plural composition of the society.

52. The EC should be unanimously appointed by a body consisting of the Prime Minister, the Leader of the Opposition, the Chief Justice of India and the Presiding Officers of Lok Sabha and Rajya Sabha. This should also be done for the State Election Commissioners.

52 The words 'unanimously' & 'Chief Justice of India' may be deleted from the suggestion.

56. There is every case for their being more women representatives. Political parties should be asked to put up women candidates for at least one-third of the seats they contest both for State and parliament elections or the same number of seats should be reserved for them by rotation.

56 Law should require the Political Parties to put up at least one-third women candidates for elections to Parliament and State Legislatures. Failure to do so should invite penalty of losing recognition for the Political Party.

58. All candidates should be required to clear government dues before their candidature is accepted. This pertains specially to payment of taxes and bills and to holding on the accommodation, telephones, and government facilities used while in power.

58 The fact that the matter regarding Government dues in respect of the candidate are pending before a Court of Law should be no answer to the suggestion.

60. Hold State level and parliamentary level elections at the same time. This would reduce election expenditure.

60 To the extent possible State & Parliamentary level elections should be held at the same time.

61. Every candidate at the time of election and every holder of a political position annually must declare his assets and liabilities along with those of his close relatives.

61 The word 'annually' should be deleted from the suggestion.

25. The Commission accepted the following suggestions in toto:

Sl. Nos. 3-7,9,11,12,16,19,23,25-28,31-33,38-39,53-55 and 57

3. Multipurpose voter ID card or citizenship card should be designed with a bar coded unique voter ID number. Over an acceptable period of time these should become mandatory for all elections.

4. This job should be entrusted to a pre-qualified professional organisation and should include designing the implementation of the scheme in coordination with and under the EC. Panchayati Raj Institutions and local post offices to be involved in helping in its implementation.

5. The designing of Electoral Rolls and ID should be coordinated with a view to the future.

6. The responsibility for the electoral rolls and ID should rest with one integrated machinery under the EC/SECs.

Electronic Voting Machines

7. Introduce Electronic Voting Machines in all constituencies as rapidly as possible. For all sensitive constituencies use them straightaway.

Booth Capturing and Rigging

9. Again, under section 58A of the Act, the Election Commission should not only be empowered to countermand the election and order a fresh election as now provided under the law, but also should be empowered to declare the earlier poll to be void and order only a re-poll in the entire constituency, instead of a re-election there, depending on the nature and seriousness of each case.

11. Consider use of tamper-proof video and other electronic surveillance at sensitive polling stations/constituencies.

Caste and Communal Hatred

12. Any campaign on the basis of caste or religion and any attempt to spread caste and communal hatred during elections should be punished with immediate disqualification and mandatory imprisonment.

Criminalisation

16. Eliminate incongruities in the existing provisions of sub-sections (1), (2) and (3) of Section 8 of the Representation of the People Act, 1951, whereby a rapist convicted and sentenced to ten years imprisonment, may be disqualified only for six years under sub-section (1) and thus remain free to contest elections, even while in prison serving the last four years of his sentence. The law should provide that whoever is convicted of any offence by a Court of law and sentenced to imprisonment for six months or more should be debarred from contesting elections, for a period totalling the sentence imposed plus an additional six years.

19. Political parties, when they are seen to be abetting criminalisation should face derecognition and other action.

Election Expenditure – the high cost of elections and abuse of unaccounted money power

23. Political parties as well as individual candidates should be subject to a proper statutory audit of the amounts they spend. At the end of the election each candidate should submit an audited statement of expenses, head-wise. The audit should not only be mandatory but it should be enforced by the Election Commission appointing a council of at least two auditors say for 10 constituencies each. Any violation or misreporting should be dealt with strongly.

25. For other proposed state funding, it has to be linked to the political parties being regulated by law and to creating a foolproof mechanism to implement financial limits strictly and to deter expenditure violations.

26. Bring in transparency into all political funding.

27. Permit corporate donations within prescribed limits and keep them transparent.

28. Make all legal and transparent donations tax exempt and treat this tax loss to the state as its contribution to state funding of elections. For example, tax exemptions could be limited to say 25,000 for individuals and 10,00,000 for companies provided that the contributions are made to party funds and not to individuals. In the case of corporate contributions, the Board of Directors may approve up to say 1,00,000 and anything over this amount may be approved by the shareholders. Political funding should be a separate head in the accounts and annual reports of the company. This will ensure transparency.

31. There should be a serious attempt at reducing election expenses and this can be done by perhaps changing the ground rules for electoral campaigns – partly by encouraging the use of

electronic and digital technology to campaign at state cost and simultaneously by totally and effectively banning other overt and wasteful *tamashaas* of campaigning

32. Place reasonable restrictions on the following:

Wall writings, Display of cut-outs hoardings and banners, Hoisting of flags (except at party offices, public meetings and other specified places), Use of more than a specified number of vehicles for election campaign and for processions, Announcements or publicity by more than a specified number of moving vehicles, Holding of public meetings beyond the specified hours, Display of posters at places, other than those specified by the district/electoral authorities, strong penalty for violation of expenditure ceiling. During election times rallies only under covered roofs should be allowed. No outdoor public rallies should be permitted.

33. Create an effective mechanism to implement these rules and create an effective deterrence against violations.

Compulsory Voting

While compulsory voting may not be feasible or advisable at present, a scheme of suitable incentives for increasing voter participation may be considered.

Negative Voting

Sound on principle, the suggestion for a provision of negative voting may be found impracticable and unnecessary.

38. Consider providing incentives to voters for casting their vote by providing of some simple facilities in order to push up the electoral turn out. Together with the 50%+1 vote scheme this will have a salutary effect on the campaigning rhetoric of the candidates and political parties because they will have to reach a higher number of voters now.

39. Electoral offences in the run-off elections should have a higher punishment prescribed.

Miscellaneous

53. The EC should not be appointed to any other office after retirement.

54. An independent auditing authority should be appointed for auditing annual statements of accounts of all political parties.

55. Rotation of seats should be done for SC seats and non-scheduled area ST seats.

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

26. It was pointed out that some of the suggestions mentioned by the Commission in the Consultation Papers were already being acted upon by the Government. Members agreed that it would be desirable to mention this fact appropriately in the report.

27. The Hon'ble Chairperson had allocated the representations submitted by various organizations containing their demands to some Members/group of Members in January 2001 for consideration and suggesting the course of action to be taken by the Commission. It was noted that there had not been much progress in this regard. Moreover, some more representations have been received after the aforesaid allocations. It was decided that the representations should be taken note of when the draft chapters on the relatable subject are considered by the Commission in its future meetings. The Secretariat was asked to take note of it.

Additional Agenda for 29th November, 2001

Consideration of the suggestions made by "Dr. Jayaprakash Narayan, Campaign Coordinator, Lok Satta

28. It was noted that Dr. Jayaprakash Narayan had made a suggestion about the availability of the Electoral Rolls in the post offices so that general public could have easy access to it. This suggestion had already been accepted by the Commission while considering the Chapter on 'Political Parties and Electoral Process – Need for Reforms'.

29. The other suggestion made by him relates to a 'direct election' of Chief Minister in States. It was felt that this suggestion in effect means introduction of Presidential form of Government in the States and acceptance of the same may amount to interfering with the basic features of the Constitution. This would be outside the Commission's terms of reference and, therefore, it could not be accepted.

Item 5 (Any other item)

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30. Smt. Sumitra G. Kulkarni, Member was in favour of establishment of Special Courts for women, children and SC/ST so that their problems could receive special attention. She also wanted a time limit to be fixed for these Special Courts for disposal of the cases before them.

31. With the permission of the Chair, the meeting was informed that Deans of Faculty of Law of University of Delhi and Dr. B.R. Ambedkar University, Agra have sought permission and funds for organizing a public interactive session cum seminar in Delhi and Aligarh respectively. After some discussion, it was agreed that the University of Delhi being a premier University might be allowed to conduct a Seminar at Delhi at the earliest and preferably by the end of December, 2001 so that its proceedings could be available before the Commission prior to finalisation of its report. An amount of Rs. 40, 000/-, which was paid to other universities for similar seminars, could be paid to it. However, the Commission did not agree to the conduct of a Seminar by the Dr. B.R. Ambedkar University, Agra at Aligarh as the Aligarh Muslim University had already held one such seminar at this place.

32. A communication received from one Shri O.P.R. Mishra from Mumbai seeking appointment to present his views before all the Members of the Commission during its meeting was placed before the Commission. All the members agreed that it was not necessary to invite Shri Mishra as they have already received his memoranda.

The meeting ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary
Tele: 302 2079, 302 2080

To

All Members of the Commission

ANNEXURE

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LIST OF PARTICIPANTS OF THE THIRTEENTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri B.P. Jeevan Reddy (except 25th & 26th November)
3. Justice Dr. Kottapalli Punnayya
4. Dr. Subhash C. Kashyap (except 28th & 29th November)
5. Shri C.R. Irani (except 25th November)
6. Dr. Abid Hussain (except 24th to 27th November)
7. Smt. Sumitra G. Kulkarni
8. Dr. Raghbir Singh, Secretary

(14)

**MINUTES OF THE FOURTEENTH MEETING OF THE COMMISSION HELD ON
14,15,17 AND 18 DECEMBER, 2001**

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The Fourteenth meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, New Delhi on 14,15,17 and 18 December, 2001. Hon'ble Justice Shri M.N. Venkatachaliah chaired the meeting. The list of participants is at Annexure-A.

2. The Hon'ble Chairperson extended a warm welcome to the Members and requested the Secretary to take up the Agenda.

Item 1 Confirmation of the Minutes of the Thirteenth Meeting of the Commission held from 24th November, 2001 to 29th November, 2001

3. The Minutes of the Thirteenth Meeting of the Commission held from 24th November, 2001 to 29th November, 2001 were taken as read and confirmed subject to the following amendments:

4. In para 11 of the minutes regarding 'Parliament and State Legislatures at Work', under the heading 'Reorganising Parliamentary Time Table' at page 8 of the minutes, the minimum number of days for which the legislatures should have sittings in a year should be prescribed as under:

Legislative Assemblies of Small States (number of legislators being less than 70)	:	50 days
Legislative Assemblies of Other States	:	90 days
Rajya Sabha	:	100 days
Lok Sabha	:	120 days

Review of the Working of the Political Parties Specially in Relation to Elections & Reform Options

5. Justice Dr. K. Punnayya had some reservation on the adoption of modified para 8.7(c) mentioned at page 15 of the minutes that no candidate should be declared elected unless he/she secures more than 40 % (40% +1) of the votes cast (instead of 50% +1 mentioned in the recommendation in that para originally). He felt that there would be practical difficulties in holding of run off elections.

6. Para 8.8 at page 18 of the minutes regarding 'Curbing Criminalisation of Politics' should be modified as under:

Any person charged with any offence punishable with imprisonment for a maximum term of five years or more, should be disqualified for being chosen as or for being a member of the Parliament or Legislature of a State on the expiry of period of one year from the date the charges were framed against him by the court in that offence and shall continue to remain so disqualified

till the conclusion of the trial for that offence. In case of conviction, the bar should apply during the period under which the convicted person is undergoing the sentence and a further period of six years after the completion of the period of the sentence. If any party violates this provision, the candidate involved should be liable to be disqualified and the party deregistered forthwith.

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

7. In Para 8.9 at page 18 of the minutes regarding 'Checking Proliferation of Independent Candidates' the portion regarding 'security deposits' should read as under:

The existing security deposits should be doubled.

8. In para 19 of the minutes para 8.14 at page 21 should be replaced by the following:

8.14 Property of candidates and politicians

A useful tool in the fight against corruption would be to lay down by legislation to make it possible to ascertain details about all the assets and Liabilities of candidates by means of public affidavits reporting on it. Such affidavits should be audited by the Special Authority created by the proposed law on Political Parties. During their term of office, elected officials should also submit audited reports on a yearly basis, as well as a final audited statement at the end of their term of office. This type of measures would serve to keep the public fully informed about the property and lifestyle of politicians before they assume power, during their term of office and at its conclusion, thereby avoiding any unlawful acquisition of wealth.

9. In para 19 of the minutes, para 8.17 at page 22 under the heading 'Restoring Moral Standards in Public Life' should be deleted as it was not agreed to in the thirteenth Meeting of the Commission.

Review Of Election Processes And Reform Options (Chapter 3, Section 2)

10. In para 24 of the minutes:

(a) In place of suggestion in para 8 (at page 26), the following shall be substituted:

8 Under section 58A of the Representation of the People Act, 1951, the Election Commission should be authorized to take a decision regarding booth capturing on the report of the returning officer, observer and also of the Citizens Groups.

(b) In place of suggestion in para 10 (at page 26), the following shall be substituted:

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

(c) In place of suggestion in para 17 (at page 26), the following shall be substituted:

18. The disqualification shall apply after expiry of a period of one year from the date the charges were framed in a court of law (as stated in para 8.8 above).

(d) In place of suggestion in para 61 (at page 27), the following shall be substituted:

61 Every candidate at the time of election must declare his assets and liabilities along with those of his close relatives. Every holder of a political position must declare his assets

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

11. In para 25 of the minutes:

(a) In place of suggestion in para 28 (at page 29), the following shall be substituted:

28. Make all legal and transparent donations upto a specified limit tax exempt and treat this tax loss to the state as its contribution to state funding of elections. For example, tax exemptions could be limited to say 25,000 for individuals and 10,00,000 for companies provided that the contributions are made to party funds and not to individuals. In the case of corporate contributions, the Board of Directors may approve up to say 1,00,000 and anything over this amount may be approved by the shareholders. Political funding should be a separate head in the accounts and annual reports of the company. This will ensure transparency. This will be in addition to the existing conditions laid in the Companies Act, 1956 for making donations to political parties.

(b) In place of suggestion in para 38 (at page 30) the following shall be substituted:

38. Consider providing incentives to voters for casting their vote by providing of some simple facilities in order to push up the electoral turn out. Together with the 50%+1(40%+1 to begin with) vote scheme this will have a salutary effect on the campaigning rhetoric of the candidates and political parties because they will have to reach a higher number of voters now. However, there should be no tax rebate for exercise of the right to vote.

(c) In place of suggestion in para 57 (at page 30) the following shall be substituted:

57. *The minimum number of valid votes polled should be increased to 25% from the current 16.67% as a condition for the deposit not being forfeited. Also the amount of deposit should be doubled for independent candidates. These steps would further reduce non-serious candidates.*

12. Dr. Abid Hussain was in favour of the power being vested in the defeated Prime Minister and his cabinet to recommend dissolution of Lok Sabha to the President, which recommendation would be binding on the President. This suggestion had not been mentioned in the minutes of the 13th Meeting and should be deemed to be incorporated therein.

13. **The meeting took up for consideration topics under Chapter II of the draft final report. After detailed discussions, the Commission agreed on each of the topics under this Chapter as under:**

(A) VISION OF SOCIO-ECONOMIC CHANGE

It was noted that this part did not contain any recommendations as such. The Commission, therefore, decided to remit this portion of the draft Report to the Editorial Committee for such editorial changes as are considered appropriate by it.

(B) EFFECTUATION AND REALISATION OF DIRECTIVE PRINCIPLES OF STATE POLICY

1. The Directive Principles of State Policy shall be called the Directive Principles of State Policy and Action

2. The demand that has been made from time to time that the Directive Principles of State Policy be made justiciable so that the same can be enforced like the Fundamental Rights contained in Part III of the

Constitution has been carefully considered and the Commission has come to the conclusion that the same can not be accepted at this stage.

