



## **National Commission to Review the Working of the Constitution**

**T**he National Commission to Review the Working of the Constitution (NCRWC) was set up by a resolution of the Government of India in 2000<sup>1</sup>. The 11-member Commission was headed by M.N. Venkatachaliah, the former Chief Justice of India<sup>2</sup>. It submitted its report in 2002<sup>3</sup>.

### **I. TERMS OF REFERENCE OF THE COMMISSION**

According to the terms of reference, the commission was required to examine, in the light of the experience of the past fifty years, as to how far the existing provisions of the Constitution are capable of responding to the needs of efficient, smooth and effective system of governance and socio-economic development of modern India and to recommend changes, if any. The terms of reference clearly specified that the commission should recommend changes that are required to be made in the Constitution within the framework of parliamentary democracy and without interfering with the ‘basic structure’ or ‘basic features’ of the Constitution.

The commission clarified that its task was to review the working of the Constitution and not to rewrite it and its function was only recommendatory and advisory in nature. It was left to the Parliament to accept or reject any of

the recommendations.

The commission had no agenda before it. On its own, it identified the eleven areas of study and proposed to examine them. They included the following<sup>4</sup>:

1. Strengthening of the institutions of parliamentary democracy (working of the Legislature, the Executive and the Judiciary; their accountability; problems of administrative, social and economic cost of political instability; exploring the possibilities of stability within the discipline of parliamentary democracy).
2. Electoral reforms; standards in political life.
3. Pace of socio-economic change and development under the Constitution (assurance of social and economic rights: how fair? how fast? how equal?).
4. Promoting literacy; generating employment; ensuring social security; alleviation of poverty.
5. Union-State relations.
6. Decentralization and devolution; empowerment and strengthening of Panchayati Raj Institutions.
7. Enlargement of Fundamental Rights.
8. Effectuation of Fundamental Duties.
9. Effectuation of Directive Principles and achievement of the Preambular objectives of the Constitution.
10. Legal control of fiscal and monetary policies; public audit mechanism.
11. Administrative system and standards in public life.

## **II. FIFTY YEARS OF WORKING OF THE CONSTITUTION**

The observations made by the Commission on the working of the Constitution from 1950 to 2000 are as follows<sup>5</sup>:

What are our achievements and failures over the 50 years since Independence? How have each of the three organs of the State—the Legislature, the Executive and the Judiciary—redeemed the constitutional pledge of ushering in a social revolution? Has the dream of the founding fathers for a life of dignity to the vast millions through the process of socio-economic transformation been realized ? What then is the Balance Sheet ?

## **1. Political Accomplishments**

1. India's democratic base has stabilized as a working federal polity. With the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional amendments, the base of democratic debate has widened. There is greater push towards non-centralisation. General Elections have been held with regularity; and transfers of power consequent upon the results of elections have been orderly, peaceful and democratic.
2. The educational qualifications of the Members of Parliament and State Legislatures have shown marked improvements. The Parliament and State Legislatures are increasingly more representative of the composition of society. More and more members of the hitherto backward classes are moving up in the political ladder.

## **2. Economic Infrastructure—Impressive Performance**

1. There has been marked expansion and diversification of production. New technologies and modern management techniques are increasingly employed. There are marked advances in Science, Technology, Medicine, Engineering and Information Technology.
2. Between 1950-2000, the index of agricultural production increased from 46.2 to 176.8.
3. Between 1960-2000, wheat production went up from 11 million tonnes to 75.6 million tonnes.
4. Between 1960-2000, rice production went up from 35 million tonnes to 89.5 million tonnes.
5. Impressive expansion of industrial and service sectors has taken place.
6. Index of industrial production went up from 7.9 in 1950-51 to 154.7 in 1999-2000.
7. Electricity generation has increased from 5.1 billion KWH in 1950-51 to 480.7 billion KWH in 1999-2000.
8. 6 to 8 per cent annual growth of GNP between 1994-2000 (except in 1997-98) was achieved.
9. Revenues from Information Technology industry have grown from \$ 150 million in 1990 to \$ 4 billion in 1999.
10. India's per capita Net National Product (NNP) in 1999-2000 was more

than 2.75 times than what it was in 1951.

