

A

Background Paper*

on

PACE OF SOCIO-ECONOMIC CHANGE AND DEVELOPMENT

This Background Paper was prepared for the Commission by the Advisory Panel on “Pace of Socio-Economic Change and Development Under the Constitution”.

(vii)

**PACE OF
SOCIO-ECONOMIC CHANGE AND DEVELOPMENT**

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Securing Good Governance

1.1 The first and foremost task appears to be for a radical redefinition of governance, to change the mind-set of bureaucracy, to surmount the colonial hang-over of the persistent notion of the 'Rulers' and the 'Ruled', governors and the governed, Government and the people – the "us" and "they" divide. The interaction between the Administrator and the citizenry needs to be informed by the awareness of and respect for the constitutional rights of the people and that the inter-action is essentially as between a free and self-governing people on the one hand and the agents chosen by them to serve them on the other. Massive and sustained participation of civil society initiatives, self-help groups, voluntary organizations, etc, appears necessary in order to achieve a faster pace of socio-economic development and for building a more just, caring and equitable society which the Constitution has enshrined. The movement must be from Governance to self-governance. Respect for human dignity, human rights, and the rights of the citizenry, are critical to development and are not merely its rewards. This requires a radical reshaping of policies so as to create an enabling and facilitating environment in which effective interaction between the Government and the institutions of civil society becomes possible.

1.2 There is a need for a radical redefinition of governance to change the mind-set of the political executive and permanent civil services. The movement should be towards acceptance of self-governance as a substantive and major part of governance, shedding maximum possible areas and activities of governance in favour of self-governance especially in areas relating to socio-economic development and even in other areas of governance associating institutions of self-governance. Recognition be paid to the fact that constitutional rights of citizenry, human dignity, Human Rights and human security are not rewards to development but are critical to development. A sensitive, sensitised and responsive civil services has to be ensured. It is accordingly suggested that:

- (a) Emphasis should be placed on participatory governance and institutions of concomitant democracy in areas relating to socio-economic development and the progressive realization of the socio-economic goals of the Constitution.
- (b) Self-governance must necessarily include developmental autonomy for Scheduled Castes and Scheduled Tribes through institutions on their behalf and empowerment of Scheduled Castes, Scheduled Tribes, Backward Classes and other deprived categories to shape policies for their development and the implementation of those policies.
- (c) As an incentive to promote institutions of concomitant democracy, a specific share of expenditure on welfare programmes such as – education, health, social security, etc. be earmarked for being spend through voluntary organisation, NGOs, Self-Help Groups, etc. This is apart from the suggestions made separately in this Paper with regard to developmental autonomy and developmental empowerment of the Scheduled Castes and Scheduled Tribes, through National & State Scheduled Castes and Scheduled Tribes Development Authorities, etc.
- (d) To promote a sense of good governance of the sensitive, important and key positions in administration shall be identified and listed. Posting and transfers of officers which have a key role in socio-economic change shall be through Civil Services Board in which heads/experts from management institutions shall be invited to participate in the evaluation of previous performance and track records and future suitability for the post.
- (e) As a mechanism of promoting sensitivity towards the Scheduled Castes and the Scheduled Tribes and Backward Classes, a provision for “Social Justice Clearance” be established, regarding which details are given later in this Paper.

Transparency and openness in Governance

2.1 Openness is in the public interest and that ‘sunlight is the best disinfectant’ against the virus of corruption. As a general rule, secrecy in governance is an unreasonable practice. It promotes corruption and suppresses accountability. Governance, therefore, needs to be transparent and open especially in policy-making, programme-formulation and implementation in areas pertaining to socio-economic empowerment and advancement of the weaker sections of the society.

Citizen’s Charters

2.2 Article 350 of the Constitution recognizes the rights of citizenry to petition for redress of grievances. Citizens’ Charters in respect of every service-provider agency of the State is suggested to ensure effective, purposeful and user friendly delivery of public services. The Citizens’ Charters would list the entitlement of the citizenry of public goods and services along with time schedule within which he is entitled to expect services from such government organisations and from each functionary at various levels. In order to ensure that Citizens’ charters become an effective instrument for improved and user-friendly delivery of public services, it is further suggested that in case any person fails to receive the public goods and the services in the manner and to the extent set out in such charters, such persons should have recourse to an easy and effective system of grievance redressal through chartered Ombudsman. A scheme for criminal juries compensation should be established.

Sensitization of Public Servants

3.1 Public Servants need to be made sensitive to the special needs of the Women, the Scheduled Castes, the Scheduled Tribes and the Other Weaker sections of the society in order to ensure full enjoyment of constitutional rights and protection by these sections of the society. A perception unfortunately exists that members of the public services, in general, are averse to working in the fields pertaining to the Scheduled Castes, the Scheduled Tribes, other backward classes, women, etc. It is also said that instead of being guided by the constitutional objectives and aspirations, many of them are guided by their own biases and prejudices in dealing with issues pertaining to aforesaid classes of people which results in denial of rights to them. Such attitudes amongst members of public services require to be changed.

3.2 As a means of achieving this objective, it is suggested that a personnel policy should be drawn up, whereby, *inter alia*, officers of the IAS and other services directly or substantially relevant to Scheduled Castes, Scheduled Tribes and backward classes will find it possible to advance their career only by working for at least a period of five years in areas and sectors directly or mainly pertaining to Scheduled Castes, Scheduled Tribes and backward classes at grassroot level, executive level and policy level and none of them should be allowed to get posts in generally coveted areas and sectors, like Commerce, Economic Affairs, Industries, etc., without acquiring this qualification; it is ensured that those who voluntarily devote the major part of their service to areas and sectors wholly or mainly pertaining to Scheduled Castes, Scheduled Tribes and backward classes should not hereafter be losers in their career; and providing for protection from persecution by powerful persons inside and outside government to be given to honest officers/employees of all ranks working sincerely for the development and protection of Scheduled Castes and Scheduled Tribes; and provision is made for "Social Justice Clearance" (just like 'integrity clearance') before an officer of Class-I or Class-II is promoted; and it is ensured that service in tribal areas does not put any public servant to any disadvantage in the matter of net family income or the education of the children; and provision is made of a formula of accelerated promotion for those who spend at least five years continuously in areas and sectors directly or mainly pertaining to Scheduled Castes, Scheduled Tribes, backward classes. Social Justice Clearance should be implemented seriously by including specific performance of officers, for example, with regard to the effectuation of Section 15A of the Protection of Civil Rights Act, 1955, thorough implementation of the Reservation Policy with accountability in their respective spheres and concrete achievements in the socio-economic development of weaker sections of the society, in particular, Scheduled Castes, Scheduled Tribes and Backward Classes. These should be similar but separate posts of the Personnel Policy in respect of Backward Classes and Women.

Elimination of Hunger

4.1 Public Distribution System is essentially the food subsidy programme explicitly targeted towards poor and is aimed at reducing hunger. Central Government incurs an annual expenditure of about Rs.12,125 crores on food subsidies. There are, it is claimed, four and a half lakh Fair Price Shops in India serving 180 million Ration Card holders/ families. The Public Distribution System is an important component of Anti-Poverty Programme. The country, unfortunately, witnesses the paradoxical situation of surplus unlifted stock of food grains in the godowns of the Food Corporation of India co-existing with hunger for lack of purchasing power. Even after fine-tuning of the Targeted Public Distribution System, the performance of the fair price shops in some of the States as revealed by some studies, is dismal. In some States the percentage of fair price shops not opening even once a week is estimated to be 87%. The transfer of income intended by Public Distribution System has, by and large, benefited the urban sectors and the Above Poverty Line sections of the society more than the poor. Investigations also indicate that about one-third of the supplies in the Public Distribution System are diverted. The delivery system, according to widely held public perception, seems to be the substantial beneficiary.

4.2 Introduction of cash subsidy or the scheme of Food Coupons (see Section 10.2.1.1 of Consultation Paper) as an experimental measure in areas where public distribution system is not functioning well and is showing persistent defiance of ethical norms and, if found successful, its extension to other areas or improving the existing public distribution system itself are amongst the options to improve the situation.

4.3 It has also been suggested that a certain percentage of the shops should be allotted to the members of the Scheduled Castes, the Scheduled Tribes and Other Backward Classes. Some State Governments already allot a particular percentage of Fair Price Shops to the Scheduled Castes and the Scheduled Tribes. Constitutionality of such allotment has already been upheld by the Court.

4.4 In respect of poor people, who at present still have the purchasing power to avail themselves of the benefit of the PDS, it is suggested that, keeping in view the fact that bulk of the genuine beneficiaries belong to the Scheduled Castes and Scheduled Tribes and "lower" backward classes; the following steps may be taken:

- (i) There should be fair price shops/ration shops in every Scheduled Castes basti, Scheduled Tribes hamlet and identifiable backward classes localities like fishermen's localities, banjaras/tandas, etc. in the rural areas. In the urban areas, there should be fair price shops/ration shops in every slum/locality wholly or predominantly inhabited by the Scheduled Castes or the Scheduled Tribes or the backward classes with particular attention to the slums.
- (ii) The number of fair price shops/ration shops in each basti/hamlet/urban locality/slum should be based on the population of each such habitations.
- (iii) The allottees of these fair price shops/ration shops, should be selected on the basis of the social profile of the habitation in question. Thus in a Scheduled Castes basti, the fair price shops should be allotted only to a Scheduled Caste candidate and similarly in other cases. In urban slums, where Scheduled Castes and Scheduled Tribes and backward classes may have a mixed population, the candidates should be selected from the largest group.
- (iv) In localities where the pre-dominant population belongs to any religious/linguistic minorities, candidates should be selected from those minorities, but keeping in view the Scheduled Castes/Scheduled Tribes and backward classes angle also since most of the minorities belong to one of these categories.
- (v) There are some localities which are very much mixed and do not have a specific community character. Such localities may also increase in number in the future. Some of them may also have residents who are pre-dominantly poor and are eligible for the benefit of the PDS. In the allotment of fair price shops/ration shops in such localities, the reservation rules prevalent in the State should be followed.
- (vi) The allottee should be selected by the whole community at a plenary meeting in the presence of the concerned officers. On no account, the department or departmental officers should select or impose whether from the same community or from any other community. The candidate selected should have the necessary minimum qualifications/eligibility and he/she should be strengthened by an appropriate practical training in matters like maintaining accounts books and filling up periodical reports. A Committee elected by the general body of the locality should monitor and supervise the proper working of the fair price shops. The Committee should give particular representation to youths of the community of the locality and also include a limited number of other sections of the society who have no clash of interests with the main community of the locality.
- (vii) This arrangement will ensure social responsibility and social accountability on the part of the fair price shop owners and also civil society participation in the proper sense of the term, i.e. that segment of people who are directly concerned.
- (viii) In each category, it is necessary to have a due proportion of women. Fair price shops/ration shops allottees other than to the Scheduled Castes, Scheduled Tribes and Backward Classes should also be selected from economically poor sections of the population from families eligible for PDS benefit.
- (ix) This scheme is intended to see that fair price shops/ration shops do not become another area for professional shop owners and there is no socio-economic hiatus between those running the fair price shops/ration shops and the beneficiaries of the PDS. In order to prevent this scheme from being defeated through Benami, it is necessary to ensure that the allottees are given full and prompt support in terms of fixed capital as well as working capital through a systematic arrangement provided by the appropriate Finance and Development Corporation (e.g. Scheduled Tribes Development Corporation, Scheduled Castes Development Corporation, Minority Development Corporation, etc.) duly involving the banks.
- (x) Special attention should be given to especially disadvantaged groups of Scheduled Castes, Scheduled Tribes and backward classes like, for example, communities engaged in "scavenging", etc. both in the allocation of the fair price shops/ration shops and in the selection of candidates who run the fair price shops/ration shops.