3. For ensuring that the Directive Principles of State Policy are realised more effectively, the Commission recommends as under:

- (i) The Planning Commission shall ensure that there is specific mention/emphasis on and specific bench-marks for the progressive effectuation/realizations of the Directive Principles of State Policy in all the plans and schemes formulated by it.
- (ii) Every Ministry/Department of the Government of India/ State Governments shall prepare and publish a special annual report indicating the extent of effectuation/realization of the Directive Principles of State Policy, the shortfall in the targets, the reasons for the shortfall, if any and the remedial measures taken to ensure their full realization, during the year under report.
- (iii) The aforesaid Report at (ii) above shall be discussed by the Planning Commission in interactive seminars/workshops with the representatives of various NGOs, Civil Society Groups, etc. in which the representatives of the concerned Ministry/Department and the Departmental Related Parliamentary Standing Committee would also participate.
- (iv) The report under (ii) along with the records/ proceedings under (iii) will be considered and discussed by the Departmental Related Parliamentary Standing Committee which shall submit its report on the working of the Department indicating the achievements/failures of the Ministry/Department along with its recommendations thereto to the Parliament which shall discuss the Report within a period of three months and pass a resolution about the action required to be taken by the Ministry/Department.

4. The Commission also recommends a similar mechanism for the States.

5. The requisite amendments to the Rules of Business to enable these procedures shall be brought about.

(C) SOCIAL SECURITY AND EMPLOYMENT

Article 41 of the Constitution may be amended and a proviso may be added to that article so as to provide that the State shall bring a suitable legislation for providing the right to rural wage labour for a minimum of 80 days in a year. A proviso to Article 41 in the following terms may be inserted:

“Provided that the State shall by suitable legislation endeavour to guarantee rural wage labour for a minimum of eighty days in a year”

(D) LITERACY

The summary of recommendations made under this topic was remitted to the Editorial Committee Shri K. Parasaran, the Member-in-charge of this topic being a member of the Editorial Committee it could consider, discuss and fine tune the recommendations with particular reference to the new technology that may be required for handling the enormous changes required after the proposed Article 21-A becomes part of the Constitution as it would be a crucial area.

(E) FUNDAMENTAL DUTIES

The draft report on the topic of Fundamental Duties prepared by the Member-in-Charge was considered. On finding that the recommendations contained therein were found to contain inadequate picture of the Commission's comprehension of the subject, it was decided that the matter be remitted to the Editorial Committee for suitably drafting the report, taking into consideration, *inter alia*, (i) Recommendations of Justice J.S. Verma Committee, which were generally found to be acceptable by the Commission (ii) Consultation Paper on the subject released by the Commission and (iii) Paper on the subject submitted by Smt. Sumitra G. Kulkarni, Member.

(F) FUNDAMENTAL RIGHTS

In the light of the discussion contained in this section, the Commission is making the following recommendations for amendment of Part III of the Constitution of India, which deals with Fundamental Rights.

RECOMMENDATIONS

1. In Article 12 of the Constitution, the following Explanation should be added:

‘Explanation.- In this article, the expression “other authorities” shall include any person in relation to functions of a public nature.’.

2. In sub-clause (1) and sub-clause (2) of Article 15 and in sub-clause (2) of Article 16, before the words “or any of them” the following words should be inserted, namely: -
“ethnic or social origin, political or other opinion, property or birth”

3. (i) In sub-clause (1) of Article 19, in clause (a), after the words “freedom of speech and expression”, the following words should be added:

“which shall include the freedom of the press and other media, the freedom to hold opinions and to seek, receive and impart information and ideas”

(ii) In sub-clause (2) of Article 19, after the words “incitement to an offence”, the following words should be added:

“or for preventing the disclosure of information received in confidence, if required, in public interest”

4. Existing Article 21 may be re-numbered as clause (1) thereof, and a new clause (2) should be inserted thereafter on the following lines:-

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

5. After Article 21, a new Article, say article 21A, should be inserted as follows:

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

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

6. The existing Article 21 may be re-numbered as clause (1) thereof, and after clause (1) as so numbered, a new clause namely, clause (2) should be inserted as follows:

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

7. It is proposed that a new article, namely, Article 21-B should be inserted in Part III of the Constitution:

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

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

8. In article 25 of the Constitution, -
(a) in clause (2), for sub-clause (b), the following clause should be substituted, namely:-
 “(b) providing for social welfare and reform or the throwing open of Hindu, Sikh, Jaina or Buddhist religious institutions of a public character to all classes and sections of these religions.”.
(b) Explanation II should be omitted.

9. After Article 30, the following Article should be added as Article 30-A:

“30-A: Access to Courts and Tribunals and speedy justice

(1) Everyone has a right to have any dispute that can be resolved by the application of law, decided in a fair public hearing before a court or tribunal or forum or where appropriate, another independent and impartial court, tribunal or forum.

(2) The right to access to courts shall be deemed to include right to reasonably speedy and effective justice in all matters before the courts, tribunals or other forum and the State shall take all reasonable steps to achieve the said object.”

10. After the proposed Article 30-A, the following Article should be inserted as Article 30-B:

“30-B: Equal justice and free legal aid:

The State shall secure that the operation of the legal system promotes justice on the basis of equal justice, and shall, in particular, provide free legal aid, by means of suitable legislation or otherwise, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

11. (i) The first proviso to article 22(4) as contained in the Constitution (Forty-fourth Amendment) Act, 1978 should be substituted by the following proviso.

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

- (ii) Article 22(4) or (7) should be suitably amended providing for restricting the maximum period of detention to six months.

12. For the existing Article 300-A, the following article should be substituted:

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

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

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

13. In Article 31-B, the following proviso should be added at the end, namely:-

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

- a) in pith and substance to agrarian reforms or land reforms;
- b) to reasonable quantum of reservation under articles 15 and 16;

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

14. Article 359 (1-A) should be amended by substituting for “(except articles 20 and 21)”, the following:

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

15. The Commission has received representations for abolition and for retention of death penalty. The Commission, after due deliberations, has not thought it appropriate to recommend, at this stage, any change in the existing law relating to imposition of death penalty.

16. A new article, say Article 30-C, should be added in Part III of the Constitution on the following lines:-

“Article 30-D: (1) Every child shall have a right to free elementary education of quality until he completes the age of fourteen years.

(2) Every person shall have the right to education beyond the age of fourteen years within the limits of economic capacity and development of the State.”

17. After article 24, the following article should be inserted, namely:-

“24A. Every child shall have a right for care and assistance in basic needs, and protection from all forms of neglect, harm and exploitation,

18. After the proposed Article 30-C, the following Article should be inserted as Article 30-D:

“30-D: Right to prevention of pollution, conservation of ecology and sustainable development:

Every person has the right—

(a) to an environment that is not harmful to his health or well-being; and

(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measure that—

(i) prevent pollution and ecological degradation,

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;”

14. The Commission took up the topic ‘**All-India Judicial Service**’ under Chapter 6 of volume II of the Final Report for consideration. Justice Shri B.P. Jeevan Reddy explained the background of the matter and the views of the various High Courts and others. After detailed discussions, the Members agreed to conclusion that the formation of an All-India Judicial Service would not be a better alternative, than the present system and therefore, it would not be preferable to disturb the present position. The Commission did not favour deletion of clause (3) of article 312 of the Constitution.

15. The next topic taken up for consideration under Chapter 6 of volume II of the Final Report was ‘**Financial Autonomy of the Judicial Branch of the State**’. After discussing the draft in detail, the Commission decided on the following recommendation to be made on this topic:

‘The financial autonomy is one of the essential elements for the independence of judiciary and the Commission recommends that an appropriate mechanism be devised to ensure that the budget proposals of the judiciary may be finalized after mutual discussions between the judiciary and the concerned Ministry keeping in view the developmental needs of the judiciary.’

16. **‘Appointment, Transfer and Removal of Judges’** was the next topic under Chapter 6 of volume II of the Final Report taken up for consideration. After comprehensive discussions, the Members agreed to the following recommendations:

- (i) There shall be a National Judicial Commission for making recommendation as to the appointment of a Judge of the Supreme Court (other than the Chief Justice of India), a Chief Justice of a High Court and a Judge of any High Court.
- (ii) The composition of the National Judicial Commission would be as under:
 - a) The Vice-President of India
 - b) The Chief Justice of India
 - c) Two senior-most Judges of the Supreme Court, next to the Chief Justice
 - d) The Union Minister for Law & Justice.

The National Judicial Commission shall meet as a round table. While meeting for making recommendation as to the appointment of a Judge of a High Court, the Chief Justice of the concerned High Court shall also be associated as a Member of the Commission.

- (iii) Proposals for appointment of Judges should originate either from the Chief Justice of India or the Chief Justice of a High Court, as the case may be.
- (iv) The retirement age of High Court and Supreme Court Judges should be uniform and it can be 65 years.
- (v) The Pension of the judges should be same as the last basic pay drawn by them plus the Dearness Allowance.
- (vi) The retired judges should not be appointed to any paid appointment under the Government. However, even for post-retirement non-paid assignments, it is recommended that, to eliminate room for irrelevant considerations, it would be appropriate to provide as a matter of law that where a retired Judge is sought to be appointed to a Tribunal/Commission or similar other body, such appointment should be made in consultation with the concerned Chief Justice. In the case of appointment of a retired Judge/Chief Justice of the Supreme Court, the Chief Justice of India will be consulted and in the case of appointment of a judge/Chief Justice of the High Court, the Chief Justice of that Court should be consulted. Such a course would help in eliminating irrelevant considerations and would also facilitate appointment of appropriate persons to these bodies.
- (vii) As regards the transfer of Judges, it should be as a matter of policy and the power under article 222 and its exercise in appropriate cases should remain untouched. The President would transfer a Judge from one High Court to any other High Court after consultation with a committee comprising the Chief Justice of India and the two senior-most Judges of the Supreme Court.
- (viii) The Commission considers that the present position of impeachment is totally inadequate and for various reasons impracticable.
- (ix) The Commission suggests a procedure as to how to deal with complaints of deviant behaviour as at Annexure-B.
- (x) The Commission is of the opinion that the mere creation and existence of a mechanism as suggested herein should itself operate as a check against deviant behaviour. Where, however, deviance occurs, it is necessary that it is dealt with appropriately.

Chapter 7 – Union-State Relations

17. The next topic taken up for consideration was **‘Article 356’**. After discussing the draft prepared by Justice Shri B.P. Jeevan Reddy and a Paper prepared by Shri S.K. Sharma, former Secretary in the Inter-State Council, in detail, the Commission decided that retention of this article was very much necessary. Shri S.K. Sharma participated in the discussions on the topic as a special invitee. The Commission requested Shri S.K. Sharma to modify the recommendations part of the draft in the light of discussions and submit the revised draft recommendations in a narrative form to the Editorial Committee by 25th December, 2001.

18. The Commission took up the next topic “the Institution of Governor”. The draft report prepared by Justice Shri B.P. Jeevan Reddy was taken up for consideration and after detailed discussions, the Commission decided to adopt the following recommendations:

- (a) *The appointment of Governor should be entrusted to a Committee consisting of the Prime Minister of India, Union Minister for Home Affairs and the Chief Minister of the concerned State.*
- (b) *Normally five year term of the Governor should be adhered to.*
- (c) *Removal or transfer of Governor should be by following a similar procedure as for appointment i.e. in consultation with the Committee. The Chief Minister of the concerned State(s) should always be consulted in the matter.*
- (d) *In the matter of selection of a Governor, the following matters mentioned in para 4.16.01 of the Sarkaria Commission Report should be kept in mind:-*

“4.16.01 A person to be appointed as a Governor should satisfy the following criteria:

- *He should be eminent in some walk of life.*
- *He should be a person from outside the State.*
- *He should be a detached figure and not too intimately connected with the local politics of the State.*
- *He should be a person who has not taken too great a part in politics generally, and particularly in the recent past.*

In selecting a Governor in accordance with the above criteria, the persons belonging to the minority groups should continue to be given a chance as hitherto.”.

- (e) The time-limit – say a period of six months – within which the Governor should take a decision whether to grant assent or to reserve it for consideration of the President should be prescribed.
- (f) The Editorial Committee was requested to examine and further consider the following suggestion:

If the Bill is reserved for consideration of the President, there should be a time-limit, say of three months, within which the President should take a decision whether to accord his assent or to direct the Governor to return it to the State Legislature or to seek the opinion of the Supreme Court regarding the constitutionality of the Act under Article 143 (as it happened in the case of Kerala Education Bill in 1958).

- (g) When the State Legislature reconsiders and passes the Bill (with or without amendments) after it is returned by the Governor pursuant to the direction of the President and the Bill as passed is again presented to the President for assent, the President shall not withhold assent therefrom.
- (h) It should be provided that save as otherwise provided in clause (4) of article 360 of the Constitution, a “Money Bill” cannot be reserved by the Governor for the consideration of the President.

The meeting ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary
Tele: 3022079,3022080

To
All Members of the Commission

LIST OF PARTICIPANTS OF THE FOURTEENTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri B.P. Jeevan Reddy (except 18th December)
3. Justice R.S. Sarkaria (except 15th, 17th and 18th December)
4. Justice Dr. Kottapalli Punneyya
5. Shri P.A. Sangma (except 17th and 18th December)
6. Shri Soli J. Sorabjee
7. Shri K. Parasaran
8. Dr. Subhash C. Kashyap
9. Dr. Abid Hussain (except 17th December)
10. Smt. Sumitra G. Kulkarni
11. Dr. Raghbir Singh, Secretary

Special Invitees

1. Shri Gopi K. Arora
2. Shri N.C. Saxena
3. Shri S.K. Sharma

How complaints of deviant behaviour should be dealt with:

A committee comprising the Chief Justice of India and two senior-most Judges of the Supreme Court should examine complaints of deviant behaviour of all kinds and complaints of misbehaviour and incapacity. Their scrutiny at this stage would be confined to ascertain whether –

- a) there is no substance in the complaint; or
- b) there is a *prima facie* case calling for a fuller investigation and enquiry; or
- c) whether it would be sufficient to administer an appropriate advice/warning to the erring Judge or give other directions to the concerned Chief Justice regarding allotment of work to such Judge or to transfer him to some other court.

If, however, they find that the matter is serious and that it calls for a fuller investigation or inquiry, they will refer the matter for a full inquiry to the committee (constituted under the Judges' Inquiry Act, 1968).

The committee shall be a permanent committee with composition indicated in the said Act and not one constituted *ad-hoc* for a particular case or from case to case, as is the present position under Section 3(2) of the Act. The tenure of the Committee shall be for a period of four years and to be re-constituted every four years.

The committee shall be constituted by the President on the advice of the Chief Justice of India. The membership shall not be full time salaried employment. But the terms and other conditions of service of the Members of the Committee shall be such as may be specified in the notification constituting the committee. The committee shall inquire into the allegation against the Judge in accordance with the procedure prescribed by the said Act, i.e. in accordance with sub-sections (3) to (8) of Section 3 and sub-section (1) of Section 4 of the said Act and submit their report to the Chief Justice of India.

The report should be considered by the full court of the Supreme Court. The full court shall take a decision as to –
whether (a) the Judge concerned ought to be exonerated of the charge or the charges levelled against him; or

(b) whether any charge or charges are established against him and if so, whether the charges held proved are so serious as to call for his removal (i.e. proved misbehaviour) or whether it should be sufficient to administer a warning to him and/or make other directions with respect to allotment of work to him by the concerned Chief Justice or to transfer him to some other court (i.e., deviant behaviour not amounting to misbehaviour).