### **3. Social Infrastructure—Achievements**

1. Between 1950 to 1998, infant mortality rate have halved to 72 births per 1000 births—down from 146.
2. Life expectancy at birth has grown up from 32 years in 1950-51 to 63 years in 2000.
3. A child born in Kerala today can expect to live longer than a child born in Washington.
4. Life expectancy of women in Kerala is now 75 years.
5. India has put in place an extensive system of Public Health Services and medical network. In 1951, the country had only 725 primary health centers. By 1995, this has increased to more than 1,50,000.
6. The number of primary schools has increased significantly between 1951 and 1995 from 2,10,000 to 5,90,000.
7. Nearly 95 per cent of the villages have a primary school within a walking distance of one kilometer.

### **4. Political Failures**

1. The main cause and source of political-decay is the ineptness of the electoral process which has not been able to keep out criminal, anti-social and undesirable elements from participating in and even dominating the political scene and polluting the electoral and parliamentary processes.
2. Though democratic traditions are stabilizing, however, democracy cannot be said to be an inclusive representative democracy. The pluralism and diversity of India is not reflected in and captured by its democratic institutions; likewise, participation of women in public affairs and decision-making processes is nowhere near proportionate to their numbers.
3. The enormity of the costs of elections and electoral corruption have been having a grievous deleterious effect on national progress and has led to the degradation of political processes to detriment of common good.
4. Political parties, which have a fair share of the criminal elements, handle enormous funds collected ostensibly for meeting party and electoral

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

5. There are no legal instrumentalities or set of law regulating the conduct of the political parties, legitimacy of fund-raising, audit and account requirements and inner-party democracy.
6. National political parties are more divided on the definition of 'common national purpose' than ever before; the noble purposes of public life have degenerated than ever before into opportunistic and self-seeking politics of competitive personal gain.
7. 'Fraternity', the noble ideal of brotherhood of man, enshrined in the Preamble of the Constitution has remained unrealized. The people of India are more divided amongst themselves than at the time of the country's independence.
8. There is increasing criminalization and exploitation of the political climate and processes and an increasing criminals-politicians-bureaucratic nexus.
9. There is crisis of confidence. There is crisis of leadership. Political leaders, owing to narrow partisan and sectarian interests and desire for short-time political gains, are unable even to agree upon broad common national purposes.

## **5. Economic Failures**

1. The richest top quintile of population has 85 per cent of the income. The poorest quintile has only 1.5 per cent of the country's income. The second, the third and the fourth quintile from top have respectively 8 per cent, 3.5 per cent and 2 per cent of the income.
2. 260 million people live below the poverty line.

## **6. Social Failures**

1. India's maternal mortality rate in 1998 was 407 per 100,000 live births. These levels are more than 100 times the levels found in the West.
2. Some 53 per cent children (almost 60 million) under five remain

malnourished—nearly twice the levels reported in many parts of sub-Saharan Africa.

3. The proportion of low birth weight babies born in India is 33 per cent. It is only 9 per cent in China and South Korea, 6 per cent in Thailand and 8 per cent in Indonesia.
4. India was a signatory to the Alma Ata Declaration in 1978 that assured ‘health for all’ by the year 2000. Only 42 per cent of the children between 12-23 months are fully immunized – 37 per cent in rural areas and 61 per cent in urban areas. The coverage is shockingly low in Bihar – 11 per cent and in Rajasthan – 17 per cent.
5. While per capita daily consumption of cereals has improved only marginally from 400 gms in 1950 to about 440 gms in 2000, the per capita pulses (protein intake) have over the 50 years decreased.
6. The promise of social revolution has remained unredeemed. There are 270 million Scheduled Castes and Scheduled Tribes and the measures for their welfare and uplift have not been implemented with sincerity.
7. There are 380 million children below the age of 14. Almost 100 million of them are Dalit children. No effective steps are taken to bring them to the level of the “core-mainstream”.
8. Population control measures in the northern States have not succeeded. Fertility rates in Uttar Pradesh indicate that the State is almost a century behind Kerala.

## **7. Administrative Failures**

1. Corruption, insensitivity and inefficiency of administration have resulted in extra-legal systems and parallel economies and even parallel governments. Bureaucratic corruption, which cause frustration in people in their daily lives, has pushed more and more people into extra-legal systems. The mal-administration has resulted in a lack of faith in and disenchantment with institutions of democracy.
2. There is an increasing non-accountability. Corruption has been pervasive. Public interest has suffered.
3. Constitutional protection for the Services under Article 311 has largely been exploited by dishonest officials to protect themselves from the consequences of their wrong-doings.