4.5 In respect of poor people who do not have the purchasing power even to buy subsidised foodgrains available through PDS, it is suggested:

- (a) A massive programme of employment should be undertaken to create purchasing power.
- (b) Existing schemes of employment generation under the poverty alleviation category should be expanded to cover the entire needy population for the requisite part of the year.
- (c) Their implementation should be strengthened by eliminating the contractor system, which is often allowed by the backdoor.
- (d) This employment programme should provide employment at the statutory minimum wage rate fixed in the State for the agricultural labourers for at least 100 days in the year over and above the unsteady employment that they have in the normal course.
- (e) The works undertaken through their labour should be of a permanent nature of direct benefit to the classes of people who work on the schemes like irrigation resources for their lands, development of their lands or construction of common work places for themselves, for construction of their houses and so on. On no account should this population be put on work creating infrastructure for the other classes.
- (f) In order that this benefit really reaches the people, this should be enshrined as Right to work as a Fundamental Right under article 21, by a constitutional amendment introducing a new clause.
- (g) A substantial part of the wages should be paid in kind i.e. foodgrains. The mechanism of these payments could be in the shape of a card entitling the beneficiary to get foodgrains of the prescribed quantity from the fair price shop/ration shop of his area of residence.

4.6 (i) Similarly, there should be reservation for Scheduled Castes, Scheduled Tribes and backward classes including a due proportion of women from these categories also in the matter of other allotments like petrol filling stations, LPG gas agencies, CNG agencies and other agencies through which commodities are distributed by public authority. The percentage of reservation should be in accordance with the reservation percentage in force in the State for the purpose of employment under the State.

(ii) In order to keep out benami operators from other sections and classes who take advantage of the financial weakness of the Scheduled Castes, Scheduled Tribes and backward classes allottees/licencees, it is recommended that the allottees should be given necessary fixed capital and working capital support in full and in time through the appropriate Finance and Development Corporation duly involving the banks.

(iii) Even in the case of categories not eligible for reservation, poor boys and girls should be selected for the allotments and they should also be given similar financial support through loans from appropriate financial institutions and banks.

(iv) While considering selection of candidates for allotment/ reservation due consideration should be given to minorities and especially the Scheduled Castes/Scheduled Tribes/backward classes amongst the minorities.

4.7 In case of benami operations of PDS or other allotments, laws should be made declaring such benami operation as void and providing for cancellation of allotment/licences after due process of law. Cancelled allotments/licences/permits should be given to eligible persons from the same social status. This law should also make it clear that subterfuges like power of attorney documents, or agreement to sale or transfer shall not be valid for the purposes of allotments/reservations, etc. This is both in keeping with the Constitution as well as the judicial pronouncements. Such Benami transactions should also be declared as an offence punishable under law. The person to be punished under this provision should not be the allottees, but the rich person who has taken advantage of the poverty, helplessness and the absence of adequate institutional financial support for the allottees.

Establishment of Residential Talent Schools

5.1 In India, the prospects of talented children achieving their potential depend on the accident of their birth and in particular the social and economic background of the family of birth. Those born in affluent families have opportunities of education and training in elite schools while the talents of those in poorer circumstances merely waste and wither away owing to lack of opportunity. This is the lot of brilliant children with talent and promise, in poor families and it has its chilling effects on the requisite opportunity. It is necessary, therefore, to identify and groom talent amongst the boys and girls of the Scheduled Castes, Scheduled Tribes and Other Backward Classes and train them in special talent schools to enable them to compete with the rest of the society in an equal manner.

5.2 In view of this and taking into account the Eighty-third Constitutional Amendment recently passed by the Lok Sabha and the Rajya Sabha, it is suggested as follows:-

- (i) The above Amendment should be further amended as not to give the State the option to decide the manner in which elementary education should be provided and it ought to provide the same type of quality education to all children, as the discretion to the State to decide the manner in which elementary education should be provided will in practical terms result in children of poor families, particularly Scheduled Castes, Scheduled Tribes and backward classes being palmed off with an inferior type of education in the name of non-formal education, handicapping them in further stages of education and in life opportunities. This is contrary to the letter and spirit of the Constitution, which mandates equality including equality of opportunity.
- (ii) Another amendment required is to protect parents penalised where children are not found in school because typically many poor children especially of Scheduled Castes, Scheduled Tribes and backward classes belonging to agricultural labour and other labour categories, artisans, etc. are not able to send their children to school not because of unwillingness or lack of interest but because their children's labours contribute to the meagre family income. The remedy for this is not to penalise the parents but to provide a widespread employment programme as recommended earlier on the one hand and on the other hand to provide food or foodgrains or foodgrains entitlement card or equivalent cash per Scheduled Castes, Scheduled Tribes child who attends school, a system which has been followed in a few States especially Himachal Pradesh. This is in line with the Supreme Court judgement in the M.C. Mehta Vs. Union of India regarding child labourers released from the factories in which it was laid down that such children should be provided non-formal bridge course of education followed by admission to formal educational institutions along with employment for the parents of children or a compensation of Rs.100 per month for delays. This type of payment, which should be made more extensive covering all children of disadvantaged categories of communities especially Scheduled Castes, Scheduled Tribes and extremely backward classes properly categorised should not be viewed as incentive but as a compensation for the opportunity cost incurred by the family when their earning/economically supporting children are sent to school. The cost of this is a necessary part of the cost free and compulsory education to be borne by the State in terms of the Constitution and no *alibi* should be sought by or allowed to the State to escape from this responsibility.

Protection of Educational Interests of Weaker Sections

5.3 Article 46 of the Constitution provides that the 'State shall promote with special care the educational and economic interests of weaker sections of the people and, in particular, of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation'. A.P. High Court in D. Murali Krishna Public School Vs. Regional Jt. Director of School Education (AIR 1986 AP 204) has declared that education is a fundamental right of the Scheduled Castes and Scheduled Tribes. The State, therefore, has a mandatory duty to provide facilities and opportunities for education at all levels to the weaker sections of the society particularly to the Scheduled Castes and Scheduled Tribes.

5.4 Accordingly, it is suggested as follows:

- (i) Reservation in government institutions should be fully implemented. The Scheduled Castes, Scheduled Tribes and backward classes students should be got admitted in every good professional institution in the district/state/country, whether public or private, in the same proportion as the percentage of reservation in education for them existing from time to time and should be educated there up to the level of their choice. The Government should meet the full cost of the education and maintenance of each student in accordance with the actual cost of study in each such institution and boarding and lodging expenses in a hostel attached to such institution(s) or in the absence of such attached hostel, in other appropriate hostel(s); and should also meet capitation fee, by whatever name known, wherever charged.
- (ii) Reservation for backward classes also in education should be introduced. One residential school each for Scheduled Castes and one each for Scheduled Tribes and one for backward classes or boys and one each similarly for girls should be set up in each district on the pattern existing in Andhra Pradesh, with 75 per cent of the seats going to the poor candidates of the specific category of weaker sections and the remaining 25 per cent for the candidates belonging to the other social categories of weaker sections and to the candidates of general categories. In Districts where either Scheduled Castes or Scheduled Tribes or backward classes are too small in number, there may be one residential school jointly for both. This facility should be provided in private residential schools also in view of the large number of private institutions of general as well as specialised education at all levels set up in the past and that may be set up in future and the advantage that the candidates passing out of such institutions have.
- A selection grade post of teachers should be created and selection grade teachers should be appointed only in these residential schools and similar residential schools for other weaker sections;
- (iii) In addition, in districts where residential schools are not possible, at least one good hostel each for Scheduled Castes, Scheduled Tribes, backward classes boys and one each for Scheduled Castes, Scheduled Tribes and backward classes girls should be set up in each place where a high school/higher secondary school or college exists. These hostels should be designed in such a manner that they may in future become the nucleus for residential schools. Where one hostel each is not adequate for all Scheduled Castes, Scheduled Tribes and backward classes boys and girls, additional hostels should be created in such places to the full extent necessary to accommodate all Scheduled Castes, Scheduled Tribes or backward classes students. No restrictions like distance, rural/urban should be laid down, since the motivation for joining hostels arises not only from considerations of distance but also from considerations of facility for undisturbed studies.
- (iv) In view of the fact that a sizeable number of students have qualified and increasing numbers should in future qualify from educational institutions of general as well as specialised/professional education in foreign countries and the career advantage that candidates passing out from foreign institutions have in this country, the Government should send, at its cost fully covering fees and other mandatory payments, maintenance and travel cost, Scheduled Castes, Scheduled Tribes and backward classes candidates in the same proportion in relation to the general category candidates who go to such institutions on their own or otherwise, as the percentage of reservation in education fixed for them from time to time, to good institutions in each such country in every area of education, every year.
- (v) Both the Union Government as well as the State Governments must find the necessary budgetary resources for this purpose. This can be done by avoiding wasteful expenditure of different types. During the transitional phase, shortages should be met by innovative steps existing in other countries like collection of an 'education cess' to be exclusively funded and utilised for this purpose and new mechanisms like collection of a reasonable amount from professionally educated and trained in India, who go abroad for taking jobs. Once this principle is accepted, suitable practical mechanisms can be worked out.

Article 46 of the Constitution obligates the State to provide education to the weaker sections of the people in particular the Scheduled Castes/Scheduled Tribes. The word 'education' has been used in a particular sense while article 45 restricts to elementary education. The State shall, i.e. the Union of India and the State Government concerned shall provide education at all levels to the children belonging to Scheduled Castes and Scheduled Tribes according to the eligibility criteria operating in this regard. The scholarships provided to the children are inadequate and reach the children practically at the end of the academic year. In consequence due to non-payment of scholarships or non-availability of the capacity to pursue the education, drop out rate is higher among the children belonging to the Scheduled Castes and Scheduled Tribes and the most backward classes particularly children from the first generation families. The rate of scholarships should be reviewed well in advance once in two years. Revolving fund should be created and the Director/Commissioner of Scheduled Castes/Scheduled Tribes should be made the authority to disburse the amount. Since the child is admitted in the educational institutions, proper mechanism should be worked out that the educational institutions give information to the concerned district authority and the district authority in consultation with the Director/ Commissioner of Scheduled Castes/Scheduled Tribes disburse the amount of scholarships to the students. At the middle level of the course of education, i.e. under the graduation/post graduation level of education, the scholarship amount remains inadequate to meet the costs of living, therefore, they should also be adequately taken care of. In the post-graduation research fellowships, more scholarships should be created and made available to the eligible and selected candidates for the purpose of pursuing such education. In view of the Preeti Srivastava case, declared by the Supreme Court prohibiting relaxation of the eligibility marks for admission into the post graduation and prohibition of reservation in higher education like Ph.D., etc. without reference to the constitutional obligation under article 46 of the constitution, the children belonging to the Scheduled Castes and Scheduled Tribes are prevented from pursuing the higher education in the professional courses and the seats allotted to them remain unfulfilled and are filled by the general candidates. With a view to providing opportunities and facilities to the Scheduled Castes and Scheduled Tribes for higher education, constitutional amendment is necessary. Therefore, a separate provision in article 15 like article 15(4A) be brought about expressly mentioning "The State shall make special provision for the educational advancement of the Scheduled Castes and Scheduled Tribes providing education to them at all levels of courses of study with relaxed qualifying marks for admission consistent with the percentage of the seats reserved for them in the appropriate courses of study".