If the decision of the full court of the Supreme Court is to remove the Judge, the recommendation to that effect shall be made by the Supreme Court to the President of India who shall pass orders accordingly. The decision of the Full Court of the Supreme Court means the decision arrived at by two-thirds of the Judges of the Supreme Court present and voting and a simple majority of the total effective strength (and not sanctioned strength) of the Supreme Court.

This procedure shall equally apply in case of Judges of the Supreme Court as well with the modification that the judge against whom complaint is received or inquiry is ordered, shall not participate in any proceeding affecting him.

(15)

MINUTES OF THE FIFTEENTH MEETING OF THE COMMISSION HELD FROM 5th TO 8th JANUARY, 2002

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The Fifteenth meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, New Delhi from 5th to 8th January, 2002. Hon'ble Justice Shri M.N. Venkatachaliah chaired the meeting. The list of participants is at Annexure.

2. The Hon'ble Chairperson extended a warm and respectful welcome to the Members and requested the Secretary to take up the Agenda.

Item 1 Confirmation of the Minutes of the Fourteenth Meeting of the Commission held on 14th, 15th, 17th and 18th December, 2001.

3. The Minutes of the Fourteenth Meeting of the Commission held on 14th, 15th, 17th and 18th December, 2001 were taken as read and confirmed subject to the following amendments:

(i) Dr. Subhash C. Kashyap pointed out that the minutes did not reflect an important decision of the Commission to have a meeting with Shri R. Venkataraman, former President of India to elicit his views on various matters of national importance relating to working of the Constitution. Such a decision had been taken twice earlier but somehow was neither recorded nor acted upon thus far. The Commission could call on him after ascertaining his convenience.

[The Hon'ble Chairperson directed that immediate action be taken to seek an appointment with the former President of India.]

(ii) Mentioning of the names of S/Shri Gopi K. Arora, N.C. Saxena and S.K. Sharma in the list of participants at Annexure-A (page 18) of the minutes as special invitees was not correct. Shri Gopi K. Arora had participated in the meeting as Consultant in pursuance of a decision of the Commission for assisting them in the drafting/editorial work whereas Shri Saxena was only called to clarify a point. Similarly, Shri Sharma was called for a few minutes only to explain the contents of his note. Hence of these three names, only the name of Shri Gopi K. Arora as Consultant should remain in the minutes. The meeting accepted the suggestion and decided accordingly.

- (iii) In para 6, the portion regarding 'Curbing Criminalisation of Politics' mentioned thereunder should be modified as under:
Any person charged with any offence punishable with imprisonment for a maximum term of five years or more, should be disqualified for being chosen as or for being a member of Parliament or of the Legislature of a State on the expiry of a period of one year from the date the charges were framed against him by the court in that offence and shall continue to remain so disqualified till the conclusion of the trial for that offence. In case of conviction, the bar should apply during the period under which the convicted person is undergoing the sentence and for a further period of six years after the completion of the period of the sentence. If any political party violates this provision, the candidate involved should be liable to be disqualified and the party should be **deregistered and de-recognised** forthwith.
Any person convicted for any heinous crime like rape, murder, smuggling, dacoity, etc. should be permanently debarred from contesting for any political office.
- (iv) Para 12 at page 5 should be substituted as under:
Dr. Abid Hussain was in favour of the power being vested in the Council of Ministers, irrespective of any vote, to recommend dissolution of Lok Sabha to the President, which recommendation would be binding on the President. This suggestion had not been mentioned in the minutes of the 13th Meeting and should be deemed to have been incorporated therein.
- (v) In para 16 regarding appointment, transfer and removal of Judges on page 14, it should be mentioned that there was some discussion regarding the composition of the proposed National Judicial Commission 16(i). Since the substantive issue relating to judiciary was scheduled to be discussed on 7th January, 2002¹, the decision on this item was deferred to that date.
- (vi) In para 16(iv), at page 14, it was noted that the Commission had agreed that the retirement age of High Court and Supreme Court judges should be uniform. However, there was no decision that it could be 65 years. The matter would be discussed on 7th January, 2002¹ and decision on this item was deferred to that date.
- (vii) Para 16(v), at page 14, relating to pension of the judges should be deleted.
- (viii) Para 16(vi) at page 14, relating to prohibition of appointment of retired judges to any paid appointment under the Government, it was suggested by some members that such jobs should include those of Governor, Ambassador and the like. However, no firm decision could be arrived and hence decision on this item was deferred¹.
- (ix) Para 16(viii) at page 15 of the minutes may be substituted as under:
"The Commission considers that the present position regarding removal of a judge of the Supreme Court or of a High Court is totally inadequate and for various reasons impracticable".
- (x) Para 17 at page 15 of the minutes may be substituted as under:
"The next topic taken up for consideration was '**Article 356**'. After discussing the draft prepared by Justice Shri B.P. Jeevan Reddy and a Paper prepared by Shri S.K. Sharma, former Secretary in the Inter-State Council, in detail, the Commission decided that retention of this article was very much necessary. Shri S.K. Sharma

was called before the Commission to explain the contents of his paper. The Commission requested Shri S.K. Sharma to submit the draft of a recommendation in the light of discussions in a narrative form to the Editorial Committee by 25th December, 2001.

The Commission noted that the Editorial Committee had not received the desired draft from Shri Sharma.

- (xi) Para 18(a), at page 16 of the minutes regarding appointment of Governor may be substituted as under:

“Article 155 of the Constitution may be amended and the amended Article may read as under:

“The Governor of a State shall be appointed by the President, after consultation with the Chief Minister of that State, by warrant under his hand and seal.”

- (xii) At the fourteenth meeting of the Commission, topics discussed included (i) Treaty Making Powers and (ii) Liability of State in Tort. After full deliberation, it was decided by the Commission to drop both these matters. The minutes may be modified to include a reference to these decisions.

Item 2 The Commission then took up the next agenda item regarding certain topics of Volume-II of the Final Report.

Chapter 2- Effectuation of Fundamental Rights, Directive Principles and Fundamental Duties

1. *Pace of Socio- Economic Change*

4. The Commission decided to request Justice Dr. K. Punnayya, Member In-charge of the subject to prepare a Draft Final Report on this topic, preferably not exceeding 15 pages and submit the same to the Drafting and Editorial Committee by 12th January, 2002. The said Draft Report would be circulated to all the Members of the Commission, who would be requested to send their comments to the Drafting and Editorial Committee latest by 20th January, 2002 so that the said Committee could take the same into consideration before finalization of the Draft Final Report.

Chapter 5 - The Executive and Public Administration

(A) Executive Responsibility.

1. *Treaty-making Power*

5. After deciding to drop the proposals contained in the Consultation Paper, the Commission recommended that Parliament may consider enacting suitable legislation under article 253 “for giving effect to international agreements.”

2. *Liability of State in Tort*

6. *After considering the points made in the Consultation Paper, the Commission decided that no recommendation was necessary to be made on the subject.*

(B) Administrative Accountability

1. *Legal Control of Monetary and Fiscal Policy*

7. *The decisions of the Commission on the **recommendations contained in the Draft Report on ‘Legal Control of Monetary and Fiscal Policy** prepared by Dr. Abid Hussain, Member In-charge are as under:*

1. No change is needed in the existing provisions of the Constitution in so far as appointment of the C&AG and other related matters are concerned. The Commission would, however, recommend that a healthy convention be developed to invariably consult the Chairman of the Public Accounts Committee, who by a well-established parliamentary convention is always a leading member of the Opposition, before the government decides the appointment of the C&AG.

(It was decided that in modification of the decision taken by the Commission in its Thirteenth meeting regarding appointment of the C&AG [Chairman of the Audit Board of India] by a Committee, the present method of appointment of C&AG may continue. However, a healthy convention be developed to consult the Speaker of the Lok Sabha before the Government decides on the appointment of the C&AG).

2. The Constitution should be amended to provide for the constitution of an Audit Board for better discharge of the vital function of public audit, but the number of members to be appointed, the manner of their appointment and removal and other related matters should be dealt with by appropriate legislation, keeping in view the need for ensuring independent functioning of the Board.

(This recommendation was agreed).

3. The findings and recommendations of the PACs be made binding on the government. This need not require an amendment of the Constitution. A political convention should be developed with the cooperation of all major parties represented in the legislature to accord to the PACs the status of a permanent conscience-keeper of the nation in financial matters.

(After discussing this recommendation in detail it was decided that Dr. Abid Hussain would discuss the issue with one of the former Chairmen of the Public Accounts Committee before finalizing the draft recommendation in the Drafting and Editorial Committee).

4. To fulfil the canons of accountability, a system of external audit of C&AG's organization by a reputed firm or agency, be adopted to ensure that our audit agencies have kept abreast of developments in the theory and practice of public audit. A similar system should be evolved for the state level organizations.

(Regarding this recommendation, the Commission reiterated its earlier decision contained in recommendation No. 13 in para 14 of the minutes of the Thirteenth meeting of the Commission which reads as under:

“the Commission recommends need for an external audit of C&AG’s organization on the same pattern as in the U.K, to fulfil the canons of accountability.”)

5. The approach contained in the Fiscal Responsibility Bill (FRB) is whole-heartedly endorsed and would urge the Parliament to enact it as expeditiously as possible.

(It was decided that in the above recommendation the word ‘urge’ be replaced by the word ‘request’).

6. The FRB should not go beyond the ambit of Article 292 and it may not be necessary to provide for express authority to Parliament to legislate the purposes for which borrowings should be made.

(This recommendations was modified as: “It may not be necessary to provide for express authority to Parliament to legislate the purposes for which borrowings should be made in as much as the FRB does not go beyond the ambit of Article 292”)

7. The State Assemblies should enact similar legislation as provided in Article 293 to put their respective fiscal houses in order.

(After discussing this recommendation the Commission requested the Drafting and Editorial Committee to further examine the matter and finalise the recommendation).

8. No amendment of Article 293(3) is considered necessary with a view to rectifying the practices and tendencies which have been noticed in regard to borrowings at the State level.

(It was explained that the recommendation has been drafted in response to some of the suggestions received in this regard. The Commission decided that the recommendation was not a positive recommendation and therefore, it should appropriately find a place in the body of the report only and not in the recommendations portion).

9. No amendment of Article 280(3)(d) is considered necessary to provide for formal involvement of the National Development Council in a consideration of the additional terms of reference for the Finance Commission. All political parties are urged to develop a consensus on a political practice of referring such terms of reference to the National Development Council.

(It was explained that the recommendation has been drafted in response to some of the suggestions received in this regard. The Commission decided that the recommendation was not a positive recommendation and therefore, it should appropriately find its place in the body of the report and not in the recommendations portion).

10. It is not considered necessary to amend the Constitution to provide for the recommendations of either the Finance Commission set up under Article 280 or of the State Finance Commissions set up under Articles 243-I and 243-Y for being treated as awards.

(It was explained that the recommendation has been drafted in response to some of the suggestions received in this regard. The Commission decided that the recommendation was not a positive recommendation and therefore, it should appropriately find its place in the body of the report and not in the recommendations portion).

11. No constitutional amendment is required to make surcharges shareable but would expect public policy to move decisively in the direction of doing away with the surcharges as part of the Centre's fiscal armoury.

(It was explained that the recommendation has been drafted in response to some of the suggestions received in this regard. The Commission decided that the recommendation was not a positive recommendation and therefore, it should appropriately find its place in the body of the report and not in the recommendations portion).

12. Enumeration of services that can be taxed exclusively by the States should get top priority with a view to augmenting the resource pool of the States. The Commission would advocate a well thought out amendment of the Constitution after more experience has been gained, particularly with regard to administrative capabilities of the States' taxation machineries in administering service taxes.

(It was explained that the recommendation has been drafted in response to some of the suggestions received in this regard. The Commission decided that the recommendation was not a positive recommendation and therefore, it should appropriately find its place in the body of the report and not in the recommendations portion).

13. No need for a change in the Constitution to specifically provide for independent conduct of monetary policy. The existing legislation and the long history of non-interference by government in the day to day conduct of monetary policy and of maintenance of a suitable environment of security and continuity for the key personnel and autonomy of decision-making by the top management have ensured that monetary policy would be conducted in an independent way.

(This recommendation needs to be reworded and end with the words “and therefore, it is not considered necessary to amend the Constitution. It should appropriately find its place in the body of the report and not in the recommendations”)

2. Executive And Public Administration

8. The Commission thereafter considered the recommendations in the Draft Report on 'Executive And Public Administration' prepared by Dr. Abid Hussain. It was decided that the recommendations were required to be reworded so as to make them more specific. It was also felt that there was need to specify the composition of the Civil Services Board and to mention its functions precisely. The desirability of having some professional management persons such as the Directors of Indian Institutes of Management or the Chairman of the Administrative Staff College on the Governing Board of the Civil Services Board needs to be examined. The functions of the Civil Services Board may also include transfers and postings of the civil servants above a particular level.

9. Smt. Sumitra Kulkarni made the following suggestions for making the bureaucracy more effective and efficient:

- (i) All the services should be treated at par and there should not be preferential treatment given to the Indian Administrative Service.
- (ii) The posts at the level of Deputy Secretary and above should be open for recruitment from a wide variety of sources, including the open market, instead of the posts at the level of Joint Secretary as mentioned in recommendation No. 9 of Dr. Abid Hussain's draft report.
- (iii) Any officer who brings political influence to further his prospects in the service should be disqualified for promotion, etc.
- (iv) The disciplinary cases should be decided within time limits, laid down for the purpose.
- (v) The officers should not be allowed to continue on central deputation after completion of their tenure and should be reverted back compulsorily.
- (vi) The officers who go on deputation to organizations other than the Central Government must go back to their parent cadre after serving the tenure so that the experience gained by them is utilized by their parent cadres.
- (vii) The powers to discipline the civil servants should be exercised effectively by the disciplinary authorities.

10. The Drafting and Editorial Committee was requested to finalize the recommendations in the light of the discussions held during the meeting.

11. The Commission then took up the draft report **on the topic 'Probity in Governance'** prepared by Justice Shri B.P. Jeevan Reddy. After detailed discussion the Commission approved the recommendations as under:

1. The Benami Transactions (Prohibition) Act, 1988 requires to be modified and strengthened. The Act could become effective and operational only when the necessary rules are made under section 8 of the Act prescribing the authority and the manner and procedure following which benami properties could be acquired by the State without paying any compensation. Hence, action should be taken to make necessary rules for giving effect to the provisions of the Act and thus fulfilling the legislative mandate. Whenever a public servant is found to have screened the illegally acquired assets in the name of a benamidar, action should be taken under that legislation to acquire those assets without paying any compensation. For this purpose, the appropriate authority should be clothed with necessary powers of investigation, verification, enquiry and the power to gather and receive information from any source, authority, institution or organization. The burden of proving that the property is not held "benami" should be placed upon the holder of the property/asset in question.

(paras 5.3.6 , 5.3.7 and 5.3.8)

2. A comprehensive law containing the principles on the basis of which misfeasance, malfeasance and nonfeasance of public servants could be rendered punishable should be made. In this connection, guidance could be taken from section 60 of the Andhra Pradesh Co-operative Societies Act, 1964.

(The Commission felt that the nomenclature of the proposed legislation should be specified. The legislation should have only very limited number of sections and model draft legislation should be annexed to this recommendation).