## **8. Gender Justice and Equality—Failures**

1. The regional disparities in life expectancy is indicated by the fact that a woman born in Kerala can expect to live 18 years longer than one born in Madhya Pradesh.
2. In most countries life expectancy among women exceeds that of men by about 5 years. In all but a few countries of the world, there are typically 1005 women for every 1000 men. Men outnumber women only in societies where women are specifically and systematically discriminated. In India, there are only 933 women for every 1000 men. This is the phenomenon about ‘missing’ women.
3. Overall representation of women in public services is just 4.9 per cent.
4. Political participation of women indicates that in 1952 there were only 22 women in Lok Sabha against 499 seats (4.41 per cent). In 1991, this increased to 49 seats as against 544 seats (9.02 per cent).
5. Between 1995-2000, out of 503 judges of the High Court, only 15 were women.

## **9. Judicial System—Failures**

1. Judicial system has not been able to meet even the modest expectations of the society. Its delays and costs are frustrating, its processes slow and uncertain.
  2. People are pushed to seek recourse to extra-legal methods for relief.
  3. Trial system both on the civil and criminal side has utterly broken down.
- On an overall assessment, there are more failures than success stories, making the inference inescapable that the fifty years of the working of the Constitution is substantially a saga of missed opportunities.

## **III. AREAS OF CONCERN: COMMISSION’S PERCEPTION**

The following are the important areas of concern according to the perception of the Commission<sup>6</sup> :

1. There is a fundamental breach of the constitutional faith on the part of Governments and their method of governance lies in the neglect of the people who are the ultimate source of all political authority. Public



servants and institutions are not alive to the basic imperative that they are servants of the people meant to serve them. The dignity of the individual enshrined in the Constitution has remained an unredeemed pledge. There is, thus, a loss of faith in the Governments and governance. Citizens see their Governments besieged by uncontrollable events and are losing faith in institutions. Society is unable to cope up with current events.

2. The foremost area of concern is the present nature of the Indian State and its inability to anticipate and provide for the great global forces of change ushered in by the pace of scientific and technological developments.
3. The next and equally important dimension is the increasing cost of government and fiscal deficits which are alarming. In 1947, there was a deficit of ₹2 crores in the revenue budget; in 1997–98, it became ₹88,937 crores; in 2001-02, it is about ₹1,16,000 crores (4.8 per cent of GDP). India is on its way to a debt-trap.
4. There is pervasive impurity of the political climate and of political activity. Criminalisation of politics, political-corruption and the politician-criminal-bureaucratic nexus have reached unprecedented levels needing strong systemic changes.
5. Issues of national integrity and security have not received adequate and thoughtful attention. Mechanisms for the assessment of early warning symptoms of social unrest are absent. Mechanisms for adequate and immediate state responses to emergencies and disaster management are wholly inadequate. Administration, as a system for anticipating coming events and planning responses in advance, has failed. It has become un-coordinated and directionless amalgam of different departments often with over-lapping and even mutually conflicting jurisdictions, powers and responsibilities which merely acts as a reaction to problems. There are no clear-cut standards or basis for fixing responsibilities.
6. Though India's overall record and experience as a working democracy (despite many centrifugal forces) are worthy to mention and though the bases of democratic debate have widened with the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional amendments, the working of the institutions of parliamentary democracy, however, have thrown-up serious fault-lines, which might, if unattended, prove destructive of the basic democratic values.



7. There is pervasive misuse of the electoral process and the electoral system is unable to prevent the entry of persons with criminal record into the portal of law-making institutions.
8. The Parliament and the State Legislatures, owing to the inherent weakness of the electoral system, have failed to acquire adequate representative character. The 13<sup>th</sup> Lok Sabha represents only 27.9 per cent of the total electorate and the Legislature of U.P. represents only 22.2 per cent of electorate respectively.
9. The increasing instability of the elected governments is attributable to opportunistic politics and unprincipled defections. The economic and administrative costs of political instability are unaffordably high and their impact on the polity is not clearly comprehended and realized. Though just four Prime Ministers ruled the country for 40 years out of the 54 years of independence and one political party alone was in power for 45 years, however, 1989 onwards the country saw five General Elections to the Lok Sabha. Costs of this political instability are simply colossal.
10. The state of the Indian economy is disturbing. The economy is gradually sinking into a debt-trap. Economic, fiscal and monetary policies, coupled with administrative inefficiency, corruption and wasteful expenditure are increasingly pushing the society into extra-legal systems, crime-syndicates, mob-rule and hoodlum out-fits. Black-money, parallel economy and even parallel governments are the overarching economic and social realities. Legitimate governments will, in due course, find it increasingly difficult to confront them. In course of time these illegal criminal out-fits will dictate terms to the legitimate governments.
11. Rural de-population, urbanization, urban-congestion and social unrest need immediate attention and solutions. Increasing unemployment will prove a serious threat to orderly government.
12. Future of society is increasingly knowledge-based and knowledge-driven. The quality of education and the higher research need urgent repair. The country is engaged in a unilateral and unthinking educational disarmament.
13. System of administration of justice in the country is another area of concern.
14. Criminal justice system is on the verge of collapse. The quality of