Establishment of Residential Talent Schools

6.1 In India, the prospects of talented children achieving their potential depend on the accident of their birth and in particular the social and economic background of the family of birth. Those born in affluent families have opportunities of education and training in elite schools while the talents of those in poorer circumstances merely waste and wither away owing to lack of opportunity. This is the lot of brilliant children with talent and promise, in poor families and it has its chilling effects on the requisite opportunity. It is necessary, therefore, to identify and groom talent amongst the boys and girls of the Scheduled Castes, Scheduled Tribes and Other Backward Classes and train them in special talent schools to enable them to compete with the rest of the society in an equal manner.

6.2 In view of the above, it is suggested that:

- (a) residential talent schools should be established for the Scheduled Castes, for the Scheduled Tribes in every district of the country, one each for SC boys, SC girls, ST boys, ST girls as one of the important package of comprehensive measures required for the comprehensive and integrated development and empowerment of SCs, STs and BCs.
- (b) In each school the students of the specific of weaker sections should have the bulk of the seats (say 75%) and the remaining should go to the students belonging to other social categories of weaker sections and to poor students of the general category.

- (c) Some of these schools for backward classes should be located in districts where BCs belonging to religious minorities are relatively more concentrated so as to facilitate BCs of such minorities getting adequate number of seats.
- (d) These schools should necessarily be residential so that they could be devoted to grooming the children for high competitive educational excellence to serve the country as administrators, scientists and in high professions combining excellence with sensitivity of awareness of the plight of the weaker sections and the poor in the country.
- (e) These schools should cover Class VI to Class XII.
- (f) In order to maintain excellence, the qualification of teachers should be not less than post graduation and a selection grade posts of teachers should be created to be appointed only in these residential talent schools.
- (g) While the aim should be to provide at least one such school for each social category mentioned in each district, in case finance is a problem a beginning may be made by setting up such schools in 100 districts which have relatively greater population percentage of Scheduled Castes and 50 districts with relatively greater population percentage of Scheduled Tribes, listed in this Report. Alternatively, in order to ensure that SCs and STs in all States get the benefit of this scheme, the districts could be apportioned among States in accordance with their share of the SC population of the country and ST population of the country respectively (suitably rounded off) and in each state districts be selected in the decreasing order of the population of SCs and STs respectively such that the same total is achieved. In each State the schools should be distributed in such a manner in the selected districts such that about 1/3rd of the schools goes to each of the categories of the SCs & STs.
- (h) So far funding is concerned, a provision of Rs.250 crores was provided in 1996-97 for residential schools for girls of SCs, STs and BCs in low literacy districts. No school has come under the scheme because of certain unjustifiable reasons. This amount can be utilised for the scheme and at least the same amount of budgetary provision may be made from year to year until saturation point is reached.
- (i) At the level of Central and State Governments these schemes should be in charge of the Ministry/Department entrusted with the welfare of SCs, STs and BCs such as the Ministry of Social Justice and Empowerment and the Ministry of Tribal Welfare at the Centre and the Departments of Social Welfare/SCs, STs and BCs Welfare in the States where two or more Ministries/Departments are concerned with SCs, STs and BCs a suitable coordinative mechanism can be created.
- (j) In each State under the concerned State Department's charge, an autonomous registered society could be formed for the management of the residential schools in the State. In the executive committee of the Societies representations should be provided for concerned officials of the Department(s) in charge of SCs, STs and BCs, Finance and Education and also for eminent educationists belonging to SCs, STS and BCs as well as others from self-help groups, educational societies with high reputation and experience particularly in the field of education of weaker sections and voluntary organisations concerned with SCs, STs and BCs. There is adequate base of experience in Andhra Pradesh where such schools have been in existence since about two decades and have produced good results and to some extent in Karnataka also. Their experience can be drawn upon with suitable modifications leaving sufficient initiative with each State to make modifications appropriate to that State. Efforts in this direction started in 1996-97 in the Ministry of Social Justice and Empowerment (then known as Ministry of Welfare) should be resumed and completed without further loss of time. The State Society may also set up units in districts for management of the residential schools in the district in which may be represented the District Collector, District Officers of the Education Department and Department in charge of SCs, STs and BCs and also representatives of voluntary organisations and educational societies of high reputation and experience in the educational development of weaker sections.
- (k) In districts where initially such residential schools are not set up, until their turn comes, a residential hostel for SCs, STs and BCs, one each for SC boys, SC girls, ST boys and ST girls and BC boys and BC girls, (75% for the specific categories and 25% for others as

recommended in the case of residential schools) should be set up as a nucleus for future residential schools.

- (i) Selection of children for admission into the schools can, as in the Andhra Pradesh model, be on the basis of a selection examination after Class V with due weightage for rural residential children, children from families of agricultural labourers, safai karamcharis, bonded labourers and released bonded labourers, nomadic, semi-nomadic communities, vimukta jatis and with provision that if any community of SCs, STs is not able to come in the select list at least one, namely the best of the candidates of that community is selected, so that the object is achieved.

Prohibition of occupations that are degrading and offend human dignity: Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993

7.1 An unfortunate blemish of India's urban sanitization system has been scavenging by members of certain communities of the Scheduled Castes under inhuman conditions. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 was enacted to put an end to this practice. The Act is said to relate to Entry 6, namely, "Public health and sanitation; hospital and dispensaries" in List II of the Seventh Schedule of the Constitution and the law, therefore, is applicable to the States (other than those at whose instance the Central law was made) only after such States adopt the law. Many States have not yet adopted the law.

7.2 There appears to be a fundamental lacuna in its approach as to the source of legislative competence, which the statute relies on and invokes. The topic of the legislation, in its pith and substance, falls within Entry 24, List III of the Constitution, respecting which the Union Parliament has concurrent competence to legislate. The encroachment on the topic of entry 6 of List II is merely incidental. Both the Preamble and the provision as to the extent of applicability of the statute need to be amended so as to bring them in accord with the position that the legislation, in pith and substance, falls within concurrent powers of legislation. This would make the law applicable to the entire country without the need for the States to adopt it.

7.3 In implementation of the abolition and eradication of Safai Karmachari (manual scavenger) system in the country, even the State Governments, which adopted the Act, have not taken adequate steps to ensure total abolition of employment of Safai Karmacharis.

- (a) Accordingly, it is suggested that the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 be amended along the lines mentioned above so as to bring it within the concurrent powers of the legislation thereby making it automatically applicable to the entire country.
- (b) While it is necessary to put an end to scavenging by human agencies at the earliest, it should be done in a manner that the existing safai karamcharis do not suffer loss of employment or income. Therefore all out effort should be concentrated on getting existing safai karamcharis shifted to other occupations. In respect of safai karamcharis who are employees of municipalities and other urban local bodies, these bodies should be required straightaway through executive instructions followed by appropriate legislative enactments to liberate their safai karmachari employees from the occupation of safai (scavenging) and shift them to any other work not connected with safai under the municipal body, providing them with training where necessary and on a salary and remunerations not less than what they draw currently. There are a number of activities needing attention in each municipal area which are now neglected. While liberation and shifting to other occupations are undertaken, the municipality should also place house owners on notice that from a date to be specified safai karamcharis will not be available for scavenging service and therefore they should make alternative arrangements for this in terms of the Act of 1993.

- (c) Regarding the other category of safai karmcharis who are privately employed on remuneration directly from house owners, it is suggested that they should be liberated by training every existing safai karmchari or a member of his or her family in an alternative employment not connected with scavenging, providing them, employment/ self-employment on stable basis so that they will not be any more compelled to do safai service.
- (d) Every child of the family of the existing safai karmcharis should be admitted to residential schools under the existing scheme of the Government of India providing for residential schools/hostels and scholarships for the children of families engaged in unclean occupation namely safai, flaying and tanning. The scheme should be expanded so that there is adequate number of residential schools/hostels to cover all the children of safai families.
- (e) The Central Monitoring Committee for the rehabilitation of Safai Karmcharis and their dependents set up by the Government of India in 1991 should be re-activated in the form as laid down then straightaway and subsequently improvements made in the scheme by providing for larger representation of safai karmcharis in the committees at the national, State, district and municipal levels. The need for this Central and other Monitoring Committees at all these levels has not vanished with the establishment of the National Commission for Safai Karmcharis. In fact, the continued functioning of the Central, State, district and municipal level committees will facilitate the functioning of the National Commission for Safai Karmcharis also in addition to providing active inputs for liberation and rehabilitation at all levels. According to the scheme of these committees, meetings are to be held every month. Presiding Officers of these committees (for example, District Collectors/Deputy Commissioners at district level and Chief secretary at State level) should be required to hold these meetings regularly. Regular and effective functioning of these committees should be a specific item of evaluation of officers in the Annual Confidential Reports to provide inputs for grant or refusal of Social Justice Clearance at the time of their consideration for promotion.
- (f) Having made these arrangements, the Act should be further amended to completely prohibit, whether directly or indirectly, employing any person as safai karmchari for scavenging from a date to be specified in the Act and any such employer should be punishable with imprisonment and (not or) fine. This sequence is suggested so that the amendment to the Act may come after arrangements are made to make sure that this will not adversely affect the employment of safai karmcharis, whether employed by the municipal body or privately.
- (g) The liberation of people from safai karmchari work and the liberation of specific communities who have been subjected to this occupation by denying them any other avenues should be accepted as a major national goal, the progress and implementation of which should be reviewed by a national committee of which the Prime Minister is the chairperson and the Chief Ministers are members, apart from Minister for Social Justice and other relevant ministers of the Centre that it is possible to secure complete liberation of safai karmcharis without adversely affecting their income or employment is established by the experience of a few States which have already achieved this goal.
- (h) Until this goal is achieved, it is necessary to ensure that interests of safai karmcharis are protected in the following respects:-
- stopping the practice of not paying their salary regularly prevalent in a number of municipalities.
 - stopping the practice of not paying their retirement benefits promptly on retirement

- providing them satisfactory residential accommodation of their own in a clean locality
 - stopping and prohibiting the practice adopted increasingly by Central and State Governments and public sector undertakings of bringing safai work under contract system making these people do the same work for less remuneration and on unfair terms and instead paying the contractor who is usually from a different social and economic class.
 - Stopping the practice of giving only safai work and not the safai supervision work to educated children of deceased safai karmcharis given employment on compassionate grounds - an unfortunate practice indulged in by some officers in charge of some municipalities - without giving thought to the serious resentment this causes. They should be given employment under the municipality commensurate with their educational background.
- (i) disabilities to which the National Commission for Safai Karmcharis has been subjected to *ab initio* should be removed by the Government of India. It should be given the status comparable with that of National Human Rights Commission and equipped adequately to perform its functions satisfactorily.

Human Dignity - Elimination of Untouchability and Prevention of Atrocities

8.1 Article 17 of the Constitution abolished untouchability but its practice and resultant disabilities remain unabated even after more than 50 years of working of the Constitution. Suppression of human spirit inherent in untouchability has now taken diverse subtle forms for its perpetration (e.g., touching the feet of people of upper castes, etc.). Atrocities are also rampant against the Scheduled Castes, the Scheduled Tribes and other weaker sections.

8.2 In view of the fact that Untouchability continues to rampant in old classic forms as well as in new form in life with modern development and the continuance of atrocities in virulent form, it is suggested that the following measures may be taken.

8.2.1 The following amendment should be carried out in the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989:-

section 14 should be amended as follows:

"Special Court - (1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the official gazette, establish in each district, a Court of Session to be a Special Court exclusively to try the offences under this Act.