(paras 5.3.13 and 5.3.14)

3. It would be appropriate for the Parliament and the State Legislatures to enact a comprehensive law to provide that where public servants cause loss to the State by their *mala fide* actions or omissions of a palpable character, they should be made liable to make good the loss caused by them to the State and in addition they should be open to the imposition of exemplary damages. The law should also deal with the public functions of the public servants and their relationship with the State. The public servants should be made aware that a *mala fide* act or action on their part carries the liability for damages or compensation. Creating personal liability of such a kind would contribute greatly to good governance and would emphasise the need for transparent, fair and honest exercise of power.

(para 5.3.14)

4. Government should take action to enact a law for forfeiture of property of corrupt public servants otherwise than through the route of conviction. A law providing for forfeiture of properties acquired by holders of public office (including the offices/posts in the public sector corporations) by indulging in corrupt or illegal acts and deals should be enacted. The law must extend not only to the properties acquired in the name of the holders of such property but also to properties held in the names of his spouse, children or other relatives and associates.

(paras 5.3.15 and 5.3.18)

5. One of the measures adopted in several western countries to fight corruption and 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.

(paras 5.3.19 and 5.3.22)

6. The Freedom of Information legislation may also provide for the government to make information public without the request therefor from any one if such information pertains to matters involving major policy proposals and the major multilateral agreements proposed to be entered into.

(para 5.3.28)

7. The Lok Pal legislation may be enacted early. It may provide for an effective machinery of investigation under the Lok Pal. Maybe, the Constitution may have to be amended to provide for an effective Lok Pal, with his own machinery of investigation.

(paras 5.3.32 and 5.3.33)

(The Commission decided that the Prime Minister should be kept outside the purview of the proposed legislation.)

8. The legislation relating to the Central Vigilance Commission may be enacted soon keeping in mind the directions contained in the decision of the Supreme Court in Vineet Narain's case.

(para 5.3.34)

9. For overseeing appointment and transfer of civil servants to senior posts, a Civil Services Board should be constituted. Till such time a legislation is brought in, executive measures may be taken to set up the Board.

(para 5.3.35)

10. An Act called the Ethics in Government Act was enacted by the US Congress in 1978. This legislation *inter alia* provides that persons assuming the position of an officer or an employee should within 30 days of such assumption furnish full, true and complete disclosure of all kinds of their assets. It would be advisable for Parliament to enact legislation similar to the said US Act.

(paras 5.3.36 and 5.3.37)

Chapter 6 – The Judiciary

Need for Systemic and Procedural Reforms

12. The Commission was informed that Prof. N.R. Madhava Menon would submit the background paper on the subject by 10th January, 2002. The Secretary was requested to follow up with Prof. Menon and ensure that the said draft was received by 12th January, 2002. The paper would then be circulated to all Members of the Commission, who were requested to send their comments to the Editorial Committee latest by 20th January, 2002 so that the said Committee could take note of the same before finalization of the Draft Final Report.

Chapter-7 – Union State Relations (including Inter-State Disputes)

1. Barriers to Inter-State Trade and Commerce

13. The Commission was informed that Dr. Bibek Debroy and Dr. P.D. Kaushik of Rajiv Gandhi Institute for Contemporary Studies would submit the revised background paper on “Barriers to Inter-State Trade & Commerce by 10th January, 2002. The Secretary was requested to follow up with Dr. Bibek Debroy and ensure that the said draft was received by 12th January, 2002. The paper would then be circulated to all Members of the Commission, who were requested to send their comments to the Editorial Committee latest by 20th January, 2002 so that the same could be taken into consideration before finalization of the Draft Final Report by the said Committee.

2. Constitutional Mechanisms for Settlement of Inter-State Disputes

14. After discussing the draft report prepared by Justice Shri B.P. Jeevan Reddy, the Commission decided on each of the recommendations as under:

1. **The Supreme Court should be given exclusive jurisdiction under Article 131 to resolve the disputes/controversies concerning the distribution of legislative powers, which have an All India repercussion and where at least one of the parties is a Government.**

(The Drafting and Editorial Committee was requested to further examine this recommendation and take a view in the matter)

(Paras 3.20 and 3.21 of the Consultation Paper)

2. **Article 139A, which confers power on the Supreme Court to withdraw cases involving the same or substantially the same question of law which are pending in Supreme Court and one or more High Courts, should be amended so as to provide that it can withdraw the cases even if they are pending in other courts in the cases in which legislative competence of the Parliament is questioned.**

(The Commission decided that the Supreme Court should have power to withdraw the cases to itself in appropriate cases.)

(Para 3.22 of the Consultation Paper).

3. Article 253 confers power on the Parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. This power includes the power to make law on the subjects mentioned in the State List also. Passing of a law under this article on subjects in the State List may create tension or friction between the Union and the States. To reduce such tension or friction, **the Inter-State Council should be consulted, before the treaty is signed, which may vitally affect the interests of States regarding matters in the State List. Either a constitutional convention can be evolved to that effect, or, if necessary, article 263 could be enlarged or clarified, to permit consultation on the above point.**

(With regard to above recommendation, the Commission decided that the recommendation should mention 'the desirability of prior consultation with the Inter-State Council may be considered'.)

(Para 5.5 of the Consultation Paper)

4. Article 293(3) prohibits a State Government from raising a loan, where an existing loan is already outstanding against the State Government, unless the Government of India gives its consent. Article 293 (4) further provides, that while giving consent under article 293(3), the Government of India may impose such conditions as it may think fit. The Government of India may refuse a loan or grant a loan stipulating certain conditions. Such refusal of consent or imposition of conditions linked with a loan may give rise to disputes. Though such disputes may not be justiciable but a State Government may harbour a plausible grievance, that the consent has been unreasonably refused or that unreasonable conditions have been suggested by the Union Government. **For the resolution of such disputes, instead of creating a new mechanism, the matter could be appropriately dealt with by the Supreme Court under article 131 of the Constitution. If necessary, a clarificatory amendment to this article to cover such disputes may be made.**

(Para 6.4 (a) and (b) of the Consultation Paper).

(The Commission decided to delete this recommendation)

3. Settlement of Inter-State Water Disputes

15. The Commission reviewed the working of Article 262 of the Constitution and the Tribunals constituted under this Article read with the Inter-State Water Disputes Act, 1956 and it was felt that the mechanism of the Tribunal had not proved very satisfactory particularly in view of the long time taken by the Tribunals to complete their work. The Commission also noticed that for implementing the awards of the Tribunals constituted under the aforesaid Act, the parties have to approach the Courts. After detailed discussion the Commission considered it desirable to confer the power of resolving the inter-state water disputes on the Supreme Court, for which an appropriate amendment of Article 131 and deletion of Article 262 may be necessary. The Supreme Court can appoint Commissioners to record evidence. It can also engage experts to assist it. Shri K. Parasaran was requested to prepare the draft final report on the topic based on the discussions held during the meeting. Shri Parasaran was also requested to take into consideration the note submitted by Smt. Sumitra G. Kulkarni on the topic suggesting nationalization of all the inter-state rivers.

4. Financial Relations amongst the Union and the States

16. The Commission requested the Drafting and Editorial Committee to prepare the draft on the topic keeping in view the various representations made to the Commission and the suggestions made by the members of the Commission.

5. Concurrent Powers of Legislation under List-III of Seventh Schedule

17. The Commission considered the Draft Report on the topic and generally agreed to the following recommendations:

The Concurrent List is, therefore, a vibrant medium for legislative action in a federal scheme to consider and evolve national policy. These trends anticipate the emergence of a wide platform of concurrent jurisdiction with the passage of time. However, the Commission are of the view that no Constitutional amendments are necessary in order to obviate the distortions in the operation of the Concurrent List. The purpose and the vitality of common legislative action in the concurrent list can only be secured only through a well structured procedure of consultation between Union and the States. We, therefore, recommend that:

- (i) There should be a wide and a deep process of consultation with the State Governments on legislation in the Concurrent List.
- (ii) The individual and the collective consultation with States should be undertaken through the Inter-State Council established under Article 263 of the Constitution.
- (iii) The Inter-State Council Order, 1990 issued by President may clearly specify in 4(b) of the order the subjects that should form a part of consultation in the Inter-State Council.
- (iv) The Commission also reiterates the principles enunciated in the Supreme Court decision *M/s Internal Tourist Corporation vs. the State of Haryana* that “where there is a division of legislative subjects but the residuary power is vested in the Parliament, such residuary power cannot be so excessively interpreted as to whittle down the power of the State Legislature”.

18. It was brought to the notice of the Commission that the Union Ministry of Agriculture had suggested inclusion of “Management of Disasters and Emergencies, Natural or Man-made” in List-III of the Seventh Schedule of the Constitution. After considering the proposal contained in the note of Ministry of Agriculture, the Commission agreed to accept the suggested inclusion of the aforesaid entry in List-III of the Seventh Schedule of the Constitution.

Chapter-8 Decentralisation/Devolution of power at the grassroots/local Government Institutions

19. The Commission took up the draft report under Chapter-8 on the topic Decentralisation/Devolution of power at the grassroots/local Government Institutions prepared by Shri P.A. Sangma under the following headings:

- 1. Panchayats
- 2. Local Self-government: Municipalities
- 3. Cantonments
- 4. Empowering And Strengthening Of Panchayati Raj Institutions/ Autonomous District Councils/ Traditional Tribal Governing Institutions In The North-East India

1. Panchayats

20. After detailed discussion the Commission approved the recommendations as under:

1. There is no inherent problem with article 243K relating to elections to the Panchayats or article 243ZA relating to elections to the Municipalities. However, past experience indicates that the State

Governments quite often delay the process of Panchayat elections willfully on purely political considerations. They can do so, partly because they retain some powers relating to the conduct of elections under the States' Acts/Rules and partly because SEC (State Election Commission) has to depend upon the State Government for logistic support that includes staff as well as fund-support. There is specific provision for providing staff support to SEC under clause (3) of article 243K, but similar provision does not exist in respect of funding to defray the expenses of conducting elections. SECs of some States cited non-receipt of adequate funds as reasons for not holding elections. Besides, certain important powers like issuance of election notification, delimitation of constituency, earmarking reserved seats, etc. are retained by the State Governments in many States. Considering all these, **there seems to be a case for strengthening further the hands of the SEC by making specific provisions in the Constitution itself. Article 243K (and article 243 ZA) may specifically, assign the following functions, among others, to the SEC, namely:-**

- (1) **Delimitation of territorial constituencies of Panchayats and municipalities;**
- (2) **Allotment of reserved seats to various electoral wards; and**
- (3) **Rotation of reserved seats among constituencies.**

[Para 2.6]

2. Sometimes, SECs have to fight lone battles against the State Governments in order to fulfil their Constitutional duty to hold elections timely and as per the provisions of law. Accordingly, **it is recommended that the Constitution should make provisions requiring SEC to submit a report annually to the Governor in the same manner as the State Public Service Commission is required to submit under clause (2) of article 323. As provided in the said clause, the report of the SEC along with the views of the State Government on the same may be placed before the State Legislature. Such a provision will, at least, enhance the accountability of the State Government, if it fails to fulfil the Constitutional mandate of holding Panchayat/municipal elections.**

[Para 2.7]

FUNCTIONAL DOMAIN

3. Mere statutory authority to undertake functions already being performed by the State Government is no guarantee that those would, indeed, be taken up by the PRIs, unless they have adequate funds and personnel to discharge them. Since these resources are not made available to them, the lists of various functions that every Panchayat Act religiously provide remain sterile. What the 73rd Constitution amendment intended is 'exclusive' and not 'permissive' functional domain, backed up by resources for the Panchayats. That has not happened. **Necessary remedial measures are to be taken.**

[Para 3.20]

4. The Constitution failed to guarantee assignment of a set of exclusive functions for the Panchayats. Hence, the kind of role they would be expected to play in governance depends on the policies of the regime that controls the Government of a State. **It is recommended that exclusive functions are to be given to Panchayats.**

[Para 3.22]

5. We are now faced with two types of conceptualisation of Panchayats and municipalities. Both of them draw their strength from the Constitution. One type of conceptualisation leads us to envision these institutions as constituting the third stratum of governance. Another takes us to the opposite extreme under which the Panchayats (and municipalities), subject to the Constitutional guarantee of their permanent existence, composition, election, etc., are no more than a local authority as understood under the General Clauses Act, 1897. **The Constitution has to categorically express the status of the 'institution of self government' as mentioned in article 243G or 243W.**

[Para 3.27]

6. Panchayats (and Municipalities) will not have a coordinate status along with the other two levels of governance. They will still be the creatures of the State Acts and subject to some kind of control by the State Government. Yet, they will have sufficient autonomy over a set of identifiable functions which **should be spelt out in the Constitution. The functions that will be carved out by the Constitution for these institutions will represent the minimum that should be given to all such**

bodies of the country, but the State Legislatures may have the option to endow these institutions with more functions, power and authority.

[Para 3.27(b)]

FINANCIAL DOMAIN

7. **Major fiscal restructuring and financial resources are necessary to enable the Panchayats to function as viable local self-government institutions.** Some of the measures necessary for such reforms may be taken even within the framework of existing Constitutional provisions. But, there are areas where rethinking about the Constitutional framework itself would be necessary.

[Para 4.9]

8. What is significant is that the Constitution does not specifically earmark some of the fiscal powers of the State List either exclusively for the local government or under State-local concurrent jurisdiction. It is not difficult to introduce the concept of exclusive and/or State-local concurrent tax domain for the Panchayat as well as the municipal bodies. At the moment this concept is absent. The purpose behind article 243H was to ensure that the issue of financial viability of PRIs is not overlooked by the State Legislatures. But by giving blanket power to the State Legislatures, the said article has been made practically sterile. It is not capable to serve its purpose since the State Governments do not want to share their fiscal powers with the local government institutions. ***The only way out is to introduce afresh the concept of a separate tax domain for the local bodies.***

[Para 4.13]

9. Independent as well as concurrent tax domain for the local bodies can be brought about by restructuring the existing Seventh Schedule to the Constitution. ***The restructuring would necessitate introduction of a local list and a State-local concurrent list.*** The other alternative is to make changes in the 11th and 12th Schedules. There are problems in the second alternative, as these Schedules, in present form, are no more than illustrative lists. Experience shows that without Constitutional support, Panchayats and the municipalities will not be able to achieve substantial fiscal autonomy. ***Ideally, a Local List in the Seventh Schedule will be most helpful to provide fiscal autonomy to the local government institutions. If that is found difficult, then the Eleventh and Twelfth Schedules have to be restructured in a manner that reduces the area of State's discretion and guarantees devolution of fiscal powers from State to the Panchayats/ Municipalities.***

[Para 4.14]

(The sentence beginning from the word 'Ideally' and ending with the word 'institutions' may be deleted. The words 'if that is found difficult, then' in the next sentence may also be deleted. The specific areas on which the taxation powers could be exercised and the limits of taxation should be specified).