investigations and prosecutions requires a strong second look. Law's delay and costs of litigation have become proverbial. Victimology, victim-protection and protection of witnesses in sensitive criminal-trials need institutional arrangements. Recruitment, training, refresher and continuing legal education for lawyers, judges and judicial administrators need immediate attention. The increasing utilization of alternative dispute resolution mechanisms such as mediation, conciliation and arbitration as well as mechanisms of auxiliary adjudicative services need to be stressed.

15. Communal and other inter-group riots in a country like India with its religious, social and cultural diversity cannot be treated as merely law and order problem. They are manifestations of collective behavioural disorders. Legal and administrative measures are required to be taken to remove the insecurity felt by the minorities and for bringing them into the mainstream of the national fabric.
16. The state of social infrastructure is disturbing. There are 380 million children below the age of 14. The arrangements for their education, health and well-being are wholly inadequate both qualitatively and quantitatively. 96.4 per cent of the primary education budget goes for salaries alone.
17. Rates of infant mortality, blindness, maternal mortality, maternal-anemia, child malnutrition and child-immunization, despite significant progress achieved, yet remain at high and disconcerting levels.
18. Public health and hygiene have not received adequate attention. There is alarming increase of infectious diseases such as Tuberculosis, Malaria, Hepatitis, HIV etc.

#### **IV. RECOMMENDATIONS OF THE COMMISSION**

In all, the commission made 249 recommendations. Of them, 58 recommendations involve amendments to the Constitution, 86 involve legislative measures and the remaining 105 recommendations could be accomplished through executive action.

The various recommendations of the commission are mentioned below in an area-wise manner<sup>7</sup>:

## 1. On Fundamental Rights

1. The scope of prohibition against discrimination (under Articles 15 and 16) should be extended to include 'ethnic or social origin, political or other opinion, property or birth'.
2. The freedom of speech and expression (under Article 19) should be expanded to include explicitly 'the freedom of the press and other media, the freedom to hold opinions and to seek, receive and impart information and ideas'.
3. The following should be added as new Fundamental Rights:
  - (a) Right against torture, cruelty and inhuman treatment or punishment.
  - (b) Right to compensation if a person is illegally deprived of his right to life or liberty.
  - (c) Right to leave and to return to India.
  - (d) Right to privacy and family life.
  - (e) Right to rural wage employment for a minimum of 80 days in a year.
  - (f) Right to access to courts and tribunals and speedy justice.
  - (g) Right to equal justice and free legal aid<sup>8</sup>.
  - (h) Right to care and assistance and protection (in case of children).
  - (i) Right to safe drinking water, prevention of pollution, conservation of ecology and sustainable development.
4. The right to education (under Article 21-A) should be enlarged to read as: 'Every child shall have the right to free education until he completes the age of fourteen years; and in the case of girls and members of the SCs and STs until they complete the age of eighteen years'.
5. Two changes should be made with respect to preventive detention (under Article 22), namely, (i) the maximum period of preventive detention should be six months; and (ii) the advisory board should consist of a chairman and two other members and they should be serving judges of any high court.
6. Sikhism, Jainism and Buddhism should be treated as religions separate from Hinduism and the provisions grouping them together (under Article 25) should be deleted. At present, the word 'Hindu' is defined to include these religions also.
7. The protection from judicial review afforded by Article 31-B to the Acts and Regulations specified in the Ninth Schedule should be restricted to

only those which relate to (i) agrarian reforms, (ii) reservations, and (iii) the implementation of Directive Principles specified in clause (b) or (c) of Article 39.

8. No suspension of the enforcement of the Fundamental Rights under Articles 17, 23, 24, 25 and 32 in addition to those under Articles 20 and 21 during the operation of a national emergency (under Article 352).

## **2. On Right to Property**

Article 300-A should be recast as follows:

1. Deprivation or acquisition of property shall be by authority of law and only for a public purpose.
2. There shall be no arbitrary deprivation or acquisition of property.
3. No deprivation or acquisition of agricultural, forest and non-urban homestead land belonging to or customarily used by the SCs and STs shall take place except by authority of law which provides for suitable rehabilitation scheme before taking possession of such land. In brief, a right to 'suitable rehabilitation' for the SCs and STs if their land is to be acquired.