Provided that in respect of districts where there are no atrocities against Scheduled Castes and Scheduled Tribes at all, the Government may, with the concurrence of the National Commission for Scheduled Castes and Scheduled Tribes, either exempt such district or districts from this provision or combine such district (s) with any other neighbouring district(s) for the purpose of establishing exclusive special courts;

(2) The special courts set up under this provision shall not be the same as any of the existing court of session;

(3) The exclusive Special Courts shall try offences under this Act on day-to-day basis."

This set of amendment is necessary because the delay in the trial and punishment of atrocities is an invitation to commission of more atrocities with impunity.

8.3 Sub-section (2) of Section 3 of the P.O.A Act should be amended to include the following crimes against Scheduled Casts and Scheduled Tribes as atrocities and to make them punishable with imprisonment for a term of not less than six months but which may extend up to seven years with fine:-

- Social Boycott;
- Economic Boycott;
- Social Blackmail;
- Economic Blackmail;

This amendment is required because these kinds of atrocities actually occur in villages and their continued omission is a serious lacunae.

- 8.4 (a) Sub-section (2) of Section 3 should be amended to provide for death sentence for murder in addition to imprisonment, as provided in Section 302 of the Indian Penal Code and for mandatory death sentence for multiple murders, multiple or mass rapes and gang rapes. This amendment is extremely important for the following reasons:-

at the stage of formulation and drafting of the Bill an anomaly has been created whereby for the offence of murder death sentence is possible if the convict is SC/ST and the victim is non-SC/ST while in the reverse instance no death sentence is possible on account of lacunae in the POA Act. While all murders and rapes are heinous and deserve to be punished promptly and appropriately, multiple murders or massacres of SCs and STs and multiple rapes of SC and ST women and gang rapes of SC/ST woman intended to terrorize the whole community whenever they display the temerity to demand slightest improvements in wages or possession of lands they have been allotted by law or allotment of lands they are entitled to or exercise of civil rights they are entitled to under the law. Such terror crimes against the whole community can be curbed only by mandatory death sentence.

- (b) Section 15 of the P.O.A Act should amended as follows:

"15 (1) Special Public Prosecutor - For every Special Court, the State Government shall, by notification in the Official Gazette, appoint a Public Prosecutor or appoint an Advocate who has been in practice as an Advocate for not less than seven years, as a Special Public Prosecutor, for the purpose exclusively of conducting cases under this Act in that court;

(2) Special Investigating Officer - For every Special Court, the State Government shall, by notification in the official gazette, appoint a Police Officer as Investigating Officer exclusively for the purpose of investigation in respect of cases of offences under this Act;"

- (c) The following new Section should be added in the Act:-

"Section 15 (A)

(1) The Special Investigating officers and Special Public Prosecutors shall be appointed from panels prepared on the basis of their record of and reputation for upholding the Rights of Scheduled Castes and Scheduled Tribes especially their rights to protection from violence.

(2) The Special Courts and the Judges, Special Public Prosecutors and Special Investigating Officers shall be provided with adequate staff and facilities so that the discharge of their duties is not impeded.

(3) The posts of Judges, Special Investigating Officers and Special Public Prosecutors shall never be kept vacant.

- (d) In order to make the protection of Section 10 available to Scheduled Castes also, the words "or in any other area of any district" should be added in sub-section (1)- of Section 10 after the following existing words:

".....in any area included in Scheduled Areas or Tribal Areas as referred to in Article 244 of the Constitution....."

(g) In view of the scope for rigid misinterpretation of Section 3(2)(v) of the Act the words "against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member" should be substituted by the words "against a person or property belonging to a member of a Scheduled Caste or a Scheduled Tribe".

- (e) The victims of atrocities and their families should be provided with full financial and other support to become economically self-reliant without their having to seek wage employment from their very oppressors and classes of oppressors and the State shall immediately take over the education of the children of such victims/such families in the best schools and colleges of their choice available in the State/in this country up to the level of the choice of such children/families fully at State cost including the cost of their food and maintenance;
- (f) In case of collective attacks on Scheduled Castes or Scheduled Tribes in any village or urban locality, the State should immediately provide full financial and other support and take all steps to make all SC and ST families of that village or urban locality economically self-reliant without any of their members having to seek wage employment from any individual and take over the education of all SC and ST children of such village/urban locality in the same manner and to the same extent as mentioned in para 3 above.
- (g) Every SC and ST victim of rape should be forthwith given a permanent government/quasi government job of the highest level appropriate to her educational qualifications in the Ministry/Department/ PSU/Public Financial Institution/other public sector organization of her choice and at least of the Group D/Class-IV level if she has no educational qualification at all. If there is no vacancy, a supernumerary post should be deemed to have been created forthwith for her appointment. The District Collectors/Heads of Departments/Heads of PSU/Heads of Public Financial Institutions/of other Public sector organizations should be authorized and mandatorily required to make such appointments with effect from the date of the atrocity. The State should also take over the responsibility of arranging her marriage if she is unmarried or divorced or widowed at the time of the rape.
- (h) Monetary compensation to the victims of atrocities or next of kin should be paid immediately on registration of the FIR in the concerned police station irrespective whether the offence under POA is incorporated therein or not.
- (i) A special wing of the Rapid Action Force should be constituted to deal exclusively with Atrocities against SCs and STs and similar wings/forces should be constituted in each state.
- (j) POA should be amended incorporating a provision that notwithstanding the provisions in the Evidence Act, the contradictions between the statement and FIR on the one hand and evidence given to the court, the Court shall assume that the evidence in the court is the correct version and be considered accordingly.
- (k) The measures at paras (2), (3) and (4) above should be incorporated in statutory rules under clause (iii) of sub-section (2) of Section 21 of the POA Act. But initially, they can and should be implemented without waiting for the issue of such Rules.
- (l) A special scheme should be drawn up to effectively prevent any form of disrespect to the statues of Dr. Babasaheb Ambedkar, as aberrant behaviour in this regard has become a form of collective atrocity against SC and ST apart from being an insult to the nation and thereafter this should be suitably incorporated in the POA Act.
- (m) Various and elaborate guidelines regarding precautionary and punitive rehabilitation measures to deal effectively with atrocities contained in the rules under the Act and DO letter of Home Minister, dated 10.3.1980 sent to all Chief Ministers should be reiterated and enforced.
- (n) This is one of the few Acts which contains a rare provision placing mandatorily on the State Government the responsibility to take such measures as may be necessary for the effective implementation of the Act and spelling out illustratively some of the possible measures and similarly placing a responsibility on the Central Government to coordinate the measures taken by the State Governments. The implementation of this Act and the rules and the various

guidelines and effective curbing of atrocities should be one of the specific items to be taken into account in the context of grant or denial of Social Justice Clearance at the time of promotion of officers.

(o) In view of the fact that in some parts of the country particularly in the south converts to Christianity from specific SCs are subjected to crimes and atrocities as their exact Hindu counterparts are (difference of religion making no difference in this regard) and the fact that trials in such cases get bogged down on the issue whether this is an atrocity since they are not SC on account of conversion. Clause (c) of section 2 of the Act should be amended by adding the following words at the end of it "and converts to Christianity from Scheduled Castes". An explanatory note may be added that this is only for the purpose of this Act and not for any other purpose since the question whether SC converts to Christianity should be included in Scheduled Castes or not by amending the proviso in Presidential Orders is a different issue to be dealt with separately by the appropriate Ministry,

(p) In view of the fact that the main perpetrators of the crime sometimes co-opt a few SCs with them and take advantage of local differences among the SCs and sometimes they promote and engineer crimes but get them executed by some members of Scheduled Castes, the Act should be suitably amended to bring such crimes and atrocities within the purview of the definition of atrocities under the Act.

(q) In view of the fact that in some cases of atrocities while most of the victims are Scheduled Castes or Scheduled Tribes there may also a few non-Scheduled Castes/Scheduled Tribe people as for example in the Belchi case. The Act should be amended to bring such atrocities and crimes within its purview.

8.5 Regarding eradication of untouchability and effective implementation of the Protection of Civil Rights Act, 1955 (PCR Act), multi pronged measures covering human rights education, moral education and punitive action under the Act should be taken, in view of the widespread prevalence of untouchability.

8.6 As part of this, human rights education, specifically focussing on the evil practice of untouchability, the cruelty inherent in it, irrational concepts on which this is based, the mind set, the harm it does not only to the victims but also to the society as a whole and the nation itself, is one of the measures which will be helpful. The curriculum for this must be prepared very carefully and imaginatively associating educated members, scholars, social workers from the SCs and those who have been fighting against untouchability. A powerful democratic movement covering all levels including villages is also necessary. This should be organized by a combination of political parties, NGOs and members of the public service and also enlightened members of the general civil society. This movement should on the one hand stand shoulder to shoulder with SCs in their assertion of their civil rights and on the other hand educating the non-Scheduled Caste non-Scheduled Tribe public and persuade them to cooperate. This movement will be more successful if the Chief Ministers and leaders of ruling parties at the Centre and States take the initiative as has been undertaken by the Chief Minister of Andhra Pradesh since November 2000 on the basis of the recommendations of Justice Punnayya Commission.

8.7 In view of reprisals such as social and economic boycott that follow this movement even started by Chief Ministers as experienced in Andhra Pradesh, the State should immediately intervene with adequate rural employment programme which will gainfully employ all the families of the victims and communities of that village. Land reforms and land distribution in that village in favour of the victims and families should be undertaken, full financial and other support provide and such measures taken to make them self-reliant. The State should also suspend arms license and confiscate arms available with any individual.

8.8 On the punitive side, the following steps should be taken:-

(i) The Protection of Civil Rights Act, 1955 (PCR Act) should be implemented sincerely, seriously and honestly.

- (ii) Inter-alia a Special Mobile Court should be established in each district exclusively for trying cases under the PCR Act on the spot. The optional provision at clause (iii) of sub-section (2) of section 15(A) of the PCR Act should be made mandatory by an amendment of the Act, but this provision can and should be implemented without waiting for the amendment.
Where there is no practice of "untouchability" at all in any district, the government may, with the concurrence of the National Commission for SC & ST, either exempt such district or districts from this provision or combine such district(s) with other neighboring district(s) for the purpose of establishing special mobile courts under this Act.
- (iii) It should be made the personal responsibility of every District Collector and Superintendent of Police, to ensure that all measures as may be necessary for ensuring that the rights arising from the abolition of "untouchability", are made available to, and are availed of by, the persons subjected to any disability arising out of "untouchability", as the State Government is mandated to do by Section 15(A) of the PCR Act. The measures taken by them should be one of the specific criteria; of Social Justice Clearance for every officer to become eligible for future promotions.
- (iv) Provision of a separate cell in every police station for investigation and prosecution under the Act will also be a measure to effectively combat untouchability. Only places where untouchability does not exist identified in consultation with the National/State Commission for Scheduled Castes and Scheduled Tribes should be exempted from this requirement.
- (v) In areas of occurrence of untouchability and the sites of their occurrence like temples, wells, ponds and such places where untouchability is practiced with open brazenness mobile teams of police and welfare department should go to those places and sites and eliminate the discriminatory practice first by persuasion and if that fails by resorting to punitive action.
- (vi) Since such places and sites are well known and untouchability is practiced with open brazenness, if no prompt action is taken by police and other officers, they should be punished as abettors.