10. Sub-clauses (bb) and (c) of clause (3) of article 280 require the Federal Finance Commission to make its recommendations in respect of the Panchayats and municipalities "on the basis of the recommendations made by the Finance Commission of the State". The Eleventh Finance Commission found it difficult to work strictly within this frame because of various problems. It found that in some States SFCs were not either constituted or did not submit their reports. Again, in view of the 'heterogeneity of approach' of different SFCs and differences in contents and periods covered by them, the Eleventh Finance Commission found it difficult to form their opinion only on the basis of their recommendations. For the purpose of avoiding such situation in future and in order to enable the Federal Finance Commission to take a macro-level view, **the provisions of article 280(3) (bb) and (c) may be amended. The words "on the basis of the recommendation" in these clauses may be replaced by the words "after taking into consideration the recommendations."**

[Para 4.22]

11. In order to enable the Federal Finance Commission to give due weight to the reports of SFCs for assessing the situation in each State, it is necessary to synchronize the periods covered by the reports of both of them. The first generation SFC reports made available to the Eleventh Finance Commission were for different periods of time. It would have been much better if the periods covered by both of them were

same or nearly the same. Since the second generation SFCs has already started working, it will also be creating the same problem for the Twelfth Finance Commission. **Ideally, the periods covered by both the types of Finance Commissions should more or less be the same. Presently, that part of the provision of clause (1) of article 243-I which calls for constitution of SFC at the expiration of every fifth year create problem to get the above objective realised. Hence, in line with article 280(1), the words “or at such earlier time as the Governor considers necessary” may be added after the words ‘fifth year’.**

[Para 4.23]

12. According to the information available to the Eleventh Finance Commission, some States—for example, Goa, Gujarat, Haryana and Sikkim – had not submitted to the respective Legislatures the report on action taken on the SFC recommendations, even after the lapse of one year or more after the submission of the report. Some States had taken more than six months time to present the action taken report (ATR). Some States (for example, West Bengal) took about four years to implement partially the SFC recommendation. While, it is for the State Legislature to ensure that the Government implements fully what it assures before it, **there has to be Constitutional obligations for placing the ATR before the legislature within ‘six months’ or so after the submission of the report. Clause (4) of article 243-I may need to be amended accordingly.**

[Para 4.24]

13. Taxes on professions, trades, callings and employment under article 276 has been a traditional source of revenue for the local bodies. (Of late, there is, however, a tendency for the State Governments to take over such powers from the local bodies). One of the impediments in generating substantial revenue from the levy and collection of this tax is that the upper ceiling (presently, Rs. 2500 per annum) has been Constitutionally fixed [see article 276(2)]. While there is a need for fixing the upper ceiling of the tax centrally in order to avoid the charge of double taxation on ‘income’, Constitutional provision for this is unnecessary and troublesome. For long, the upper ceiling remained at the unrealistic level of Rs. 250 only because of the rather difficult process involved in amending the Constitution. **It would be better to change this provision and give the necessary legislative power of fixing upper limit to the Parliament. The words “district board, local boards or any other local authority” as mentioned in clauses(1) and (2) of Art. 276 may be suitably replaced by the words “Panchayats and Municipalities”.**

[Para 4.25]

14. Now-a-days, the local governments are being encouraged to take recourse to borrowing for financing asset-building and/or remunerative projects. Some Municipal Corporations have been given power even to go to the capital market. The Panchayats of West Bengal are permitted to borrow from the financial institutions, subject to Government approval. With the role we are envisaging for PRIs in the governance structure, there is no reason as to why the borrowing power should not be Constitutionally given to the Panchayats, especially, the Zilla Parishads. **In chapter II of Part XII of the Constitution, a new article may be added to allow the Panchayats (and Municipalities) to borrow from the State Government and financial institutions. The zilla parishads may, in addition, be permitted to borrow from the capital market.**

[Para 4.26]

[Recommendations 15 to 19 dropped]

PERSONNEL SYSTEM

20. **Failure to address the human resource issue has definitely affected the growth of Panchayats as self-governing institution.** For governance at the third stratum, the Panchayats, with or without coordinate status, have to have autonomy over management of its personnel. It is, however, necessary that the enabling powers in this respect are provided in the Constitution, as has been done in matters relating to finance under article-243H. **A specific Constitutional provision on personnel will, if not anything else, legitimise the right of Panchayats to have their own staff and to have powers to control them, so that they are enabled to perform functions devolved upon them. What is necessary is full-scale transfer of services of staff from the State Government to the PRIs. it is**

necessary that an enabling provision is made in Part IX of the Constitution **permitting the State Legislature to make, by law, provisions that would empower the State Government to confer to the Panchayats full power of administrative and functional control over such staff as are transferred following devolution of functions, notwithstanding any right they may have acquired from Act/Rules made under article-309.**

[Paras 7.1, 7.11, 7.12 and 7.13]

[Recommendations 21 and 22 dropped]

OTHER ISSUES

23. **To be an institution of self-government, a gram Panchayat should, as far as possible, be a viable unit both financially as well as administratively. It should be capable of generating internal resources by using its own fiscal powers that include taxing power.**

[Para 8.12]

(This recommendation may be included in the text of the report).

[Recommendations 24 to 27 dropped]

28. **There is a suitable machinery at the State level to bring about necessary co-ordination among them and between the Panchayats and the State Government.** Gujarat, Orissa and Karnataka Acts provide for such a body. Keeping in view the necessity and importance of such a body, it may be considered whether a provision for Constitution of the **State Panchayat Council under the chairmanship of the Chief Minister may be made in the Constitution on the analogy of the provision in article 263 of the Constitution relating to the Inter-State Council.** The leader of the opposition may be made ex-officio vice-chairman to provide a consensual approach to the development of Panchayats as fully democratic, efficient and responsible institutions.

[Paras 8.25 and 8.26]

(Recommendation accepted and it was decided to follow the Gujarat pattern.)

29. There is considerable lack of accountability because of **inadequate provisions in law relating to audit of accounts of public bodies.** There is no time-frame to conduct the audit of accounts of a given year, submit the audit report or comply with the objections raised in the report. Delay in audit provides opportunity for misuse of fund, tardy implementation of projects and over-all weakening of the system. It is, therefore, necessary that **the provisions be made in this respect to ensure that all works related to audit (conduct of audit, submission of audit report and compliance with audit objections if any) are completed within a year of the close of a financial year.**

[Para 8.27]

30. It seems that there is necessity to make suitable provisions in the Constitution for introducing a uniform pattern throughout the country in-so-far-as matters relating to audit of Panchayat accounts are concerned. **The Comptroller and Auditor-General of India may be either empowered to conduct the audit or lay down accounting standards for Panchayats.**

[Para 8.29]

[Recommendation 31 dropped]

2. Municipalities

21. After detailed discussion the Commission approved the recommendations as under:

I. Constitution of Municipalities, Elections and State Election Commissions

A. Constitution of Municipalities

1. Article 243Q provides for a Nagar Panchayat for a transitional area, Municipal Council for a smaller urban area and a Municipal Corporation for a larger urban area. While clause (2) allows the States to take into consideration various other factors, given the very wide variance, **it is desirable that a population classification is provided in the Constitution itself**. Given the increasing rate of urbanisation, its density and economic factors, a Corporation should have a minimum population of 5 lakhs, a Municipal Council 50,000 and a Nagar Panchayat 20,000. Provision can be made to preserve previously existing municipalities.

(State Legislature may consider prescribing the population classification in the appropriate legislation)

2. The proviso to article 243Q states that a municipality may not be constituted for an Industrial township under certain circumstances. This proviso did not figure in the Constitution Amendment Bill relating to the 73rd Amendment Act introduced in Parliament in July, 1991 or in the Bill as reported upon by the Joint Committee in July, 1992. This appears to be an after thought in response to some suggestions from certain quarters. The provision goes against the grain of decentralisation and local self-government. **Hence, the proviso may be deleted.**
3. Article 243U (1) contains a proviso that where a municipality is superseded "it shall be given a reasonable opportunity of being heard before its dissolution". There is no corresponding proviso in article 243E relating to Panchayats. **The same proviso should be inserted.**

(This recommendation may be incorporated in the recommendations under the topic of Panchayats).

4. **Whenever a Panchayat or a Municipality is superseded, a report stating the grounds for such dissolution should be placed before the State Legislature.** This will be a deterrent to treating supercession casually and resorting to it because of political expediency. This provision is on par with a report being placed before each House of Parliament in the event of a proclamation of President's rule in a State under article 356.
5. **In determining the number of municipal wards and in delineating them, there should be parity, in the ratio between a seat and the population and such ratio should be uniform within a State among any category of municipalities such as Corporations, Municipal Councils and Nagar Panchayats:**

(It was decided to add the words 'so far as possible' after the word 'parity'.]

[Recommendations 6 to 8 dropped]

B. Qualifications and Disqualifications for Membership in Municipalities

9. Articles 243T and 243V contain identical provisions so far as disqualifications for membership in a panchayat or a municipality is concerned. The main principle followed is that the grounds of disqualification should be the same as applied for elections to the State Legislatures. State laws may make additional provisions. State laws should compile all provisions regarding qualifications and disqualifications for elections in a single law and in the meantime prepare a manual compiling existing provisions for public information.

[Para 1.23]

10. While SEC should have the authority to prescribe ceiling of expenses and code of conduct and while these may vary depending on the conditions of the different States, **State laws should**

clearly specify the powers of the SEC to disqualify candidates or set aside elections in the event of violations of those laws.

[Para 1.23]

C. Regularity of Elections

Ensuring regular elections

Articles 243E and 243U of the Constitution contain identical provisions. Clause (1) of article 243E states that every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer". Similarly, clause (1) of article 243U states that every municipality, unless sooner dissolved under any law for the time being in force, shall continue for **five years** from the date appointed for its first meeting. Clause (3) of article 243E and that of 243U further State that elections to constitute a Panchayat and a municipality respectively shall be "completed before the expiry of its duration specified in Clause (1)"

Both articles 243E and 243U in sub-clause (1) contain a provision for dissolution of panchayat or municipality respectively. Here again sub-clause (b) of clause (3) in both the articles stipulate that elections have to be completed "before the expiration of a period of six months from the date of its dissolution."

11. To reinforce the existing provisions in the Constitution the following additional stipulations are recommended:-

- a **It shall be the duty of a State and the Union (in case of panchayats and municipalities located in Union territories) to ensure the completion of elections as stipulated.**
- b **It should also be duty of the State Election Commissioner to ensure this and in the event of possible delay make a report to the Governor of the State drawing his attention to the problems and suggesting remedial action to fulfill the requirements of the Commission.**
- c Article 243K(I) and article 243 ZA(I) State that the "superintendence, direction and control of the preparation of electoral roles and the conduct of all elections to the panchayats/municipalities shall be vested in a State Election Commission." This is a composite set of responsibilities. The preparation of electoral roles and the conduct of elections involve several processes and actions which are closely inter-related. The words, "superintendence, direction and control" are comprehensive and unambiguous and do not permit any artificial division. Clause (4) of 243K and Clause (2) of 243 ZA do provide for a State Legislature to make provisions with respect to all matters relating to interaction with these elections. However, this has to be subject to the provisions of the Constitution and can relate only to processes to be followed and guidelines for this purpose so that such processes serve public interest and ensure free and fair elections. They do not permit splitting up of the composite responsibilities as Stated in article 243K and 243ZA. However, as experience indicates certain important parts of these responsibilities such as delimitation of territorial constituencies or reservation of seats or rotation of such reservation among constituencies have been assumed by some State Governments. The effect of this has been to enable these State Governments to intervene in the composite and integrated process of conducting elections and thereby hold up the same if they so chose to do. **Articles 243K and 243 ZA may, therefore, be suitably amended to specify that the responsibility for the conduct of elections shall include all preparatory steps for the same including the electoral roles, delimitation, reservation, rotation and matters connected therewith and the responsibility for the same shall vest with the State Election Commission.**

Electoral Rolls and Delimitation

12. As regards electoral rolls and delimitation, the following recommendations are made:-

- a Under articles 243K and 243ZA, the preparation of electoral rolls is the responsibility of the State Election Commission (SEC). The general practice has been for the SECs to adopt the electoral rolls available for the Assembly and Lok Sabha elections. In some cases however the electoral rolls for the local elections are prepared afresh and the two rolls may differ. **The Constitution should specifically stipulate a common electoral roll.** The processes for preparing the roll as also its periodical revision should be uniform throughout the country.

(It was decided that after the words ‘common electoral roll’ the following may be added:

‘for local elections and Assembly/ Lok Sabha elections. It should be the same electoral roll which is prepared by the Election Commission of India under Article 327, and as updated’.)

- b The Election Commission has been evolving over a period of time a system whereby each polling station in an Assembly constituency has a unique identity which is linked to the roll of electors using that polling station. It is possible that panchayat and municipal elections may require more polling stations. If so, these additional polling stations should be extensions or sub-units of the main polling station. This will ensure a ‘building block’ approach for elections in the country whereby the smallest unit will be a polling station or a sub unit theory. A certain number of these will form a ‘panchayat ward’ or a ‘municipal ward’ which in turn will be grouped into panchayats and municipalities or Assembly segments and Lok Sabha constituencies. The voter is the same. **The relevant R.P. Act and State laws should specify that common polling stations should be used for elections to local bodies, State Legislatures and Parliament.**
- c While delimitation of the constituencies for panchayat and municipal elections should be under the control and direction of the SEC, **the Constitution should stipulate that such delimitation should be adjusted after every census and not for every elections.** This will be in keeping with articles 82 and 170 of the Constitution requiring readjustment of Assembly and Lok Sabha Constituencies after every Census.
- d **The State laws should provide guidelines for the delimitation work such as parity in the ratio between the population of a territorial constituency and the number of seats within the same class of panchayats or municipalities. The extent of permissible variations should also be mentioned.** Parity as a requirement is already stipulated in the proviso to article 243C so far as Panchayats are concerned but is missing in article 243R relating to municipalities.

(It was decided to add the words ‘so far as possible’ after the word ‘parity’.)

- e **State laws should specify that changes in the administrative boundaries of districts, sub-divisions, taluks, police stations, etc., should not be made within six months prior to a panchayat or a municipal election.**

[Para 1.40.2]

Reservations

13. Regarding reservations, the following recommendations are made:
- (a) Articles 243D and 243T contain identical provisions so far as reservation of seats in panchayats and municipalities for SC/STs and women are concerned. However there are some ambiguities about the rotation of such reserved seats. The words used in both the articles are “may be allotted by rotation”. However in the second proviso

under article 243D regarding reservation of the offices of chairpersons the words used are “shall be allotted by rotation”. The Constitutional provisions also do not specify the frequency of rotation. Moreover, in clause (4) of article 243T there is no stipulation for rotation. To remove ambiguities, **articles 243D and 243T should be suitably amended to provide for rotation and changes only at the time of delimitation and not in between.**

- (b) **State laws should however, provide the guidelines for the process of reservation which should ensure transparency and adequate opportunities for eliciting voter response.**

(The word ‘should’ be replaced by ‘may’)

- (c) Clause (6) of article 243D and clause (6) of article 243T enable a State Legislature to provide for reservation of seats as also offices of chairpersons in panchayats and municipalities in favour of backward class of citizens. Neither of the articles stipulate any ceiling for the total number of reserved seats and reserved offices. Since not less than one-third of total seats has been specified as the minimum for women; the reservation additionally made for backward classes can take a large proportion. To remove ambiguities, **the overall total of reserved seats and reserved offices should be specified in the Constitution.**

[Para 1.40.3]

D. State Election Commissions

14. Some specific provisions should be added to the Constitution as follows:

[In the above sentence the word ‘Constitution’ may be replaced by the words ‘State Law’.]

- (a) **The State Election Commissioner should be appointed by the Governor on the recommendations of a group comprising the Chief Minister, the Speaker of the State Assembly and the Leader of the Opposition.** This would make the selection impartial in the eyes of all concurred.
- (b) **The State Election Commissioner should have a fixed term of 5 years.**
- (c) In rank and status the State Election Commissioner should be equal to a Judge of the High Court.
- (d) **The broad qualifications for position of State Election Commissioner may be specified in the Constitution itself or in the laws of the State. Since the conduct of elections is a major logistical exercise, administrative experience should be stressed.**

(The words ‘in the Constitution itself or in the laws of the State’ may be replaced by the words ‘under the State laws.’)