## **3. On Directive Principles**

1. The heading of Part-IV of the Constitution should be amended to read as 'Directive Principles of State Policy and Action'.
2. A new Directive Principle on control of population should be added.
3. An independent National Education Commission should be set-up every five years.
4. An Inter-Faith Commission should be established to promote inter-religious harmony and social solidarity.
5. There must be a body of high status to review the level of implementation of the Directive Principles.
6. A strategic Plan of Action should be initiated to create a large number of employment opportunities in five years.
7. Implementation of the recommendations contained in the Report of the National Statistical Commission (2001).

## **4. On Fundamental Duties**

1. Consideration should be given to the ways and means by which Fundamental Duties could be popularized and made effective.
2. The recommendations of the Justice Verma Committee on operationalisation of Fundamental Duties should be implemented at the earliest<sup>9</sup>.
3. The following new fundamental duties should be included in Article 51-A:
  - (a) Duty to vote at elections, actively participate in the democratic process of governance and to pay taxes.
  - (b) To foster a spirit of family values and responsible parenthood in the matter of education, physical and moral well-being of children.
  - (c) Duty of industrial organizations to provide education to children of their employees.

## **5. On Parliament and State Legislatures**

1. The privileges of legislators should be defined and delimited for the free and independent functioning of Parliament and state legislatures.
2. Article 105 may be amended to clarify that the immunity enjoyed by members under parliamentary privileges does not cover corrupt acts committed by them in connection with their duties in the House or otherwise. Further, no court would take cognizance of any offence arising out of a member's action in the House without prior sanction of the Speaker / Chairman. Article 194 may also be similarly amended in relation to the members of state legislatures.
3. The domiciliary requirement for eligibility to contest elections to Rajya Sabha from the concerned state should be maintained. This is essential to ensure the federal character of the Rajya Sabha.
4. The MP local area development scheme should be discontinued.
5. The Election Commission should be empowered to identify and declare the various offices under the central and state governments to be 'offices of profit' for the purposes of being chosen, and for being, a member of the appropriate legislature.
6. Immediate steps be taken to set up a Nodal Standing Committee on

National Economy.

7. A Standing Constitution Committee of the two Houses of Parliament for a priori scrutiny of constitutional amendment proposals should be set up.
8. A new Legislation Committee of Parliament to oversee and coordinate legislative planning should be constituted.
9. The existing Parliamentary Committees on Estimates, Public Undertakings and Subordinate Legislation may not be continued.
10. The Parliamentarians must voluntarily place themselves open to public scrutiny through a parliamentary ombudsman.
11. The State Legislatures with less than 70 members should meet for at least 50 days in a year and other State Legislatures for at least 90 days. Similarly, the minimum number of days for sittings of Rajya Sabha and Lok Sabha should be fixed at 100 and 120 days respectively.
12. A Study Group outside Parliament for study of procedural reforms should be set up.

## **6. On Executive and Administration**

1. In case of hung Parliament, the Lok Sabha may elect the leader of the House. He may then be appointed as the prime minister by the president. The same procedure could be followed at the state level also.
2. A motion of no-confidence against a prime minister must be accompanied by a proposal of alternative leader to be voted simultaneously. This is called as the 'system of constructive vote of no confidence'.
3. For a motion of no-confidence to be brought out against the government, at least 20 per cent of the total number of members of the House should give notice.
4. The practice of having oversized Council of Ministers should be prohibited by law. A ceiling on the number of Ministers in any State or the Union government be fixed at the maximum of 10 per cent of the total strength of the popular house of the legislature.
5. The practice of creating a number of political offices with the position, perks and privileges of a minister should be discouraged. Their number should be limited to 2 per cent of the total strength of the lower house.
6. The Constitution should provide for appointment of Lokpal keeping the prime minister outside its purview and the institution of lokayuktas in the



states.

7. Lateral entry into government jobs above joint secretary level should be allowed.
8. Article 311 should be amended to ensure not only protection to the honest public servants but penalisation to dishonest ones.
9. The questions of personnel policy including placements, promotions, transfers and fast-track advancements should be managed by autonomous Civil Service Boards constituted under statutory provisions.
10. Officials, before starting their career, in addition to the taking of an oath of loyalty to the Constitution, should swear to abide by the principles of good governance.
11. Right to information should be guaranteed and the traditional insistence on secrecy should be discarded. In fact, there should be an oath of transparency in place of an oath of secrecy.
12. Public Interest Disclosure Acts (which are popularly called the Whistle-blower Acts) may be enacted to fight corruption and mal-administration.
13. A law should be enacted to provide for forfeiture of benami property of corrupt public servants as well as non-public servants.