Adequacy of representation in Public Services

8.9 Adequate representation of the Scheduled Castes and the Scheduled Tribes at all levels in public services is the mandate of Article 335. There is a widespread dissatisfaction amongst the Scheduled Castes and the Scheduled Tribes over the changes brought since 1996 in Government orders providing reservation in public services in purported implementation of the directives of the courts and a feeling persists amongst them that amendments are detrimental to the Constitutional objective of achieving adequate representation for them in services. Adequacy of representation has not been achieved in Government services even after 50 years at any level for the Scheduled Tribes and save at lower levels of Group C and D posts for the Scheduled Castes (See Table 9.2 in Chapter 9). In order that the serious apprehensions of the Scheduled Castes and the Scheduled Tribes of denudation of the constitutional rights to reservation in educational institutions and civil posts under the State are allayed, it has been suggested that the position of reservation as it existed prior to 1996 be restored.

8.10 Accordingly, the following suggestions are made:

- (i) In view of the fact that an Act passed by the legislature has got greater power than executive instructions and ensures greater transparency and makes it less easy to spring upon the people executive orders like the one which tampered with the pre-1966 roster, downgrading the roster position of SCs and STs from 1 and 3 to 7 and 13, under the pretext of implementing the Supreme Court's judgement in the Sabharwal case, reservations should be immediately brought under the purview of a statute to be named as Scheduled Castes and Scheduled Tribes (Reservation of Appointments or Posts and of Seats in Educational Institutions) Acts. The Bills ascending in the Parliament as Private Member Bills at the instance of individual member of political parties be adopted as official Bills and steps taken to have these passed by both Houses of the Parliament.
- (ii) This Act should provide for all aspects of reservations pertaining to the Scheduled Castes and Scheduled Tribes. The constitutional amendments in articles 16 and 15 be suitably

- brought about. The pending Bill introduced in the Parliament be adopted as official Bill. The constitutional Amendments and the two Acts be brought in 9th Schedule.
- (iii) Inter-alia it should provide for the establishment of Aarakashan Naya Adalats (ANA) or Tribunals for Justice in Reservation (TJR) with its main bench at Delhi and other benches in every place where Central Administrative Tribunal has got benches. These Tribunals should have the status of High Courts and appeals therefrom should lie only to the Supreme Court.
 - (iv) The Chairperson, Vice Chairperson and other members of this Adalat and its benches should be appointed from panels of names of persons who, while possessing the requisite formal qualifications for High Court level Tribunal as in the case of CAT shall in addition necessarily have the qualification of having implemented reservation fully and sincerely in their respective areas of earlier activity.
 - (v) These Tribunals should have jurisdiction in respect not only of reservation in appointments and posts in the Government but also the public sector, banks and other financial institutions, universities and all other institutions and organizations to which reservation is applicable and is made applicable from time to time.
 - (vi) Since there are unfortunately persons and authorities who allow their biases based on their own caste origins to subvert the correct implementation of the constitutional provisions regarding reservations, the Act should contain a penal provision including imprisonment for those convicted of willfully or negligently failing to implement reservation in full.
 - (vii) The Central Government and State Governments should forthwith issue orders restoring the pre-1996 roster so as to undo the harm done to SCs and STs under the pretext of implementing the Sabharwal judgement; this does not require a constitutional amendment, but in order to prevent scope for any such tampering with the roster in future, this should be brought within the purview of the Reservation in Services Act mentioned above.
 - (viii) While appreciating the enactment of three Constitution Amendment Acts, in order to undo the harm done to the long pre-existing rights of SCs and STs in reservation, these should be put into effect quickly so that on the one hand the negative consequences of the last five years can be rectified in practice and the benefits of these amendments may begin to flow again the full measure to the SCs and STs.
 - (ix) The Central Government and State Governments should also forthwith amend the executive order issued in terms of the newly introduced Clause (4A) of article 16 and remove the limitation of reservation promotion only upto the first level of Group/Class I and allow reservation in promotion to any and every level in accordance with the letter and spirit of Clause (4A).
 - (x) Categories of services excluded from reservation should be reviewed since educated and qualified candidates of SCs and STs have since become available through the process of education and if still the review shows any few categories for which qualified candidates are not available special programmes should be launched to build up qualified manpower of SCs and STs in the relevant disciplines.
 - (xi) Since it is important from the point of view of social and national integration that the delay in the recommendations of and provision of reservation for BCs should not be compounded by truncation or delay, reservation for backward classes also should be brought under a statute to be named as Backward Classes (Reservation of Appointments and Posts and of Seats of Educational Institutions) Act which, while containing the specificities of reservation for backward classes should also contain provisions for Aarakashan Nyay Adalats or Tribunals for providing Justice in Reservation, penal provisions, etc. as in the case of the statute in respect of SCs and STs.
 - (xii) For the same reason it has to be ensured that on no account should any shortfall in the quantum of reservation for BCs be allowed to occur in any year in any institution at any level, so that unmanageable backlog does not grow in the case of BCs as was allowed to grow in the case of SCs and STs through half-hearted implementation in the past.
 - (xiii) In order to remove the anomaly of absence of reservation in seats in educational institutions for BC while providing them reservation in jobs, reservation in seats should be immediately introduced for BCs.
 - (xiv) In view of the wide range of variations in the level of backward classes among different castes and communities included in the list of backward classes, the Government should in

- the light of the Supreme Court judgement in the Mandal case and also done by many State Governments with experience in the backward classes' reservation since long like Karnataka, Andhra Pradesh, Kerala and Tamil Nadu, categorise the backward classes on a rational basis into backward classes/more backward classes/most backward classes/extremely backward classes and apportion the total reservation for BCs among different categories keeping in view the population proportion and weightage for relatively greater degrees of backwardness but also providing that in case of non-availability of adequate number of candidates in any year in any lower category of backward classes the resultant vacancies shall be made available to candidates of the next higher category of backward classes so that no scope is given for transfer of any post reserved for backward classes to the open category and so that there will be no suspicion that non-availability of candidates is being engineered in order to secure transfer of backward classes reserved posts to the open category.
- (xv) It is extremely important that categorization as above should be done only through a high power authority of unbiased experts purely on the objective data of indicators of relative backwardness so that there is no scope for suspicion of this mechanism of social engineering being misused for other purposes or with ulterior motives.
 - (xvi) In the course of the on-going process of privatization of public sector undertakings and other such bodies, in order to avoid any adverse effect on the existing reservation for the SCs, STs and BCs in these public sector undertakings and other bodies, the provision of reservation for SCs, STs and BCs. should continue to be mandatorily applicable even after privatization or disinvestment and it should be mandatorily stipulated in every Memorandum of Understanding on privatization or disinvestments that the policy of reservation in favour of SCs, STs and BCs shall be continued in that public sector undertaking and other body in the same form as it exists in the Government with such amendments as may be made from time to time.
 - (xvii) This provision of mandatory continuance of the policy of reservation through MOU should be incorporated in the two Reservation Acts mentioned above. A supplementary MOU in this regard should be executed in respect of PSUs or other public sector bodies already privatized or disinvested/private sectors receiving financial/state assistance by way of loans, etc.

Representation in Higher Judiciary

8.11 In higher judiciary, the representation of judges from Scheduled Castes, Scheduled Tribes and other backward classes is inadequate. Out of 610 judges in the High Courts, there are hardly about 20 judges belonging to the Scheduled Castes and the Scheduled Tribes. In S.P. Gupta's¹ case and Supreme Court Advocates on Record² case, popularly known as the First Judges' Case and Second Judges' Case respectively, the Supreme Court upheld the constitutionality of the circular letter addressed by the Union Law Minister requesting the State Governments and the High Courts to recommend the names of competent candidates belonging to the Scheduled Castes, the Scheduled Tribes, women and Other Backward Classes.

8.12 In view of the above and also taking into account the weighty opinion against the formal introduction of reservation in the higher judiciary, it is found that over fifty years, the progress of education, however tardy, has certainly produced adequate number of persons of the SC, ST and BC in every State who possess the required qualifications, having necessary integrity, character and acumen required for Judges of Supreme Court and High Courts for appoint as Judge of the superior judiciary. A way could and should, therefore, be found to bring a reasonable number of SCs, STs and BCs on to the Benches of the Supreme Court and High Courts in the same way in which, in practice, it is found is followed in respect of advocates from different social segments/regions of the country/States or different religious communities so that on the one hand the overwhelming opinion against formal reservation in the Supreme Court and High Courts is respected and on the other hand, the feeling of alienation of the vast majority of Indians comprising SCs, STs and BCs that, in spite of having persons of requisite calibre and character among them, they are being ignored in the selection of appointment of Judges, is resolved.

Allocation and Management of funds – Revitalization of Special Component Plan for the Scheduled Castes and Tribal Sub-plans

9.1 The Schemes for socio-economic empowerment of Scheduled Castes, Scheduled Tribes and other Weaker Sections of the Society mandated by article 46 and other provisions of the Constitution are presently being implemented by different Departments of the Government. For comprehensive development and empowerment of Scheduled Castes and Scheduled Tribes, it has been a policy for last twenty five years or so that a proportion of total plan outlay equivalent to the population proportion of the Scheduled Castes and Scheduled Tribes respectively are constituted as a special component plan for Scheduled Castes (SCP) and Tribal Sub-Plans for Scheduled Tribes (TSP) so that adequate financial outlay for their development are made available. There is, however, no specific constitutional or statutory provision for separate allocation of funds for socio-economic empowerment of the Scheduled Castes, Scheduled Tribes and other Weaker Sections of the Society. This laudable policy, however, has only partially succeeded in achieving its objectives as in practice full budgetary allocations as required to be made under the policy are hardly made. The share of budgetary allocations for the welfare of the Scheduled Castes and Scheduled Tribes has declined in recent years. Due to lack of coordination amongst various Departments, even budgetary allocations lapse for want of finalization of schemes. Centralisation of schemes under one Body/ Department has been suggested as a remedy. It has also been suggested that funds allocated for the welfare of the Scheduled Castes and the Scheduled Tribes be transferred to this Body. This Body/ Department is to be made responsible for formulation, implementation and accountability of the benefits to the targeted Groups.

9.2 In view of the above and the supreme importance of ensuring that the developmental plans for the country and Special Component Plan for Scheduled Castes (SCP) and sub-Plans for Scheduled Tribes (TsP) are made powerful instruments of social transformation based on the vision of economic liberation, educational equality and social dignity of the Scheduled Castes and Scheduled Tribes to effectuate the existing national policy consensus, and taking into account the failure to follow or adequately ensure this quantum of flow in requisite quality, it is suggested as follows:

- (1) There should be a National Development Council for SC and ST consisting of the Prime Minister as its Chairperson, the Deputy Chairperson of the National Scheduled Castes and Scheduled Tribes Development Authority (referred to lower down), Minister(s) in charge of Scheduled Castes and Scheduled Tribes Development and Welfare, Chairperson and Dy. Chairperson of the National Commission for SC and ST, Finance Minister, Ministers of other development sectors, Chief Ministers, Experts and Scholars, which shall perform the same role in respect of Special Component Plans for Scheduled Castes and Tribal sub-Plans for Scheduled Tribes as has been done hitherto by the National Development Council with regard to general plans of development;
- (2) There should be a National SC and ST Development Authority having a wing each to respectively concentrate from SCs and STs constituted with members and experts drawn on SCs, STs and others with empathy for SCs and STs, with faith in social justice and experience in the development and empowerment of SCs and STs, representatives of authentic SC and ST voluntary organisation/associations. This authority should be responsible for formulating and approving National and State Plans – Annual, Quinquennial and perspective- based on the developmental needs of SCs and STs and their priorities keeping in view the overall dimension of socio-educational liberation and socio-economic equality.
- (3) There should be similarly constituted State Scheduled Castes and Scheduled Tribes Development Authorities.
- (4) The population equivalent proportion of the total plan provision of the Centre and each State/UT should be set apart as the Special Component Plan for SCs and STs and placed at the disposal of the National SC and ST Development Authority and State SC and ST Development Authorities. These authorities will then make schemewise, programmewise and sector-wise allocations of outlay based on the developmental needs and priorities of the Scheduled Castes and Scheduled Tribes, sanction appropriate funds to the concerned Ministries/Departments/other organisation and thereafter supervise, monitor and direct the implementation of the developmental plans so as to ensure the achievement of the purpose

of the socio-economic liberation of SCs and STs and their socio-educational equality in relation to rest of the society.