- (e) Notification for all elections to Panchayats and Municipalities should be issued by the SEC.
- (f) **SEC should be the single and common electoral authority in the State for all local body elections and elections to the State Legislatures.** The SEC will also carry out the elections to Parliament under the supervision and control of the Election Commission of India. What is envisaged is a strong link between the State Election Commissions and the Election Commission of India so that the Election Commission of India can reinforce the autonomy of the State Election Commissions, support their functioning with expertise and technical help and

enable the whole election machinery of the country to emerge as an integrated system.

(The words 'and elections to the State Legislatures' may be deleted).

[Para 1.50]

E. Wards Committees and Proximity to Citizens

15. Article 243S of the Constitution should be amended suitably to incorporate the following proposals:-

- (a) **Wards Committees should be mandatory for each of the ward in all Municipal Corporations with a population of three lakhs or more, to comprise of persons chosen by direct election from the territorial area of the Ward. The Chairman of the Committee will be the Councillor elected from the Ward.**
- (b) **The State laws should determine the number of persons to be so elected but there should be parity, within the city in the ratio between that number and population of a ward.**
- (c) **State laws should also enable Wards Committees to co-opt such residents of a ward who are knowledgeable and can assist the work of the Committee.**
- (d) **In all Corporations with a population of six lakhs and more, Zonal Committees at a level between the Wards Committees and the Corporation Council should be formed.** State laws may determine the number and area of such Zonal Committees. The Councillors of all the municipal wards represented in that area shall be members. In addition, one other person from each of the Wards Committees elected by and from amongst the elected members of that Committee shall be a member of the Zonal Committee.
- (e) **State laws should determine the manner in which elections to the Ward and Zonal Committees are to be held, their functions and responsibilities and the allocation of funds to carry out the same.**

[Para 1.62]

[Heading E. Wards Committees and Proximity to Citizens and para 15 there under may be dropped].

II. Functional and Financial Domain

[The following remaining recommendations are on the same lines as in the case of Panchayats and hence adopted.]

A. Functional Domain

16. As regards the functional domain, it is recommended that-

- (a) **a common Schedule of functions for both rural and urban local bodies is desirable. The existing 11th and the 12th Schedules which have several common items should be integrated.**
- (b) **the integrated Schedule should not be illustrative only, but should be mandatory. It should be on par with the lists in the Seventh Schedule in status and in the exercise of Legislative and Executive powers, which should be co-extensive with the subject, listed in the Schedule.**
- (c) **the assignment of functions should be by substantive law rather than by rules and regulations.**

- (d) **the laws should also provide for the transfer to the Municipalities of organisations, funds and staff who were previously responsible for discharging the functions being assigned. The local bodies should have full control over its staff including those transferred to them. Functions, functionaries and funds should go together.**

[Para 2.10]

B. Financial Domain

17. In the financial domain, it is recommended that –

- (a) **The concept of a distinct and separate tax domain for municipalities should be recognised.** This concept should be reflected in a list of taxes and should form part of the common schedule of functions and responsibilities for local bodies or in the event it is decided to continue with the 11th and 12th Schedules as separate, the tax domain should figure in the relevant schedule. Carving out items from the existing State lists such as item 49 (taxes on land and buildings) and item 52 (taxes on entry of goods into a local area for consumption) should not be difficult.
- (b) Similarly, **the concept of a divisible pool of taxes which can be shared between the Union, the States and the Municipalities should also be recognised** similar to the provisions in articles 268 to 274. There should be categories of taxes and other levies specifying who will collect the same and how it will be distributed between the 3 levels.
- (c) In case of taxes and levies, the proceeds of which are to be shared with municipalities, prior consultation will be required before any modification is made in the scope of the tax or its rates.
- (d) Article 276 on taxes on professions, trades and employment should be amended as suggested by the 11th Finance Commission. The ceiling should be specified by Parliament from time to time rather than requiring amendments to the Constitution.
- (e) **State laws should provide for composition of the State Finance Commission and the criteria for its membership similar to the provisions in the case of the Finance Commission set up by the President under article 280.**
- (f) **State laws should provide for the establishment of the SFCs in a periodical manner and determine a time schedule for the same so that the work and output of the SFCs are synchronised suitably with the Central Finance Commission.**
- (g) Articles 243-I and 243Y should be amended to ensure that the Action Taken Report by the Government is laid before the State Legislature within six months of the submission of the SFC recommendations.
- (h) Sub-clauses (bb) and (c) of clause (3) of article 280 should be amended so that the Central Finance Commission while taking into consideration the recommendation of the SFCs, is not circumscribed by the same.
- (i) State laws should also provide for establishing and maintaining a financial database as suggested by the 11th Finance Commission.
- (j) State laws should specifically empower municipalities to borrow.
- (k) State laws should also provide for the preparation and adoption of municipal budgets in a transparent manner in keeping with the public right to information.

[Para 2.22]

III. District Planning Committees, Metropolitan Planning Committees and Organic links between municipalities and Panchayats

A. District Planning Committees

18. As regards District Planning Committees, the following legal changes are recommended:-

- (a) As per the definitions given in article 243, 'district' means a district in a State while 'Panchayat area' means the territorial area of a Panchayat. The Panchayat at the district level should, therefore, be for the district as a whole instead of the rural areas only. The definitions under article 243 should be amended accordingly. **Clause (1) of article 243 ZD should be amended to stipulate that the District Planning Committee shall be constituted within the Panchayat at the district level or Zilla Parishad.**
- (b) **Sub-clause (d) of clause (2) of article 243 ZD should be amended to provide for the Chairperson of the Panchayat at the district level to be the Chairperson of the District Planning Committee. The Chairperson of the largest Municipality in the District should be the Vice-chairman.**
- (c) **In clause (1) of 243ZD, the words "consolidate the plans prepared by the Panchayats and Municipalities in the district" should be omitted so that the DPC's main task of preparing a draft development plan for the district is not contingent or dependent on individual plans prepared by the Panchayats and the Municipalities.** However, clause (3) of article 243ZD can provide that in preparing the development plan the DPC will have regard to such plans as are prepared by the Panchayats and the Municipalities. Zilla Parishad should help panchayats and municipalities to prepare these plans which will serve as building blocks for preparation of Development Plan for the district.
- (d) **Article 243ZD should also contain a provision to enable the State laws and State Governments to entrust additional responsibilities as monitoring of development schemes and programmes in the district, co-ordination of their implementation including powers to modify sanctions to ongoing schemes subject to limits.**
- (e) The Zilla Parishad should be the technical and administrative secretariat for the DPC independent of and distinct from the District Collector or the District Magistrate.
- (f) The State laws should provide for association and involvement of government and non-government agencies and professionals in the DPCs. MPs, MLAs and Ministers desiring to participate in the District Planning Committee should be welcome as invitees.
- (g) State agencies, district agencies and district administration should assist the DPC with data and technical know-how in preparation of the development plan for the district. State laws should provide for this.
- (h) Where Metropolitan Planning Committees (MPCs) are required to be set up, State laws and regulations should determine the functional and territorial jurisdiction of the DPCs as distinct from the MPCs. Where Metropolitan Planning Committees exist for predominantly urban districts, they should be deemed as DPCs, as no separate DPC is necessary.

[Para 3.17]

B. Metropolitan Planning Committees

19. As regards Metropolitan Planning Committees, the following legal changes are recommended:-

- (a) Metropolitan Planning Committees should be limited to metropolitan areas with 20 lakh population or more. Clause (c) in article 243P may be amended accordingly.

- (b) The composition of the MPC should be as suggested in para 3.29 of the Paper, which reads as under:

Another item of importance is the representation of the Members of Parliament and MLAs in the MPC. Here again the rationale for their participation is more than in individual municipalities or Panchayats. Under article 243ZE two-thirds of the members of the MPC are to be elected by and from amongst the elected members of the Municipalities and Chairpersons of the Panchayats in the metropolitan area in proportion to the population ratio. Since the MPC itself is conceived as an inter-sectoral and an inter-governmental platform bringing together the concerns and interests of local, State and Central Governments within a metropolitan perspective, it stands to reason that provisions should be made to secure the participation of MPs and MLAs. This can be done by determining the composition of the MPC in the Constitution itself. As suggested in the case of the DPC earlier, three-fifths of the total number of members can be elected by and from amongst the elected members of the Municipalities and Panchayats. The remaining two-fifths should be representatives of organisations and institutions, as the State Governments may consider necessary for carrying out the functions of the MPC. As in the case of DPC, MPs can be invitees.

Article 243ZE should be amended accordingly.

- (c) State laws should specify the organisation which will function as the technical and administrative secretariat of the MPC under its control.
- (d) Where MPCs exist, their functional and territorial jurisdiction should be distinct and separate from the DPC.

[Para 3.34]

C. Organic links between Municipalities and Panchayats

20. For bringing organic links between Municipalities and Panchayats, the following legal changes are recommended:

- (a) In keeping with the spirit and substance of the 73rd and 74th Amendments envisaging Panchayats and Municipalities as institutions of self-government, the provision for representation of MPs, MLAs and MLCs in articles 243C and 243R should be deleted.
- (b) If such representation is considered necessary, it should be without voting rights and as invitees.
- (c) Representation, if allowed at all, should be in District Planning and Metropolitan Planning Committees.
- (d) Dual membership in a Panchayat or a Municipality on the one hand and a State Legislature or Parliament on the other should be specifically prohibited.

[Para 3.47]

3. Cantonment

22. After considering the draft recommendations made under this Chapter the Commission decided that there was no need to make any recommendations on the topic of Cantonment.

4. **Empowering And Strengthening Of Panchayati Raj Institutions/ Autonomous District Councils/ Traditional Tribal Governing Institutions In The North-East India**

23. The Commission noticed that the Consultation Paper on the subject had been released recently. Shri P.A. Sangma informed that he had released the Consultation Paper separately to various bodies and organizations in the North-East. It was decided that Shri Sangma would be associated with

the Drafting and Editorial Committee in its ensuing meetings when it discusses the draft recommendations on the topic.

Item 3 Note dated 18.12.2001 submitted by Justice Dr. K. Punneya, containing his views on the 'First-Past-The-Post-System'.

24. The Commission discussed the matter in detail but no final conclusion was reached. However, the Commission generally agreed to the suggestions of introducing compulsory voting in elections and increasing the percentage of votes polled for recognition of political parties to be 10 per cent. Both the measures were aimed at increasing the representative character of the legislators.

Item 4 Letter from the Secretary, Ministry of Social Justice and Empowerment requesting the Commission to examine the relevance of the Office of the Commissioner for Linguistic Minorities under Article 350-B of the Constitution.

25. After considering the issues raised in the letter from Ministry of Social Justice and Empowerment, the Commission felt that no change was considered desirable in Article 350-B of the Constitution regarding the office of the Commissioner for Linguistic minorities.

Item 5 To consider the representations received from various organizations/ authorities and to indicate if any of the suggestions made in the representations can be adopted and if so the Chapter in which such recommendations may be included:

Sindhi Organizations - S.No. (i) to (v)

26. The Commission considered the recommendation made by Dr. Subash C. Kashyap, to whom the matter was referred by the Commission, on the demands made by various Sindhi Organizations in his note dated 24.8.2001. It was agreed that the grievances of the community were genuine and hence required action. The Commission agreed to the recommendations made by Dr. Kashyap. It was agreed that the recommendation at S.No. (ii) which is indicated as (a) below may be included in the body of the final report

- a The Commission is required to review the working of the Constitution and to examine if the objectives of the Constitution have been fulfilled in practice and if not what, if any, remedial measures may be advisable. Dignity of the individual citizens is the bedrock of Indian polity established by the Constitution. The Constitution stands for equality before law, equal protection of laws and non-discrimination on grounds of religion, race, caste, sex, place of birth or any of them. It does not recognize any community or communal rights except that, as a most special case, provisions have been made for the Scheduled Castes, the Scheduled Tribes as also for other socially and educationally backward classes. In view of this basic principles of our polity, it may not be possible for the Commission to consider granting any separate constitutional status to the Sindhi community as such or to consider any request for carving out a separate territory as a Sindhi state or a Sindhi region. However, the Commission is convinced that the Sindhi community do have a linguistic identity of their own and as such they are entitled to all the rights as a linguistic minority that are available to any other such minorities. It would be appreciated that except as a linguistic minority, the members of the Sindhi community cannot at all be considered as socially, educationally or economically backward or disadvantaged. Thanks to their own abilities, Sindhis are among the socially, educationally and economically advanced citizens of India.

27. The Commission adopted the recommendations (iii), (iv) and (v) mentioned in the note of Dr. Kashyap which are indicated as (b), (c) and (d) below:

- b The Commission may like to recommend to the Government steps that may be found necessary for better protecting and promoting Sindhi language and culture. In this

connection, setting up of a Centre of Sindhi Language and Culture may be encouraged by the State providing necessary facilities for the same.

- c Sindhi community may be recognized as a special linguistic minority if such further recognition is specifically considered necessary.
- d Difficulties faced by the Sindhi migrants may be examined and corrective measures taken administratively to facilitate grant of citizenship as per the existing law.

Sikh Organisations - S.No. (vi) to (ix)

28. It was noted that one of the demands of the Sikh Organisations related to their identity, which was accepted while considering the topic on fundamental rights. The Commission had agreed to amendment of article 25 (2)(b) and deletion of Explanation II under the said article (This stands already reflected in the minutes of the 14th meeting of the Commission). The Commission agreed that the recommendation on the demands might be as under:

“The Commission has carefully considered all representations made by the Sikh Organisations and the demands made therein have been accepted to the extent indicated in the chapter on Fundamental Rights.”

Mithilanchal Organisation- S.No. (x)

29. After carefully considering the demands contained in the representation made by Shri Tara Kant Jha on behalf of the Mithilanchal Vikas Manch For inclusion of Maithili in the Eighth Schedule of the Constitution, the Commission decided that no recommendation was considered necessary in this regard.

Coorg Organisations – S.No. (xi) to (xii)

30. The Commission considered memoranda submitted by Shri N.U. Nachhappa on behalf of the Coorg National Council and Shri N.S. Devi Prasad on behalf of Kodagu Prejavedike (about Coorgis) and appreciated the contribution made by the Coorgis to the national causes and felt that the nation should recognize it. The Government may consider nomination of a member from amongst the people from the region to the Rajya Sabha/ State Legislature to the extent possible. The Government could also consider having a Sainik School in the area and setting up of a Development Board for them. The Commission did not favour the demand for a separate State or to the granting of Union Territory status for the area.

STATUTORY AUTHORITIES

Union Public Service Commission – S.No. (xiii)

31. The Commission considered the report of a Group of Members consisting of Shri K. Parasaran and Dr. Subhash C. Kashyap who had examined the memorandum submitted by the UPSC. After detailed discussions, the Commission agreed to the recommendation made by the Group of Members that no Constitution amendments were necessary in regard to the provisions concerning the UPSC and other Public Service Commissions.

Central Administrative Tribunal – S.No. (xiv)

32. The Commission considered the memorandum received from the Central Administrative Tribunal, New Delhi. Some of the members were in favour of abolition of the Tribunal as it had not been able to come up as an alternative to the regular courts for resolution of the disputes/grievances of the Government employees. It was, however, decided that Dr. Abid Hussain would have a meeting with the Chairman of the CAT to have a first hand account about the working of the CAT and to know the trend in the number of cases filed before the various benches of the Tribunal, the number of cases disposed, the

number of decisions challenged before the High Courts and the trend in the decision of the High Courts in the appeals against the CAT decisions.