## **7. On Centre-State and Inter-State Relations**

1. The Inter-State Council Order of 1990 may clearly specify the matters that should form the parts of consultations.
2. Management of disasters and emergencies (both natural and manmade) should be included in the List III (Concurrent List) of the Seventh Schedule.
3. A statutory body called the Inter-State Trade and Commerce Commission should be established.
4. The president should appoint the governor of a state only after consultation with the chief minister of that state.
5. Article 356 should not be deleted, but it must be used sparingly and only as a remedy of the last resort.
6. The question whether the ministry in a state has lost the confidence of the assembly or not should be tested only on the floor of the House. The Governor should not be allowed to dismiss the ministry, so long as it enjoys the confidence of the House.



7. Even without the state being under a proclamation of emergency, President's Rule may be continued if elections cannot be held. Article 356 should be amended to this effect.
8. The State Assembly should not be dissolved before the proclamation issued under Article 356 has been laid before Parliament. Article 356 should be amended to ensure this.
9. River water disputes between States and / or the Centre should be heard and disposed by a bench of not less than three judges and if necessary, a bench of five judges of the Supreme Court for the final disposal of the suit.
10. Parliament should replace the River Boards Act of 1956 with another comprehensive enactment after consultation with all the states.
11. When the state bill is reserved for consideration of the President, there should be a time-limit (say of three months) within which the President should take a decision whether to give his assent or to return the bill.

## **8. On Judiciary**

1. A National Judicial Commission under the Constitution should be established to recommend the appointment of judges of the Supreme Court. It should comprise the chief justice of India (as chairman), two senior most Judges of the Supreme Court, the Union law minister and one person nominated by the president.
2. A committee of the National Judicial Commission should examine complaints of deviant behaviour of the Supreme Court and high court judges.
3. The retirement age of the judges of high courts and Supreme Court should be increased to 65 and 68 respectively.
4. No court other than the Supreme Court and the High Courts should have the power to punish for contempt of itself.
5. Except the Supreme Court and the High Courts, no other court should have the power to declare the Acts of Parliament and State Legislatures as being unconstitutional or beyond legislative competence and so ultra-vires.
6. A National Judicial Council and Judicial Councils in States should be set up for the preparation of plans and annual budget proposals.

7. In the Supreme Court and the High Courts, judgements should ordinarily be delivered within 90 days from the conclusion of the case.
8. An award of exemplary costs should be given in appropriate cases of abuse of process of law.
9. Each High Court should prepare a strategic plan for time-bound clearance of arrears in courts within its jurisdiction. No case to remain pending for more than one year.
10. The system of plea-bargaining should be introduced as part of the process of decriminalization.
11. The hierarchy of the subordinate courts in the country should be brought down to a two-tier of subordinate judiciary under the High Court.

## **9. On Pace of Socio-Economic Change and Development**

1. A way could and should be found to bring a reasonable number of SCs, STs and BCs on to the benches of the Supreme Court and high courts.
2. Social policy should aim at enabling the SCs, STs and BCs and with particular attention to the girls to compete on equal terms with the general category.
3. Appropriate new institutions should be established to ensure that the resources earmarked for the weaker sections are optimally used.
4. The Citizens' Charters be prepared by every service providing department / agency to enumerate the entitlements of the citizens specifically those of the SCs, STs and other deprived classes.
5. Reservation for SCs, STs and BCs should be brought under a statute covering all aspects of reservation including setting up of Arakshan Nyaya Adalats to adjudicate upon all disputes pertaining to reservation.
6. Residential schools for SCs, STs and BCs should be established in every district in the country.
7. All tribal areas governed by the Fifth Schedule of the Constitution should be transferred to the Sixth Schedule. Other tribal areas should also be brought under the Sixth Schedule.
8. Special courts exclusively to try offences under the SCs and STs (Prevention of Atrocities) Act, 1989, should be established.
9. Prevention of untouchability requires, inter alia, effective punitive action under the Protection of Civil Rights Act, 1955.

10. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, should be strictly enforced.
11. Steps should be taken for improvement of educational standards as well as for increasing the political representation of the minority communities.
12. A fully empowered National Authority for the Liberation and Rehabilitation of bonded labour should be set up. Similar authorities should also be established at the state level.
13. As regards women, action covering reservation, development, empowerment, health and protection against violence should be taken.

## **10. On Decentralisation (Panchayats and Municipalities)**

1. The Eleventh and Twelfth Schedules of the Constitution should be restructured in a manner that creates a separate fiscal domain for panchayats and municipalities.
2. State panchayat council should be established under the chairmanship of the chief minister.
3. Panchayats and Municipalities should be categorically declared to be 'institutions of self-government' and exclusive functions be assigned to them. For this purpose, Articles 243-G and 243-W should be suitably amended.
4. The Election Commission of India should have the power to issue directions to the State Election Commission for the discharge of its functions. The State Election Commission should submit its annual or special reports to the Election Commission of India and to the Governor. This requires the amendment of Articles 243-K and 243-ZA.
5. Article 243-E should be amended to the effect that a reasonable opportunity of being heard shall be given to a Panchayat before it is dissolved.
6. To ensure uniformity in the practice relating to audit of accounts, the CAG of India should be empowered to conduct the audit or lay down accounting standards for Panchayats.
7. Whenever a Municipality is superseded, a report stating the grounds for such dissolution should be placed before the State Legislature.
8. All provisions regarding qualifications and disqualifications for elections to local authorities should be consolidated in a single law.

9. The functions of delimitation, reservation and rotation of seats should be vested in a Delimitation Commission and not in the State Election Commission.
10. The concept of a distinct and separate tax domain for municipalities should be recognized.

## **11. On Institutions in North East India**

1. Efforts are to be made to give all the States in this region the opportunities provided under the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendments. However, this should be done with due regard to the unique political traditions of the region.
2. The subjects given under the Sixth Schedule and those mentioned in the Eleventh Schedule could be entrusted to the Autonomous District Councils (ADCs).
3. Traditional forms of governance should be associated with self-governance because of the present dissatisfaction.
4. A National Immigration Council should be set up to examine a range of issues including review of the Citizenship Act, the Illegal Migrants Determination by Tribunal Act, the Foreigners Act and so on.
5. As regards Nagaland, the Naga Councils should be replaced by elected representatives of various Naga society groups with an intermediary tier at the district level.
6. As regards Assam, the Sixth Schedule should be extended to the Bodoland Autonomous Council and other Autonomous Councils be upgraded to Autonomous Development Councils.
7. As regards Meghalaya, a tier of village governance should be created for a village or a group of villages in the Autonomous District Councils.
8. As regards Tripura, the changes which may be made in respect of other Autonomous Councils should also apply in respect of the Autonomous District Councils.
9. As regards Mizoram, an intermediary elected tier should be developed at the district level in areas not covered by the Sixth Schedule.
10. As regards Manipur, the provisions of the Sixth Schedule should be extended to hill districts of the State.

## 12. On Electoral Processes

1. Any person charged with any offence punishable with imprisonment for a maximum term of five years or more, should be disqualified for being chosen as or for being a member of Parliament or Legislature of a State.
2. Any person convicted for any heinous crime like murder, rape, smuggling, dacoity, etc., should be permanently debarred from contesting for any political office.
3. Criminal cases against politicians pending before Courts either for trial or in appeal must be disposed of speedily, if necessary, by appointing Special Courts.
4. The election petitions should also be decided by special courts. In the alternative, special election benches may be constituted in the High Courts and earmarked exclusively for the disposal of election petitions and election disputes.
5. Any system of State funding of elections bears a close nexus to the regulation of working of political parties by law and to the creation of a foolproof mechanism under law with a view to implementing the financial limits strictly. Therefore, proposals for State funding should be deferred till these regulatory mechanisms are firmly in position.
6. Candidates should not be allowed to contest election simultaneously for the same office from more than one constituency.
7. The election code of conduct should be given the sanctity of law and its violation should attract penal action.
8. The Commission while recognizing the beneficial potential of the system of run off contest electing the representative winning on the basis of 50 per cent plus one vote polled, as against the present first-past-the-post system, for a more representative democracy, recommends that the Government and the Election Commission of India should examine this issue of prescribing a minimum of 50 per cent plus one vote for election in all its aspects.
9. An independent candidate who loses election three times consecutively should be permanently debarred from contesting election to the same office.
10. The minimum number of valid votes polled should be increased to 25 per cent from the current 16.67 per cent as a condition for the deposit not

being forfeited.