- (5) There should also be constituted District SCs and STs Development Authorities in each District, consisting of SC and ST Chairpersons and Members of District and Intermediary level Panchayat bodies, SC and ST Chairpersons and Municipal councillors in the District, SC and ST MLAs and MPs, District Collectors, Heads of Departments relevant to SCs and STs, experts, representatives of NGOs who have been working sincerely for SCs and STs. These District Authorities should, on the one hand, provide the inputs to the National and State SCs and STs Development Authorities for planning and monitoring purpose and on the other hand be the main implementation authority of the SCPs and TsPs in the District so as to ensure their objective.
- (6) The Prime Minister should be the Chairperson of the National SC and ST Development Authority. Its Deputy Chairperson should be full-time and have the rank of a Union Cabinet Minister and invariably attend the Cabinet meetings. Similarly the State/UT Chief Minister should be Chairperson of the State SCs and STs Development Authority and its Deputy Chairperson should be full time and have the rank of a State Cabinet Minister and invariably attend the State Cabinet meetings.
- (7) The NDC for the SC and ST and these Authorities should be given constitutional status by making suitable provision in the Constitution.
- (8) While releasing funds to village panchayats/local self-government at different levels, Special Component Plan and Tribal sub-Plan should be earmarked in them to be exclusively used for infrastructural work of the SCs and STs so as to build up the economic and social infrastructural assets of the SCs and STs.
- (9) This structure, while ensuring that plans are formulated as mentioned above, will ensure that for obvious economic and social reasons the following schemes and programme of actions are undertaken on a massive scale.
 - (a) A Comprehensive National Programme of Minor Irrigation i.e. irrigation of all irrigable but unirrigated lands, owned and held by SCs and STs through wells, community wells, bore-wells, tubewells and community tubewells, Bandheras, check dams, lifts and other such minor irrigation sources (which will at one stroke liberate a substantial proportion of SC and ST families from the compulsion of agricultural wage – labour, bonded labour and child labour and migrant labour);
 - (b) Endowing every landless rural family of SCs and STs with at least a minimum extent of land through proper implementation of land ceiling and redistribution legislations; full and sincere implementation of un-implemented Supreme Court judgement which will neutralise the illegal reduction of ceiling-surplus lands, distribution of assessed and un-assessed waste lands/gair mazaruam lands not required for any legitimate public purpose/use and ensuring actual occupation and peaceful and undisturbed possession of land allotted to SCs and STs by the allottees; allotment of Bhoodan lands; long term lease of temples and other such institutions on the basis of the average rentals of past few years; with full financial provisions and facilities for development of such lands through irrigation under the National Programme of Minor Irrigation mentioned at (a) above;
 - (c) Implementation of Minimum wages Act for wage labourers by identifying the largest employing land owners and ensuring compliance with the Act by them;
 - (d) Proper implementation of the policy of harmonious protection of Scheduled Tribes and forests;
 - (e) Total liberation and full rehabilitation of bonded labourers and elimination of child labour practice;
 - (f) Total liberation and full rehabilitation of Safai Karamcharis (“Scavengers”);
 - (g) Training and education to enable the SCs and STs to secure reasonable presence in every sector of employment;
 - (h) Strengthening SCs and STs in self-employment through training, education and provision of financial and other facilities;

- (i) Preservation and restoration of land ownership and possession of STs in Tribal areas; and
 - (j) Food for education on national scale.
- (10) The tendency to equate the development of SCs and STs with loans and loans alone which, however, are not available or are available in a niggardly measure from banks and financial institutions should be brought to an end. Instead, inputs of a collective nature which provide infrastructure to a number of individual, though on a micro scale, should be on a grant basis, e.g., community tubewells and borewells, common workplace, common facility centres, and so on, on the analogy that the cost of roads, railways, power generation and transmission, major irrigation dams and other macro infrastructural requirements are met not by loans to individual industrialists or large agriculturists but from the public budget. Only that part of the inputs which are to be utilised by a individual like a handloom or the cost of field channels should be met through loans. At the same time, the aversion of banks and financial institutions to SC and ST applicants for loans should be effectively overcome by making performance in this regard a specific qualifying criterion for evaluation of individual bank officers for grant or rejection of Social Justice Clearance for promotions.
- (11) Representatives of authentic SC and ST organisations should be given representation on the boards of banks, financial institutions at the national and State levels and also in other important decision making bodies in all sectors. Representation should also be provided in them for non-SC and non-ST experts who have personal experience of developmental work for SCs and STs.
- (12) It is desirable to impress upon the Government and all authorities that the desparate situation of the SCs and STs, on account of which there is deep resentment among them, can be remedied only by the above structure and approach to development.
- (13) In addition, the Ministry Incharge of SCs and STs (at present named as Ministry of Social Justice and Empowerment and Ministry of Tribal Welfare) should continue to perform the nodal role in relation to the various Ministries and State Governments which has already been entrusted to it long back. This role should be exercised effectively. The new framework of National and State SC and ST Development Authorities, etc. mentioned above, will strengthen the Ministry's nodal role and the two will be mutually complimentary.

10.1 On account of unfortunate delay in recognising social and educational backward classes category other than SC and ST needing the focussed developmental attention, which was done only in 1990, could be put into effect only after the Supreme Court Mondal judgement in 1990 November. On account of this, there has been a serious lacuna in respect of planned development of backward classes and there is no national policy consensus as in the case of SCs and STs. The Working Group on the empowerment of backward classes in the Tenth Plan has given a clear and comprehensive approach to the development of backward classes. The best that can be said is that the Government should immediately implement everyone of the recommendations of the Working Group.

10.2 The backward class include the bulk of the religious minorities of the Muslims, who are 80% of the religious minorities, Muslims are the largest religious minorities constituting 80% of the population of religious minorities. Of the Muslims not less than 90% belong to specified and identifiable castes/communities of backward classes so that the caste of the backward classes which continue extending across the major religious and the main minority religious group. Every backward caste has got its Hindu wing and Muslim wing.

10.3 The Muslim backward caste also include a number of castes which would have been in the Scheduled Castes list if they had been Hindu Sikh or Buddhisht. In view of this, the Commission recommends that special care should be taken that these Muslim backward communities are taken along with their Hindu counterparts in the entire developmental effort for the backward classes. This will, on the one hand, help a substantial section of the religious minorities and also help national integrity. Similarly the bulk of the Christian minority which is second largest includes castes which are classified as backward among Hindus as well as Scheduled Caste converts. Almost the entire buddhisht population in

India is of the Scheduled Castes and a small number of the Scheduled Tribes. Amongst the Sikhs also, there are scheduled castes of backward classes. The best approach in respect of the religious minorities would be to ensure that these backward classes among the religious minorities are fully taken along with their Hindu backward classes brethren in the entire gamut of development by means illustrated by the Commission's specific recommendations regarding the allocation of some of the residential talents schools, earmarked for backward classes, to be allocated in areas of concentration of Muslim backward classes.

10.4 While developmental priority and focus is a right of the backward classes of SCs and STs among the religious minorities, they as well as the non-SC, non-ST category of the religious minorities are entitled to the right to freedom of religious, cultural and educational rights enshrined in Article 25 to 30 of the Constitution and this should be fully protected. In addition, religious minorities are entitled to protection of their lives and properties. It is desirable to impress upon the Government and the people in general that the vitiated communal situation of the country will be totally altered if religious minorities population belonging to BC, SC and ST are fully taken along with other BC, SC and ST in the economic, educational and other developmental approach.

Social Responsibilities of the Private Sector

11.1 In the changed economic scenario, private sector is likely to grow rapidly. The Private Sector Enterprises, by and large, draw substantial support from Government bodies and Banks which handle public-funds. Large investments in their enterprises come from the public funds. Private sector has, therefore, social responsibilities to perform. It needs actively to help in the improvement of socio-economic conditions of the people especially those belonging to the weaker sections of the society so as to build a conflict free and caring society without which no enterprise either public or private can hope to flourish. At present, Scheduled Castes and Scheduled Tribes employees in the private sector are believed to be numerically insignificant except at the shop-floor level. There is a increasing apprehension that the employment opportunities of the Scheduled Castes, Scheduled Tribes and the other weaker sections would shrink with the reduction in role of the Government.

11.2 Areas of social obligation of the private sector needs to be identified. Private Sector should contribute in the areas of advancement of education, health and in provision of employment opportunities of weaker sections of the people including the Scheduled Castes, the Scheduled Tribes and other backward classes. Policy frame work for active involvement and participation of private sector for socio-economic development of the people needs to be evolved after a meaningful, purposeful and result oriented debate with the leaders of the Indian Industry, Trade and Commerce.

11.3 In view of the above, it is suggested as follows :-

- (1) A special National Workshop should be convened with the Prime Minister presiding and Ministers in charge of economic Ministries and SCs, STs, BCs, Minorities and Women participating along with representatives of organisations of Industry, Trade & Commerce and organisations representing SC, ST, BC, Minorities (of BC) and Women to identify the areas of social obligation of the private sector, which will include all those mentioned above and in particular ways of removing the stonewall of traditional bias and deep scented hostile mindset against SCs, STs, BCs and Women, on account of which individuals of these categories possessing necessary qualifications and qualities find their entry into the supervisory, technological, managerial levels of the private sector tightly barred, especially in the case of the SCs, STs, "lower" BCs and Minorities and Women belonging to these categories.
- (2) The above Workshop should formulate a practical mechanism of collaboration in order to provide relevant training and orientation for qualified members of the above categories in keeping with the specific requirements of each Industry.

- (3) It should be made clear to the private sector that failure on its part to cooperate, under the pretext of efficiency, but really on account of traditional biases, will leave the Government with no alternative but to introduce reservation in the private sector.
- (4) At each stage of clearances of any type for any industry in the private sector there should be interaction involving the Ministry concerned and the Ministry/s in charge of SCs, STs, Minorities and Women to ensure the above type of arrangement.
- (5) A separate exercise should be undertaken with foreign investors who may not share traditional social biases, and they may be able to provide some useful models of enabling SCs, STs, BCs, Minorities and Women to enter in reasonable numbers into higher levels of the private sector without any dilution of standards of efficiency required and which SCs, STs, BCs, Women and Minorities are indeed capable of fulfilling.
- (6) If this experiment does not take off and produce satisfactory results in a reasonable period, say one year, there will be no alternative left but to introduce reservation in the private sector which in fact is one of the strong demands of associations and the representatives of the vast majority of people of India comprised in the above five categories.

Transfer Of Areas Under Fifth Schedule To The Sixth Schedule

12.1 The Fifth Schedule deals with the administration and control of Scheduled Areas and Scheduled Tribes while the Sixth Schedule relates to the Administration of the Tribal Areas in the North-Eastern States. The Sixth Schedule provides for the autonomous districts and autonomous regions and power of constitution of district and regional councils, their respective powers, etc. The Fifth Schedule read with Article 244 empowers the Governor of the State to regulate administration and control of Tribal Areas, Scheduled Areas and Scheduled Tribes with the power to modify, annul any law made by the Parliament or the State Legislature or limiting its application to a particular area.