North-East Organisations – S.No. (xv) To (xxxii)

33. Shri P.A. Sangma, the Member In-charge of the subject informed that he had taken all the representations into consideration while finalizing the draft report on 'Empowering And Strengthening of Panchayati Raj Institutions/ Autonomous District Councils/ Traditional Tribal Governing Institutions In The North-East India'. The Commission agreed that no further discussion was necessary at that stage.

Item 6

(i) Letters received from Justice Shri J. Eswara Prasad, Chairman, Appellate Tribunal for Forfeited Property, New Delhi, regarding:

i. Proposal for amendment of Section 2(2) (c) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA) to include the Public Servants in possession of properties disproportionate to their known sources of income or convicted under the Prevention of Corruption Act, 1988, and

ii. Amendment of article 348(1)(a) of the Constitution of India by including "National Appellate Tribunals and Commissions" after "Supreme Court and in every High Court" in article 348(1)(a).

34. With reference to the first proposal mentioned above the Commission decided that if necessary, the Prevention of Corruption Act, 1988 may be amended to provide for confiscation of the property of the public servants in possession of properties disproportionate to their known sources of income and convicted under this Act for the said offence.

35. The Commission though appreciated the difficulties mentioned in the second proposal yet it was not inclined to accept the suggestion to recommend amendment of article 348 (1) (a) of the Constitution.

(ii) Consideration of the request from Justice Shri M.C. Jain, Lokayukta, Rajasthan, emanating from the Resolution passed in Sixth All-India Conference of Lokayuktas and Upa-Lokayuktas, 2001, for conferment of constitutional status on the Institution of Lokayuktas and Upa-Lokayuktas.

36. The suggestion for conferring a Constitutional status on the Lokayuktas and Upa-Lokayuktas made in the Sixth All India Conference of Lokayuktas and Upa-Lokayuktas was carefully considered by the Commission but not found acceptable. Regarding the second suggestion made by the Conference that there should be a uniform law regarding Lokayuktas and Upa-Lokayuktas, the Commission felt that the Conference might take up the matter with the State Governments.

(iii) Representation dtd. 31.7.2000 received from Ms. Mahasweta Devi on behalf of De-Notified And Nomadic Tribals Rights Action Group.

37. This matter was carefully considered by the Commission and it was decided that the Government, Ministry of Social Justice and Empowerment may be requested to examine the suggestions made by the organizations, preferably through a Commission, which may forward its recommendations to the Government for appropriate action.

(iv) Letter dated 25.4.2001 from Ather Farouqi, Secretary Linguistic Minorities Guild suggesting insertion of an explanation under Article 347 regarding Special provision relating to language spoken by a section of the population of State to the effect that in this Article "substantial" means "not negligible".

38. After careful consideration the Commission did not consider it necessary to suggest any amendment to Article 347 as suggested in the representation.

- (v) **Letter dated 14th December, 2001 from Cap. Jai Narain Pd. Nishad, Member of Parliament (Lok Sabha) containing demands adopted in the Electoral Reforms Maha Rally, held on 2.12.2001 at Ramli Grounds, New Delhi.**

39. The Commission considered the suggestions made regarding electoral reforms and requested the Drafting and Editorial Committee to suitably incorporate them in the report, wherever found feasible.

- (vi) **Letter dated 9th November, 2001 from Smt. Arti Shrivastava suggesting direct election of the Chief Minister by the people of the State and direct election of the Prime Minister by the people of the country.**

40. The Commission found that the suggestions made are beyond the terms of reference of the Commission and hence they could not be considered.

- (vii) **Letter dated 28th November, 2001 from Shri N.P. Singh, IAS (Retd) containing his response to the Consultation Paper on 'Treaty-Making Power under our Constitution'.**

41. It was noticed that the suggestions made have already been taken into consideration while finalizing the Draft Final Report on the topic.

- (viii) **Representation of All India Backward Muslim Morcha through its National Convenor (Dr. M. Ejaz Ali) requesting for inclusion of dalit Muslims in the Scheduled Castes Order issued by the President under article 341 of the Constitution.**

42. The Commission decided that the suggestion would be considered by the Drafting and Editorial Committee at the time of finalisation of the Draft Final Report on the topic of 'Pace of Socio-Economic Change'.

Any other item:

43. The issue of citizenship was considered in detail. There was difference of opinion. It was decided that the matter would be taken up again in the next meeting of the Commission. For the time being, the Commission decided not to make any recommendation on the issue.

44. With the permission of the chair, the Commission discussed the news items published in the daily, 'The Hindu' on 18th and 19th December, 2001 titled "Statute panel releases new paper on electoral reforms" and "Delete anti-defection law, says panel" respectively and the news item published in the daily, 'The Times of India' on 21st December, 2001 titled "Statute review panel to give Kashyap's paper a quiet burial". The meeting was informed that a clarification was sent to the Hindu through the PIB on 19.12.2001 that no new Consultation Paper was released by the Commission on the topic. After discussing the matter, the Commission decided that the following categorical denial of the contents of the report be issued to the Times of India immediately:

"The earlier Consultation Papers were approved by the Advisory Panel of the Commission on the subject and also by the Commission as a whole and these were issued for eliciting public opinion. Dr. Subhash C. Kashyap was member-in-charge of these papers.

"The Commission would like to point out that no Consultation Paper was issued in addition to, or in substitution of, the Consultation Papers issued in the first instance on the subject of *Electoral Reforms*. The question of giving "a quiet burial" to the earlier Consultation Papers is totally unfounded and the news in this behalf is misleading and regrettable. The statement that the Chairperson was not happy with the earlier Consultation Papers is unfounded inasmuch as the Consultation Papers had been approved by the Commission under his Chairpersonship."

45. The Commission discussed the issue of the safe custody, proper indexing and transfer of the complete records and research papers to the appropriate Department after the Commission is wound up. The Commission decided that action in this behalf may be initiated in the right earnest and requested the Secretary to monitor the progress.

The meeting ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary
Tele: 3022079,3022080

To

All Members of the Commission

ANNEXURE

LIST OF PARTICIPANTS OF THE FIFTEENTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri B.P. Jeevan Reddy (except 8th January)
3. Justice Shri R.S. Sarkaria (except 6th and 7th January)
4. Justice Dr. Kottapalli Punnayya (except 6th and 7th January)
5. Shri P.A. Sangma (except 5th January)
6. Shri Soli J. Sorabjee
7. Shri K. Parasaran
8. Dr. Subhash C. Kashyap
9. Dr. Abid Hussain (except 7th January)
10. Smt. Sumitra G. Kulkarni

Shri Gopi K. Arora, Consultant
Dr. Raghbir Singh, Secretary

(16)

**MINUTES OF THE SIXTEENTH MEETING OF THE COMMISSION HELD FROM
25th February, 2002 TO 1st March, 2002**

The Sixteenth meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, New Delhi from 25th February, 2002 to 1st March, 2002. Hon'ble Justice Shri M.N. Venkatachaliah chaired the meeting. The list of participants is at Annexure I.

2. The Hon'ble Chairperson extended a warm and respectful welcome to the Members and requested the Secretary to take up the Agenda.

Item 1 Confirmation of the Minutes of the Fifteenth Meeting of the Commission held on 5th to 8th January, 2002.

3. The Minutes of the Fifteenth Meeting of the Commission held from 5th to 8th January, 2002 were taken as read and confirmed subject to the following amendments suggested by Justice Shri K. Punnayya in his letter dated 14.2.2002:

Justice Shri K. Punnayya in his aforesaid letter pointed out that para 24 of the minutes at pages 30-31 (on his note dated 18.12.2001 regarding the 'First-Past-The-Post-System) was partly correct and partly incorrect. He stated that from the consensus of the opinion, he gained the impression that all the members of the Commission agreed with his dissenting note against the second election to be held after taking into consideration the votes polled in favour of the first two candidates in the first election as proposed by the Advisory Panel on the subject, while accepting the suggestions of introducing compulsory voting in elections and increasing the percentage of votes polled for the recognition of political parties to be 10%. Obviously the latter two suggestions were made by him as the alternatives to the second election proposed by the Advisory Panel for obtaining 50 % of the votes.

Item 2 Discussion and adoption of Draft Report Volumes-I and II

4. Before taking up for consideration of the individual chapters of the Report, the Commission passed a resolution appreciating the completion of the monumental work done by the Drafting and Editorial Committee within the shortest possible time. A copy of the resolution is annexed as Annexure-II to these minutes.

5. At the outset, the Commission decided the format of Volume-I of the Report as under:
- (i) Each Chapter should begin with a content sheet with an index of para numbers.
 - (ii) The report should be in one and a half space instead of single space.
 - (iii) The font size should be increased to 12.
 - (iv) The Chapter on 'Summary of Recommendations' should at the top indicate:
 - (a) the total number of recommendations made by the Commission;
 - (b) the number of recommendations pertaining to the provisions of the Constitution and requiring amendments thereto and
 - (c) the number of recommendations that require statutory amendments or executive action.

Each Chapter should make a reference to the Consultation Papers and Background papers giving a reference to Volume-II of the Report.

6. The Commission considered various chapters of the Final Report on the dates indicated below:

Date	Chapter No.	Name of the Chapter
25.02.2002	1	1. Introduction
	2	2. Basic Approach and Perspective
	3	3. Fundamental Rights, Directive Principles and Fundamental Duties
26.02.2002	3	1. Fundamental Rights, Directive Principles and Fundamental Duties
27.02.2002	7	1. The Judiciary
	4	2. Electoral Processes and Political Parties
28.02.2002	5	1. Parliament and State Legislatures
	6	2. Executive and Public Administration
01.03.2002	8	1. Union-State Relations
	9	2. Decentralisation and Devolution
	10	3. Pace of Socio-economic Change and Development

As regards Chapters 1 and 2, the members agreed that these were within the exclusive prerogative of the Hon'ble Chairperson and accordingly requested that these chapters may be finalized by the Hon'ble Chairperson himself. The Hon'ble Chairperson requested Shri K. Parasaran to take into account all the available material, including the initial drafts prepared by him and redraft these two chapters with the assistance of the Secretary.

7. Chapter 3 regarding '**Fundamental Rights, Directive Principles and Fundamental Duties**' was discussed in detail and approved by the Commission after incorporating certain changes. The suggestions of the Hon'ble Chairperson regarding recommendations relating to article 347, constituting an 'Inter-faith Commission' by entrusting the functions to the National Human Rights Commission by amendment of the Protection of Human Rights Act, 1993 and deletion of paragraph No. 3.22.2 in the draft report regarding articles 29-30 were agreed to in the meeting. Smt. Sumitra G. Kulkarni presented her views regarding the need to expand the 'Fundamental Duties' for greater stability, oneness and united strength of the country. It was decided that the chapter as finalized on the basis of the deliberations would be submitted by the Secretariat to Shri Soli J. Sorabjee, who would see the changes made and approve the same before this chapter is incorporated into the draft final report to be placed before the Commission at its next meeting for final approval and adoption. The meeting decided that the points raised by Smt. Kulkarni would be looked into while finalizing Chapter 3. It was also decided that certain miscellaneous issues discussed in Chapter 3 would be transferred to a new Chapter, say Chapter 11 titled "Miscellaneous Matters".

8. The Commission thereafter took up for consideration Chapter 7 relating to '**The Judiciary**'. Detailed discussions were held on certain topics such as proposed National Judicial Commission, retirement age of the Judges of the High Courts and the Supreme Court. The Commission also considered, as part of systemic changes in the justice delivery mechanism issues such as plea-bargaining, need for setting up of a Digital Legal Information System, institutionalizing mediation and conciliation as mandatory pre-trial procedures in certain class of cases etc.

9. It was noticed that the issue regarding setting up of National Judicial Commission was discussed in its fourteenth meeting held on 14-15 and 17-18 November, 2001 and fifteenth meeting held from 5-8 January, 2002. Though there was a broad consensus as to the need and desirability of setting up of a National Judicial Commission for the appointment of judges, no consensus could, however, be arrived at on the question of the composition of the National Judicial Commission. As a result, the Commission then took the view that no change in the existing system of appointment of judges need be recommended.

10. Consequent to further discussions held on 27th February, 2002, it was broadly agreed that the composition of the National Judicial Commission should be as follows:

- (i) The Chief Justice of India, Chairperson;
- (ii) Two senior most judges of the Supreme Court;
- (iii) Union Minister for Law and Justice;
- (iv) One eminent person nominated by the President after consulting the Chief Justice of India.

The Commission was strongly of the view that if a National Judicial Commission was to be established, it was essential that its composition should be as indicated above and that the recommendation in this behalf be treated as a package of both the concept as well its actual composition in view of the need to preserve judicial independence.

11. The Commission also decided to recommend that the age of retirement of the judges of High Courts be enhanced to 65 years and that of Supreme Court judges to 68 years.

12. It was decided that the Chapter 7 as finalized on the basis of the deliberations would be submitted by the Secretariat to Shri K. Parasaran, who would examine the changes made and approve the same before this chapter was incorporated into the final report and placed before the Commission in its next meeting for final approval and adoption.

13. The Commission thereafter took up for consideration Chapter 4 on '**Electoral Processes and Political Parties**'. The chapter was discussed in detail. On the question of 'representational-legitimacy', after detailed deliberations, it was decided that the recommendation on the issue might be as under:

The Government and the Election Commission should examine this issue in all its aspects, consult various political parties and formations and take the views of all sections of the society and initiate appropriate measures in this behalf. The Commission recommends a serious examination of this issue by the Election Commission and the Government.

The Commission declined to recommend that voting being made compulsory, under pain of sanctions as suggested in paragraph No. 4.17 of the draft report. The members also agreed to delete the paragraph No. 4.24 of the draft report regarding 'proxy voting for armed forces personnel'.

14. It was decided that Chapter 4 as finalized would be submitted by the Secretariat to the Hon'ble Chairperson, who would see the changes made and approve the same before this chapter was incorporated in the final report and placed before the Commission in its next meeting for final approval and adoption.

15. The Commission thereafter took up for consideration the Chapter 5 on '**Parliament and State Legislatures**'. After detailed discussions, the chapter was approved with certain changes. It was decided that the Chapter, as finalized, would be submitted by the Secretariat to Dr. Abid Hussain, who would examine the changes made and approve the same before this chapter was incorporated into the final report and placed before the Commission at its next meeting for final approval and adoption.

16. The Commission thereafter took up for consideration Chapter 6 on '**Executive and Public Administration**'. The issues relating to the institution of the Prime Minister, confiscation of properties of corrupt public servants, Whistle Blower Act, conferment of constitutional status to the Lok Pal and Lokayuktas were discussed in detail. After discussions, the chapter was approved with certain changes. It was decided that the chapter as finalized would be submitted by the Secretariat to Dr. Abid Hussain, who would examine the changes made and approve the same before this chapter was incorporated into the final report and placed before the Commission at its next meeting for final approval and adoption.

17. The Commission thereafter took up for consideration Chapter 8 on '**Union-State Relations**'. The issues relating to the Inter-State Water Disputes, Concurrent Powers of Legislation, etc. were discussed in detail. Smt. Sumitra G. Kulkarni desired that the administration of the Inter-State rivers should be entrusted to statutory authority in larger national interests. After discussions, the chapter was approved with certain changes. It was decided that the chapter as finalized would be submitted by the Secretariat to Shri K. Parasaran, who would examine the changes made and approve the same before this Chapter was incorporated into the final report and placed before the Commission in its next meeting for final approval and adoption.