11. The issue of eligibility of non-Indian born citizens or those whose parents or grandparents were citizens of India to hold high offices in the realm such as President, Vice-President, Prime Minister and Chief Justice of India should be examined in depth through a political process after a national dialogue<sup>10</sup>.
12. The Chief Election Commissioner and the other Election Commissioners should be appointed on the recommendation of a body consisting of the Prime Minister, Leader of the Opposition in the Lok Sabha, Leader of the Opposition in the Rajya Sabha, the Speaker of the Lok Sabha and the Deputy Chairman of the Rajya Sabha. Similar procedure should be adopted in the case of appointment of State Election Commissioners.

### **13. On Political Parties**

1. A comprehensive law regulating the registration and functioning of political parties or alliances of parties should be made. The proposed law should—
  - (a) provide that political party or alliance should keep its doors open to all citizens irrespective of any distinctions of caste, community or the like.
  - (b) make it compulsory for the parties to maintain accounts of the receipt of funds and expenditure in a systematic and regular way.
  - (c) make it compulsory for the political parties requiring their candidates to declare their assets and liabilities at the time of filing their nomination.
  - (d) provide that no political party should provide ticket to a candidate if he was convicted by any court for any criminal offence or if the courts have framed criminal charges against him.
  - (e) specifically provide that if any party violates the above provision, the candidate involved should be liable to be disqualified and the party deregistered and derecognized.
2. The Election Commission should progressively increase the threshold criterion for eligibility for recognition so that the proliferation of smaller political parties is discouraged.
3. A comprehensive legislation providing for regulation of contributions to



the political parties and towards election expenses should be enacted by consolidating such laws. This new law should:

- (a) aim at bringing transparency into political funding;
- (b) permit corporate donations within higher prescribed limits;
- (c) make donations up to a specified limit tax exempt;
- (d) make both donors and donees of political funds accountable;
- (e) provide that audited political party accounts should be published yearly; and
- (f) provide for de-recognition of the party and enforcement of penalties for filing false election returns.

## **14. On Anti-Defection Law**

The provisions of the Tenth Schedule of the Constitution should be amended to provide the following:

1. All persons defecting (whether individually or in groups) from the party or the alliance of parties, on whose ticket they had been elected, must resign from their parliamentary or assembly seats and must contest fresh elections.
2. The defectors should be debarred to hold any public office of a minister or any other remunerative political post for at least the duration of the remaining term of the existing legislature or until the next elections whichever is earlier.
3. The vote cast by a defector to topple a government should be treated as invalid.
4. The power to decide questions regarding disqualification on ground of defection should vest in the Election Commission instead of in the Speaker / Chairman of the House concerned.

## **NOTES AND REFERENCES**

1. The Ministry of Law and Justice (Department of Legal Affairs), vide its Resolution, dated the 22 February, 2000.
2. The other members of the Commission were: B.P. Jeevan Reddy (Chairman of the Law Commission), R.S. Sarkaria (former judge of the Supreme Court), K. Punneya (former judge of the Andhra Pradesh High



Court), Soli Sorabjee (Attorney–General of India), K. Parasaran (former Attorney–General of India), Subhash Kashyap (former Secretary–General of Lok Sabha), C.R. Irani (Chief Editor and MD of the Statesman), Abid Hussain (former Ambassador of India to the USA), Smt. Sumitra Kulkarni (former MP) and P.A. Sangma (former Speaker of the Lok Sabha). P.A. Sangma resigned three months before the submission of the report by the Commission.

3. The Commission was asked to complete its work and make recommendations within one year. After three extensions, the Commission submitted its report on March 31, 2002. This report is a bulky one, containing 1,979 pages in two-volumes. Volume I contains its recommendations while Volume II (divided in Books 1, 2 and 3) consists of detailed consultation papers, background papers, details of deliberations and the report of its drafting and editorial committee.
4. Report of the Commission, Volume I, [Chapter 1](#).
5. Report of the Commission, Volume I, [Chapter 2](#).
6. *Ibid*.
7. Chapters 3 to 10 in Volume I of the Report of the Commission contains the detailed area-wise recommendations. The summary of recommendations is given in [Chapter 11](#) of the Report.
8. At present, it is a Directive Principle under Article 39-A.
9. The Government of India appointed the committee “to operationalise the suggestions to teach Fundamental Duties to the citizens of India” in the year 1998 under the chairmanship of Justice J.S. Verma. The Committee submitted its report in October 1999.
10. The Commission was deeply divided on this issue and because of this, P.A. Sangma left the Commission.