12.2 During the working of the Constitution in 51 years, anomalies have occurred in the administration and control of the Scheduled Areas and Scheduled Tribes governed by Fifth Schedule. The Scheme under the Sixth Schedule on the other hand has worked reasonably well.

12.3 Some tribal areas in the country have neither come under the Fifth Schedule nor the Sixth Schedule. It has been suggested that the Scheme envisaged in the Sixth Schedule for the Administration of the Tribal Areas in the North-Eastern States be extended to the areas covered by the Fifth Schedule with necessary amendments thereto and these areas be brought under the Sixth Schedule. It has further been suggested that the tribal areas which are presently neither under the Fifth nor under the Sixth Schedule should also be brought under the Sixth Schedule directly.

12.4 In the light of the above facts, it is suggested as follows:-

- (1) All areas governed by the Fifth Schedule should be forthwith transferred to Sixth Schedule which is now applicable to only tribal areas in the North Eastern States.
- (2) All tribal areas which are neither in the Fifth Schedule nor in the Sixth Schedule should also be forthwith brought under Sixth Schedule.
- (3) In order to secure the full potential of the Sixth Schedule, namely, local developmental and administrative autonomy, which is designed to provide the STs satisfaction of participation in governance and to remove scope for any resultant discontent weakening the national fabric, special programmes of training and orientation for the elected representatives of Sixth Schedule bodies the tribal areas and related officials should be undertaken and conducted regularly.

Transfer Of Tribal Land

13.1 In certain States covered by the Fifth Schedule, such as, Andhra Pradesh, Bihar and Orissa, there are laws prohibiting the transfer of the lands owned or in the possession of the tribals to non-tribals. There have, however, been large-scale complaints, even in areas where such land transfer laws prevail, of transfer of tribal lands to non-tribals through various surreptitious means. Efforts made to reverse the process and restore land to tribal people as laid down in the laws have produced only limited results. Despite deficiencies in implementation, these laws have nonetheless provided protection to the tribals in these areas. In *Samatha's Case*, the Supreme Court while construing the word 'land' in Andhra Pradesh Scheduled Area Land Transfer Regulation Act held that the 'land' included both transfer *inter vivos* between a tribal to a non-tribal as well as transfer of Government land in tribal areas in favour of anybody other than tribals. Any transfer, by way of lease or licence, therefore cannot be made in favour of non-tribals. There is a move to amend the existing land transfer laws so as to enable the transfer of lands belonging to Scheduled Tribes or Government land situated in the Tribal Areas in favour of companies and multi-nationals for the purpose of securing more efficient agricultural practices or better exploitation of minerals and forest wealth.

13.2 Keeping in view the sad story of the deprivation of tribals of their lands, which has been going on since long but has got a spurt in recent decades after Independence, in blatant violation of laws, thereby not only causing misery to the tribals but also driving them into arms of those who advocate violent methods of remedy, it is suggested that the following measures need urgent implementation :-

- (1) No Government or authority should issue any executive order, as has happened in the past, which will in any way, dilute or delay the process and proceedings of implementation of laws prohibiting the passing of lands owned by or in the possession of tribals to non-tribals.
- (2) Special Tribunals of the status of High Courts with appeal only to Supreme Court should be established in order to quickly institute inquiries on applications or *suo moto* and restore to tribals lands which tribals have been deprived of in the past.
- (3) A presumption should be laid down that lands in tribal areas all in the possession of non-tribals shall be presumed to have belonged to tribals and to have been illegally / wrongfully transferred to non-tribals unless the non-tribals in possession are able to establish that they get the full extent of lands they possess legally and properly.
- (4) Government should not allow lands to be taken over by non-tribals and then come up with proposals to find alternative lands for the tribals by means, such as deforestation. Instead, they should take the hard decision of restoring the very land the tribals were deprived of.
- (5) No Government should entertain or sponsor proposals of regularising non-tribal occupation of tribal lands and propose rehabilitation of the dispossessed tribals outside the tribal areas. Instead they should take the hard decision of restoring the very lands the tribals were deprived of and rehabilitate the non-tribals, in illegal or wrongful occupation, outside the tribal areas. Criminal cases filed against tribals shall be withdrawn.
- (6) Wherever developmental work in industry, mining, hydel power generation, irrigation or township. etc. has to be undertaken, involving displacement of people in the tribal areas, there should be consultation with them to identify whether there is an alternative location or digment whereby tribal displacement could be avoided. If tribal displacement is unavoidable, there should, on the one hand, be a policy of total rehabilitation of the displaced as whole communities without scattering them widely, and providing them all the requirements for starting a new life successfully (including their declaration as STs if in the State of rehabilitation they are not STs) and, on the other hand, securing for them a due share of benefits from the project. Government has already got sufficient material for

evolving such a policy which will be acceptable to the STs but this should be given a final shape and put into practice. Those, who have been displaced in the past with only cash compensation and without the right type of safeguards and inuts, should now be properly rehabilitated and given a due share for the benefits of the projects on account of which they were displaced. This policy should protect the interests of non-land holding displaced groups both of STs and as well as others like agricultural labourers, artisans and traditional fisher-folk. Where dislocation is inevitable, the policy should spell out broadly the conditions in which decisions for or against locating a project can be made so that such dislocation is minimised and such projects are taken up only with the consent of the tribals likely to be displaced thereby and shall lay down rehabilitation measures whereby the STs get their due share of benefits from such projects and they do not suffer in the short or long term.

- (7) Displacement of tribal communities from their traditional common property survival resources, through creation of national parks, sanctuaries and bio-sphere reserves should be avoided by integrating the tribal communities and their traditions in the management of reserves and/or effecting their full and proper rehabilitation.
- (8) Resettlement plans and costs should be built into the project plans and costs to be fulfilled before / simultaneously with the project constructions.
- (9) The children of displaced tribals as well as others should be admitted in talent schools so that they are able to acquire education for diversification of their economy and to enter new occupational areas.
- (10) Instead of posing forests and tribals as antagonistic entities, joint management of forests by involvement of tribals and their representative organisations in a transparent manner along with the forest department should be undertaken to protect the forest on the one hand and allowing the tribals to continue to avail themselves of their traditional rights in the forest products.
- (11) Exploitation of forest coupes should be entrusted to continuing tribal co-operatives of which there are/were available models in the country, as part of a comprehensive mechanism to eliminate middlemen in all spheres of tribal life and economy. This comprehensive policy should undertake the establishment of different types of organisations of STs, like co-operatives or associations wholly owned and managed by tribals, to undertake or participate in different economic activities undertaken in their area. The tribals and their representatives should be trained and oriented to run these organisations successfully. Successful models of this also are available in the country.

Corporations and Co-operatives formed at the State and National levels to purchase MFP from ST collectors and dispose them in the market should be managed efficiently, involve STs in their management (with training for ST representatives), pay a fair price to the STs (on the basis of end-price in the market, minus, only essential costs like transport and reasonable storage) and should not be allowed to divert their activities to any field which is not directly concerned with STs and MFP or their agricultural or industrial products.

Protection Of Land Ownership/Land Tenures

14. The statistical data available indicate that the majority of the Scheduled Caste and the Scheduled Tribes continue to be agricultural labourers and marginal land-holders, despite various measures taken by the Government to improve their lot in the last fifty years. Under various land reforms schemes land has been made available to landless labourers. These schemes, however, have not altered the lot of landless labourers particularly of those belonging to the Scheduled Caste and the Scheduled Tribes. A number of land reform cases are held up in judicial process and in certain cases judgements are said to have run contrary to the legislative intent. Cultivable Government land and Bhoodan land is still available

in some States for distribution to beneficiaries. In many cases, the Scheduled Castes and Scheduled Tribes to whom lands have been allocated/granted have been forcibly evicted and persecuted. True implementation of land reforms legislation and proper allotment/distribution of land under these schemes could have substantially improved the lot of landless labourers and it still has the potential to do so.

- (i) A list of all the available Government land not required for genuine public purpose, Bhoodan lands and ceiling surplus lands should be published at the village level, tehsil/taluka/mandal level and district level and a joint programme involving the administration and the SC, ST BC and other landless poor should be undertaken to go to each field identify the occupant in public, evict the occupant if ineligible, allot the land to the occupant if eligible and allot unoccupied lands to eligible landless poor people particularly SC and ST in consultation with the landless poor people of the village. There are models of such successful involvement of people especially SC and ST in the country for correct identification of lands and occupants and correct recording/distribution as for example the Nijai Bol movement in the Basti district of U.P. in the mid-fifties and the Barga Movement more recently in West Bengal and also in some settlement operations in Andhra Pradesh in the Fifties and early Sixties. This mass programme involving potential eligible persons in groups and the administrative machinery should be undertaken from village to village clearing all work in each village taken up. Performance in this regard should be a specific item for evaluation of officers for grant or denial of Social Justice Clearance for promotion.
- (ii) By involving the SC and ST, lands allotted to them but occupied by others should be identified by mobile teams, transparently in public and the wrongful occupants should be promptly tried and punished under the POA Act under an existing provision in that Act. The enforcement of the Act should start with the biggest land owners and the most powerful individuals in each village who are in occupation of land allotted to SCs and STs., in order to have a demonstration effect about the seriousness of the Government and deterrent effect on the offenders.
- (iii) Occupation of Government land or Panchayat land or Bhoodan land or ceiling surplus land which are allottable to the SC and ST and other landless poor should be included in the POA Act as an atrocity and those in occupation of such land should be dealt with in the same manner as above.
- (iv) Offenders of the above type should be made ineligible to stand for any election at any level for six years after conviction by suitably amending the Representation of People Act and they should also be disqualified to continue to hold any office to which they have already been elected.
- (v) The High Court and the Supreme Court should be moved by the respective Governments to set up a separate bench to deal with all matters pertaining to land reform cases along with other matters pertaining to SCs and STs and BCs like reservation in order that they may be disposed of quickly and implementation of land reforms and other benefits may not be delayed by powerful vested interests through the mechanism of institution and prolongation of legal proceedings.
- (vi) Bhoomi Sudhar Adalats (Land Reforms Justice Tribunals) should be set up.

Strengthening of constitutional provisions

15. The following measures are suggested:-

- (i) In Article 46, the following should be added at the end of it:

“and it shall be the right of the weaker sections of the people and, in particular, of the SC and ST that the State and all institutions of or created by or promoted by or assisted by the State shall at all times function fully and totally in accordance with this right, shall take every measure required to fulfil this right and shall not take any measure the effect of which will be contrary to it.”

- (ii) In order to remove any scope for misunderstanding, to prevent abuse and to allay the apprehensions of members of Scheduled Castes and Scheduled Tribes to the effect that this

clause is used to defeat their rights, the clause “consistently with the maintenance of efficiency of administration”, be deleted from article 335.

- (iii) The existing Clause 4 of article 16, to be renumbered as Clause 5 which is at present worded permissibly should be made mandatory thus making the renumbered article 16(5) the source of reservation for backward classes who may be termed as Socially and Educationally Backward classes in line with article 15(4) and article 340(1).
- (iv) The existing clauses (4A) and (4B) under article 16 should be consequently renumbered as clauses (5A) and (5B).
- (v) Clause (4) of article 15 should be made mandatory.
- (vi) The following entries should be included in List III of the Constitution.
 - (a) Development, welfare and protection of the Scheduled Castes and the Scheduled Tribes.
 - (b) Development, welfare and protection of the Backward Classes.
 - (c) Development, welfare and protection of women.