18. The Commission thereafter took up for consideration the Chapter 9 on '**Decentralisation and Devolution**'. After discussion, Shri P.A. Sangma was requested to give a final shape to the chapter and to make available the final copy to the Secretariat before this chapter is incorporated into the final report and placed before the Commission in its next meeting for final approval and adoption.

19. The Commission thereafter took up for consideration the Chapter 10 on '**Pace of Socio-economic Change and Development**'. After discussion, Justice Shri K. Punnayya was requested to give a final shape to the chapter and to make available the final copy to the Secretariat before this chapter was incorporated into the final report and placed before the Commission in its next meeting for final approval and adoption.

20. The Commission decided to have its next meeting on 6th March, 2002 so as to finally approve and adopt the Report before it being presented to the Government (Prime Minister) on a convenient day.

The meeting ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary to the Commission

All the Members of the Commission

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ANNEXURE I

LIST OF PARTICIPANTS OF THE SIXTEENTH MEETING

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1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
 2. Justice Shri B.P. Jeevan Reddy (except on 28th February and 1st March, 2002)
 3. Justice Dr. Kottapalli Punayya
 4. Shri P.A. Sangma (except on 25th and 28th February, 2002)
 5. Shri Soli J. Sorabjee (except on 25th February, 2002)
 6. Shri K. Parasaran
 7. Shri C.R. Irani
 8. Dr. Abid Hussain (except on 1st March, 2002)
 9. Smt. Sumitra G. Kulkarni
 10. Dr. Raghbir Singh, Secretary

ANNEXURE-II

NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

RESOLUTION

The Draft Final Report Volumes 1 and 2, as prepared by the Drafting and Editorial Committee, were placed before the Commission.

2. At the outset, the Members felt it their duty respectfully to acknowledge and express their immense sense of gratitude to the "Drafting and Editorial Committee" for the monumental work that they had done in the shortest possible time, pouring hours of hard work into the job and making the Volumes of the Report comprehensive and reflective of the voluminous material in the Consultation Papers, Background Papers and discussions on the various topics covered by the draft report. The Commission expressed its sense of indebtedness to Dr. Subhash C. Kashyap, Chairman of the Drafting and Editorial Committee, to Shri K. Parasaran and Dr. Abid Hussain, Members for the enduring value of the services rendered by them. The Chairman was requested to send an appropriate letter of appreciation and thanks to the Chairman and the Members of the Drafting and Editorial Committee reflecting the sentiments of the Commission in this behalf.

3. The Commission also placed on record its appreciation of the services of Dr. Raghbir Singh, Secretary and Shri Gopi K. Arora, Honorary Consultant. The Chairman was requested to write to them conveying the appreciation of the Commission. The Commission also placed on record its sense of appreciation for the services rendered by Shri N.K. Nampoothiry, Additional Legislative Counsel, Shri Dinesh Bhardwaj, Deputy Research Officer, Shri K. Shankar, Deputy Research Officer and their supporting staff for the assistance provided to the Drafting and Editorial Committee. The Drafting and Editorial Committee has referred to the valuable assistance rendered by these gentlemen in the task of preparation of the Draft Report. The Secretary is requested to convey the appreciation of the Commission to the three members of the staff.

(M.N. Venkatachaliah)
Chairperson
25.02.2002

(17)

MINUTES OF THE SEVENTEENTH MEETING OF THE COMMISSION HELD FROM 6th MARCH, 2002 TO 9th March, 2002

The Seventeenth meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, New Delhi from 6th March, 2002 to 9th March, 2002. Hon'ble Justice Shri M.N. Venkatachaliah chaired the meeting. The list of participants is at Annexure.

2. The Hon'ble Chairperson extended a warm and respectful welcome to the Members and requested the Secretary to take up the Agenda.

WEDNESDAY, 6TH MARCH 2002

Item 1 Confirmation of the Minutes of the Sixteenth Meeting of the Commission held from 25th February, 2002 to 1st March, 2002.

3. The Minutes of the Sixteenth Meeting of the Commission held from 25th February, 2002 to 1st March, 2002 were taken as read and confirmed.

Item 2 Discussion and adoption of Draft Report Volumes-I and II

4. Chapter 3 regarding '**Fundamental Rights, Directive Principles and Fundamental Duties**' was taken up for consideration. One of the Members suggested that the recommendation regarding 'right to education' contained in paragraphs 3.19.1 and 3.19.2 may be modified so as to confer the right to education on the girls and members of the Scheduled Castes and the Scheduled Tribes until they complete the age of 21 years as a fundamental right. The Member also suggested that the right to rural wage employment for a minimum of 80 days in a year proposed to be included in the Directive Principles (as per para 3.25.8 of the Draft Chapter) should be included as a Fundamental Right in Part III of the Constitution.

5. The Commission agreed to both the above suggestions and the draft chapter was accordingly modified.

6. Thereafter, the Commission took up draft Chapter 9 relating to '**Decentralisation and Devolution**' as modified on the basis of the suggestions of the Member-in-charge. Recommendation contained in the draft chapter in paragraph 9.6.2 (amendment of article 243K) was discussed in detail and it was decided that a separate clause (1-A) should be added instead of amending the existing clause (1) so as to provide that the State Election Commissions should perform their functions under the superintendence, direction and control of the Election Commission of India. Similar amendment was decided to be carried out in respect of article 243 ZA

7. The Commission discussed the proposed clause (3) of article 275 as contained in para 9.8.3 of the draft chapter. It was felt that the proposed sanctions if a State failed to constitute a Finance Commission in accordance with the provisions of article 243-I or failed to comply with the recommendations of the Finance Commission were too harsh. It was agreed that a revised formulation for the mechanism to be evolved would be worked out by Shri Soli J. Sorabjee and Shri K. Parasaran.

8. The Commission thereafter took up for consideration the draft Chapter 4 on '**Electoral Processes and Political Parties**'. The question of eligibility of non-Indian born citizens to hold high offices was discussed. The members agreed that the language of para 4.21 of the draft chapter required modification. Shri P.A. Sangma and Shri Soli J. Sorabjee were requested to prepare new draft formulations of this para and place them before the Commission.

9. The Commission took up for consideration the draft Chapter 7 relating to '**The Judiciary**' as the next item. After discussions, the chapter was approved with certain amendments.

THURSDAY, 7TH MARCH 2002

10. On a review, the Commission decided that its decision of 6th March, 2002, referred to in para 4 to make the right to education for the girls and members of the Scheduled Castes and the Scheduled Tribes until they complete the age of 21 years as a fundamental right should be modified so as to confer such right only till the they complete the age of 18 years.

11. The issue of recognition of the political parties (Chapter 4) was again discussed and the Commission decided to make certain modifications in paragraph 4.29, which earlier suggested that 10% of the valid votes polled by the candidates all over the country or in at least one-half of the States be prescribed as recognition criteria.

12. The Commission thereafter took up for consideration the draft Chapter 5 on '**Parliament and State Legislatures**'. After discussion the Chapter was approved with certain modifications.

13. Draft Chapter 6 (**Executive and Public Administration**) was taken up for consideration. There was discussion on various issues brought out in the Chapter. The meeting approved the draft chapter with certain modifications, in the paragraphs, *inter alia*, relating to the 'Institution of the Prime Minister'.

14. The Commission thereafter took up for consideration Chapter 8 on '**Union-State Relations**'. The issues relating to the 'Inter-state Water Disputes' and the 'Assent of the President and the Governor' were discussed in detail. The meeting approved the draft chapter with certain modifications, particularly on the latter issue.

15. The Commission thereafter took up for consideration draft Chapter 10 on '**Pace of Socio-economic change and Development**', finalised by the Member in-charge with the assistance of the Advisory Panel. The Commission appreciated the draft. However, it was suggested that the draft required certain editorial changes so as to bring coherence in the presentation of the ideas and wherever possible, inviting reference to the background paper and Consultation Paper on the subject (available in Vol. II of the report) so as to make the chapter compact. The Member in-charge agreed to the suggestion. He agreed to place before the Commission a revised draft on 8th March, 2002 for consideration.

16. The Commission thereafter took up for consideration Chapters 1&2 (**Introduction and Basic Approach**) and approved the same.

17. After considering the proposed Chapter '**Miscellaneous Matters**', the Commission decided that the topics included in this chapter should be reallocated to the relevant chapters.

FRIDAY, 8TH MARCH 2002

18. The revised draft Chapter 10 on '**Pace of Socio-economic change and Development**' as presented by the Member In-charge, Justice Shri K. Punnayya was considered by the Commission and approved the same subject to certain modifications in the Background Paper.

19. The Commission also considered the question of qualification regarding domiciliary requirement for eligibility of candidates to contest elections to the Rajya Sabha from the concerned State Legislatures and decided to incorporate a paragraph in Chapter 5 of the Report.

20. Smt. Sumitra G. Kulkarni suggested that there should be a ban on export of meat and meat products. She also raised the issue of euthanasia. After discussion, the Commission did not consider it feasible.

21. The Commission again discussed the question of eligibility of non-Indian born citizens to hold high offices. The draft paragraph on the said issue was considered in the meeting and provisionally agreed to.

22. The proposed clause (3) of article 275 (referred to in para 7 of these minutes) was again discussed. It was finally decided to restore the original paragraph having regard to the complexity of the proposal in the light of a federal polity.

SATURDAY, 9TH MARCH 2002

23. The draft para relating to the question of eligibility of non-Indian born citizens to hold high offices, was again discussed and the draft paragraph on the said issue was finalized by the Commission.

24. The Commission decided to add a paragraph on "Office of Profit" recommending for empowerment of the Election Commission of India to declare the offices under the Government of India/ State Governments as offices of profit.

25. After a brief discussion it was agreed that a copy of draft report should be sent to Dr. Subhash C. Kashyap, Chairman of the Drafting and Editorial Committee. The Commission also fixed 11th of March, 2002 for adoption and signing of the final report, which would be presented to the Prime Minister at the earliest.

The meeting ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary to the Commission

All the Members of the Commission

ANNEXURE

LIST OF PARTICIPANTS OF THE SEVENTEENTH MEETING

1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri B.P. Jeevan Reddy (except on 8th March, 2002)
3. Justice Shri R.S. Sarkaria (except on 7th & 8th March, 2002)
4. Justice Dr. Kottapalli Punnayya
5. Shri P.A. Sangma (except on 7th, 8th and 9th March, 2002)
6. Shri Soli J. Sorabjee
7. Shri K. Parasaran
8. Shri C.R. Irani (except on 6th, 7th & 8th March, 2002)
9. Dr. Abid Hussain (except on 6th & 9th March, 2002)
10. Smt. Sumitra G. Kulkarni
11. Dr. Raghbir Singh, Secretary

(18)

MINUTES OF THE EIGHTEENTH MEETING HELD ON 28TH & 30TH MARCH, 2002

The Eighteenth meeting of the Commission was held in the Conference Room of the Commission in Vigyan Bhawan Annexe, New Delhi on 28th and 30th March, 2002. Hon'ble Justice Shri M.N. Venkatachaliah chaired the meeting. The list of participants is at Annexure.

28th March, 2002

2. The Hon'ble Chairperson extended a warm welcome to the Members and explained the purpose of convening the meeting.

3. The letter dated 21st March, 2002 received from Dr. Subhash C. Kashyap, the letter dated 26th March, 2002 received from Shri C.R. Irani, the letters dated 27th March, 2002, received from Justice Shri B.P. Jeevan Reddy, Dr. Abid Hussain, Shri K. Parasaran and fax message dated 27th March, 2002 received from Smt. Sumitra G. Kulkarni, in response to the notice dated 25th March, 2002 were circulated to the Members at the meeting. After discussion, it was decided that a communication be sent to all the Members of the Commission, who did not attend the meeting to ascertain their views. The following is the text of the communication, which was finalized during the meeting.

“At the meeting of the Commission today, the need and desirability of a unanimous Report was felt. During the proceedings of the meeting, Dr. Subhash C. Kashyap stated that the points of divergence between the draft Report and the Final Report be crystallised and there should be an occasion for the Commission to have the benefit of his views in respect of the same. It was specifically agreed that if all or some of the divergent points in the Draft Report are not accepted by the majority of the members, the divergent views would be mentioned in the Final Report. In that event, there would be no occasion for Dr. Subhash Kashyap to decline to sign the Report.

2. Members are kindly requested to signify their views in writing so as to reach the Commission latest by this evening. In case, the majority of members are agreeable to the aforesaid suggestion, it would become necessary to obtain extension of time for submission of the Final Report for the requisite period.”

30th March, 2002

4. The minutes of the meeting dated 28th March, 2002 were approved.

5. With a view to achieving a possible unanimity in the Final Report and to persuade Dr. Subhash C. Kashyap to subscribe his signature to the Final Report (with any Note of Dissent, if he had one in mind), a meeting was held on 28th March, 2002 to explore the possibilities in this direction. However, four Members expressed their opposition to any further meetings. The proposal tossed up at the meeting on March 28, 2002 could, therefore, not be pursued since not only the four of the Members who had already appended their signatures to the Final Report expressed their opposition but also some of the Members present at today's meeting expressed their strong reservations as to the proposal. Therefore, the proposal contemplated on March 28, 2002 was given up.

6. The Commission, however, resolved to request Dr. Subhash C. Kashyap to sign the Final Report subject to any Note of Dissent that he may have in mind.

7. Dr. Subhash C. Kashyap raised a general point that pertains to the discipline of the Minutes of Dissent and that any defamatory statements or statements adversely commenting upon matters *sub judice* etc., should not find a place in the notes of Dissent. In the unlikely event of the minutes of dissent containing any defamatory statements or statements which adversely affect the administration of justice, the Commission should not be understood to have subscribed to them. Further, the Secretariat was requested to carry out certain corrections pointed out by Dr. Subhash C. Kashyap in the Final Report before its submission.

8. The Commission decided to proceed with the arrangements to present the Final Report as signed by the Members (except Shri Sangma who has since resigned), tomorrow, i.e., 31st March, 2002. The Secretary is requested to make the requisite arrangements for the presentation of the Report.

9. The Secretary was also authorized to undertake steps for the winding up the affairs of the Commission within two months from 1st April, 2002 with minimum requisite officers and staff assisting him.

The meeting ended with a vote of thanks to the Chair.

(RAGHBIR SINGH)
Secretary to the Commission

All the Members of the Commission

ANNEXURE

LIST OF PARTICIPANTS OF THE EIGHTEENTH MEETING

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1. Hon'ble Justice Shri M.N. Venkatachaliah (In Chair)
2. Justice Shri R.S. Sarkaria
3. Justice Dr. Kottapalli Punnayya
4. Shri Soli J. Sorabjee
5. Dr. Subhash C. Kashyap
6. Shri K. Parasaran (except on 28th March, 2002)
7. Dr. Raghbir Singh, Secretary

^Y The constitution of the Committee is at Annex-II.

^{\$} Also includes minutes of agenda item number (ii) for the meeting held on 9.7.2000.

[#] The portion typed in italics refers to the minutes of the meeting held on 9.7.2000.

^{\$} Also includes minutes of agenda item number (i) for the meeting held on 9.7.2000.

[#] The portion relating to the minutes of the meeting held on 9.7.2000 is typed in italics.

[#] The portion relating to the minutes of the meeting held on 9.7.2000 is typed in italics.

This was listed as agenda item no. (iii) for the meeting held on 9.7.2000.

¹ No final decision could be arrived at when the matter was discussed again.