Empowerment of Women

16.1 The representation of women at all levels of Government is 7.1% of Government service. The representation of women in the Indian Administrative Service is about 10%. Out of the 500 and odd Judges of the superior courts, there are only 15 women Judges. The number of women Members of Lok Sabha is 49. The full potential of women therefore remains grossly underutilized even after more than 50 years of the working of the Constitution

16.2 The following suggestions are made:

- (i) Reservation for women should be provided in State Legislative Assemblies and Lok Sabha. The existing bill should be amended to provide for reservation for backward classes as permissibly provided in the case of Panchayats and Municipalities. However, in order to secure consensus, from the benefit of reservation for backward classes such communities of backward classes as are able to secure seats comparable with their population even now may be excluded by a suitable provision.
- (ii) A wide spread programme of Empowerment of Women economically and educationally should be undertaken and the Bill on Domestic Violence passed and implemented so that more and more women may be able to take advantage of reservation in elective bodies and also representation in various levels of Governance and administration and different professions.
- (iii) Malnutrition and maternal anaemia widespread among women from SCs, STs, BCs and other weaker sections of the people “Right to Health has been declared by the SC as a fundamental right. NHRC after conducting a workshop recommended to amend the Constitution declaring that Right to Health a fundamental right. Massive programme of actions undertaken by the Central and State Government health care and to prevent maternal anaemia and infant mortality.

Unorganized Labour

17.1 In India, out of 286 million working force in 1991, 259 millions were in unorganized sector. The largest numbers of unorganised labourers are in occupational sectors like agricultural labour, traditional and village industries, primary production in fisheries, etc. There are also sizable number of workers in bidi rolling, match stick making, etc. The unorganized labour continues to be exploited in diverse ways. Practice of employing contract labour even for works of continuing and long term nature which increasingly is being adopted both by Public and Private sector results in their exploitation and is a problem area. They need protection from exploitation. A mechanism under which such unorganized labour can be enabled to form cooperative societies/self-help groups may help in reducing their exploitation and in improving their economic conditions. For instance, rickshaw pullers vegetable

vendors, street-vendors, hawkers do not own their rickshaws or carts but take them on rent. The rent paid by them in a year often is sufficient to pay back the cost of rickshaws and interest thereon. A cooperative movement should enable easy loans from banks to be made available to them through cooperative institutions. The cooperative institution could themselves supply such rickshaws and carts on hire-purchase basis enabling them to be the owners, and thus ending their exploitation. Institutions of civil society too can play an important role in preventing exploitation of unorganized labour.

17.2 The following suggestions are made:

- (i) The task of enforcing payment of prescribed statutory wages to agricultural labourers and other categories of unorganized wage labour should be entrusted to the District Collectors and SPs. They should identify the largest wage employers in each district and ensure payment of the prescribed statutory wages by them in a transparent manner so as to secure demonstration effect and emulation effect. This should be a specific item for Social Justice Clearance for them for promotion.
- (ii) The Central Act for agricultural workers drafted in 1978-80 and the introduction of which has been continuously postponed in the name of an ever-elusive consensus should be introduced and passed immediately, as it is the evasion of such legislations that gives opportunity, scope and fillip to the advocates of violence.
- (iii) Khet Mazdoor Nyay Adalats (Agricultural Labour Justice Tribunals) should be established.

Statutory Protection To Farmers

18.1 Mahatma Gandhi, the Father of the Nation, said that India lives in villages. Agriculture is the main rural economy. The Freedom movement laid emphasis on empowerment of agriculturists and conferment of title to the tiller of the soil. The Constitution enjoins in Article 48 that the State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps to preserve and improve the breeds, etc. Despite the Green Revolution having been achieved over the years, the agricultural economy remains in precarious condition. The agriculturists, due to diverse reasons, like natural calamities, marketing exploitation of their produce, etc. are subjected to recurring losses. In *Dalmia Cement (Bharat) Ltd. Case¹*, (1996), the Supreme Court declared that agriculture is an industry, the livelihood and sustained economic development of agriculturists depends on the production and return from the agricultural produce. Socio-economic justice to the farmer was declared a Fundamental Right in the said judgment. Like an industrialist, the agriculturist should also be made entitled to all the benefits of Government policy on industry. Farmers also need to be protected from the adverse effects of the WTO and IPR regimes, while at the same time securing the benefits of these regimes for them.

18.2 In view of the above, the following suggestions are made:

- (i) The long pending demand of agriculturists that agriculture should be treated as an industry with the benefits of Government policy to industries should be conceded without further delay.
- (ii) The remedial steps require to protect agriculturists for incurring losses, to promote sustained growth of agriculture and to protect them and other traditionally producing classes from the adverse effects of the regimes of WTO, IPR, etc. while at the same time helping them to secure the benefits of those regimes should be specifically identified at a national convention involving Ministers in charge of Ministries connected with globalisation and Ministers in charge of Agriculture and other sectors of traditional produce and authentic representatives of the peasant organizations as well as representatives of other producing classes and a consensus arrived at to be implemented quickly. There should be a continuous mechanism involving all these to continuously monitor implementation and corrections and modifications required from time to time to secure the twin results mentioned above.

Bonded Labour and Child Labour

19.1 Despite prohibition of 'begar' and other forms of forced labour, the practice of bonded labour has not ended, Child labour too exist

19.2 The following suggestions are made:

- (i) A fully empowered National Authority for the Liberation and Rehabilitation of bonded labourers as recommended by the Commission for Rural Labour in 1990-91 should be set up immediately and similar authorities at State level.
- (ii) In order to offset the influence of powerful people who maintain bonded labourers and also dominate many fields of Governance, the sections of population from which bonded labourers are drawn namely SC (about 2/3rd), ST (about 1/5th) and BC (about 1/7th) should be mobilized through their representative organizations, SC, ST and BC wings of all political parties, SC, ST and BC holders of elective offices in panchayats and municipalities of all levels, NGOs and social activists who have been sincerely working for the bonded labourers along with the administration should be mobilized. Rehabilitation programme should simultaneously be implemented so as to avoid relapse.
- (iii) The mandatory provision in the Bonded Labour System (Abolition) Act which places the responsibility on the State as in the PCR Act and the POA Act should not be allowed any more to remain merely on paper.
- (iv) The monthly and other periodical meetings required by the Act to be held by the District Collectors, Chief Secretaries, etc., which is more honoured in the breach than in the observance should be held regularly by all those officers hereafter and this and other aspects of the liberation and rehabilitation of bonded labourers should be made a specific item for the evaluation of each of these officers for the grant or denial of Social Justice Clearance for promotion.
- (v) Bandhua Mazdoor, Bal Mazdoor evam Pravasi Mazdoor Nyay Adalats (Bonded Labour, Child Labour & Migrant Labour Justice Tribunals) should be established.
- (vi) Chairperson, Members of the National and State Authorities referred to above and other Authorities, Commissions and other bodies for SCs, STs, BCs, Minorities, Women, Safai Karmacharis and any other weaker section should be appointed not as at present but in keeping with the qualifications and qualities specified in the respective Acts or in the Constitution or in Rules thereunder and under a transparent procedure similar to that provided for the appointment of Chairperson and Members of the National Human Rights Commission, *mutatis mutandis*.

Immoral Trafficking in Women – Rescue & Rehabilitation

20.1 In Gaurav Jain's Case¹, the Supreme Court of India on 9th July, 1997 directed the Union of India to constitute a committee to make an 'in depth study' of the problems relating to prostitution, child prostitutes and children of prostitutes and to evolve suitable schemes for rescue and rehabilitation of the victims of prostitution. The court directed that the report should be circulated to all the State Governments eliciting their views thereon. Thereafter, the Prime Minister was to convene a conference of all the Ministers dealing with women and child, consider the recommendations and the responses, evolve policies and plans of action. A permanent committee of three Secretaries was directed to be constituted for implementation and continued monitoring of the implementation. Government of India in the Ministry of Human Resource Development (Department of Women and Child Development) had, accordingly, constituted a committee on Prostitution, Child Prostitutes and Children of Prostitutes on 21st August, 1997. The Committee in its Report¹ has *inter alia* recommended certain Plan of Action² to combat trafficking and commercial sexual exploitation of women and children. These include action points on (i) Prevention, (ii) Trafficking, (iii) Awareness Generation and social mobilization, (iv) Health Care Services, (v) Education and Child Care, (vi) Housing, Shelter and Civic Amenities, (vii) Economic Empowerment, (viii) Legal Reforms and Law Enforcement, (ix) Rescue and Rehabilitation, (x) Institutional Machinery and (xi) Methodology.

20.2 The Centre of Concern for Child Labour has identified certain child prostitution prone areas in India as is indicated in Appendix XIX.

20.3 The following suggestions are made:

- (i) The recommendations of the Secretary's Committee should straightaway be implemented without further loss of time.

- (ii) The process of complying with the Supreme Court's directions should be completed without further loss of time:
- (iii) Since the present recommendations deal with the symptoms, it is necessary to go to the root identifying the sources from which prostitutes and child prostitutes are recruited usually by force or by the operation of economic forces or traditional exploitative customs, like the Devadasi System (known by different names).
- (iv) Since the bulk of prostitutes and child prostitutes recruited in all the above ways are from the Scheduled Castes, Scheduled Tribes, Backward Class artisans who have lost their occupation on account of being suddenly exposed without any preparation of support to unfair and hopelessly unequal competition from technologically and financially superior categories, this root of the problem has to be tackled by empowering these communities and these categories by economic development, economic protection educational development and other measures recommended earlier, failing which the release of some prostitutes and child prostitutes will result in either relapse of the same persons or substitution by other individuals who share the same miserable social and economic plight.
- (v) Child prostitutes and children of prostitutes should be admitted to the residential schools mentioned earlier for SC, ST and BC in the 25% quota meant for others.

21. It is observed as follows:

- (i) There is absolutely no room for difference of opinion that the socio-economic change since independence is far below par, potential and need.
- (ii) The pace of change is not commensurate with financial outlays and expenses because on the one hand the schemes have not been drawn up in consultation with the people and in accordance with the full requirements of development in a comprehensive and integrated manner and the people are not associated with the implementation of the schemes.
- (iii) The pace of change is also not commensurate with the potential of the country.
- (iv) At the core of the failure is the refusal to see that the bulk of the people, not less than 75% belong to SCs, STs and BCs who also contribute almost all the physical labour in production and services and the fact that most of those occupying the commanding heights of the economy, of governance, of administration, and of all institutions have their origin in the remaining 25% of the society whose interests are either opposed to the interests of the full economic and educational development of the above bulk of the population or who are indifferent to and oblivious to their plight and their interests.
- (v) There has been similar neglect of the Minorities most of whom belong to SC or ST or BC and of women, belonging to SC, ST and BC and also other women.
- (vi) The various measures of Constitutional amendment and creation of institutions and systems recommended by this Commission are a beginning to reverse this trend, secure the economic liberation of the SC, ST and BC and other poor, and their educational development, and enable the nation to better achieve its potential. Delay or neglect in this regard will make a nearly unmanageable situation totally unmanageably and come in the way of the various projects of economic growth of the country being planned and desired.

¹ AIR 1982 SC 149

² AIR 1994 SC 268

* Samatha's Case, AIR 1997 SC 3297

¹ 1996 (10) SCC 104

¹ Gaurav Jain Vs Union of India , AIR 1997 SC 3021

¹ See the Report of the Committee on Prostitution, Child Prostitutes and Children of Prostitutes & Plan of Action published by Department of Women & Child Development, Ministry of Human Resource Development, Govt. of India, 1998.

² ibid