

REPORT  
OF THE COMMISSION  
ON  
REVIEW OF ADMINISTRATIVE LAWS

VOLUME - I



DEPARTMENT OF ADMINISTRATIVE REFORMS  
AND PUBLIC GRIEVANCES

MINISTRY OF PERSONNEL,  
PUBLIC GRIEVANCES AND PENSIONS

GOVERNMENT OF INDIA

SEPTEMBER 1998

## ERRATA

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P. C. Jain IAS (Retd.)  
Chairman

Commission on Review of  
Administrative Laws

Dated : September 30, 1998

Dear Shri Prabhat Kumar,

I have great pleasure in forwarding herewith the Report (in two Volumes) of the Commission on Review of Administrative Laws.

2. The short time available to the Commission, the constraints under which it functioned and to which a reference in detail has been made in the Report and the formidable nature of the task assigned to it hardly need to be emphasised here.

3. In the absence of an universally accepted definition of the term "Administrative Laws", the Commission has considered nearly all those Central laws which were considered by various Ministries/Departments for purposes of review, repeal and amendments, as well as those which were mentioned by the user groups and were also relevant to our terms of reference, particularly, (b) and (c).

4. There is a perception among many people that despite a fairly extensive State intervention and a regulatory regime in our country there is no real deterrence and effective enforcement for the benefit of society in general and the average citizen in particular. Be that as it may, it can hardly be disputed that multiplicity and complexity of laws, rules, regulations and procedures and lack of adequate information about these, is one of the major reasons for their misuse by officers and staff, particularly at the cutting-edge level, resulting in delays, harassment and corruption on a massive scale. The cost of all these consequences to the society and to the country's growth is enormous. Thus any further delay in bringing about adequate reforms in such a regulatory regime can be at our own peril. The Commission has been able to recommend in its Report repeal of over 1300 Central laws out of a total of approximately 2500 such laws.

5. Equally important, if not more, is the urgent need to bring about a radical change in the mindset of administration at almost all levels. Officers are not accessible to people for whom they exist. Grievance redressal mechanism exists only on paper. Complaints are either not received or are not acted upon. Reply to the complaints is an

exception rather than the rule, particularly in the public sector banks, organisations providing public utilities, e.g. electricity, water, street lighting, sanitation, sewerage, telephones etc. Intervention of an MP/MLA/MLC or publication of the complaint in an important newspaper, or payment of speed money do help. The helplessness of an average citizen is to be objectively assessed to be believed. A system of 'open house' to be held on fixed dates, announced in advance, periodically at district, tahsil and block levels might meet, to a considerable extent, the requirement of motivating the functionaries at the cutting-edge level towards their duty to the public, and in the direction of taking concrete steps for trying to ensure a responsive administration. If, however, motivation and orientation do not bring about the desired improvement in the mindsets, there is no better alternative than to strictly enforce individual accountability for delays and harassment within specified time frames without any compunction.

6. One more aspect needs to be highlighted. It is often said that as economic reforms proceed towards more liberalisation and globalisation, ensuing competition would take care of the problems of deficiency in products and services. Such a perception obviously has its limitations in the conditions of our country. Lower middle class-what to say of poor people, cannot afford to change their consumer durables, such as televisions, refrigerators, washing machines, air-conditioners, generating sets, two and four wheelers, etc. on coming to know that better products have since come in the market, or that there are manufacturers or suppliers who provide better after-sales service. For majority of people these are virtually lifetime purchases. Thus it is imperative that manufacturers and business in their own long-term interests adopt standards and practices which are ethical, and that if they do not do it, they are organisationally made to set up, at their own cost, voluntary disputes settlement mechanisms. Professional associations and bodies should not work only in the interest of their members, but also discharge their duties towards the society in general and the aggrieved persons in particular.

7. Before concluding, I must place on record my personal gratitude towards my colleagues in the Commission. Mr. H.D. Shourie, whom I call a young man of 87 years, has greatly helped the Commission with his insight into the problems of consumers and his personal experience in the area of public interest litigation. Mr. S. Ramaiah has made highly valuable contribution to the task of cleansing the statute book. Dr. P.S.A. Sundaram our Member Convenor, is a man of academic pursuits with strong commitment to administrative reforms. He has been a driving force for the Commission to be able to do what it has done in this short period.

8. I would also like to place on record my personal appreciation of the excellent support provided to the Commission by the Secretariat of the Deptt. of Administrative Reforms & Public Grievances led by Shri Nikhilesh Jha, Director and all his colleagues.

With warm regards,

Yours Sincerely,

Sd/=   
(P.C. Jain)

**Shri Prabhat Kumar,  
Cabinet Secretary,  
Govt. of India,  
New Delhi.**

# Report of the Commission on Review of Administrative Laws

## INTRODUCTION

A Commission on Review of Administrative Laws was set up with the approval of the Prime Minister on 8<sup>th</sup> May, 1998, vide Office Memorandum No. K-11022/19/98-P issued by the Department of Administrative Reforms and Public Grievances. Following is the composition of the Commission :

- |     |  |                        |
|-----|--|------------------------|
| (1) | Shri P.C. Jain, Retired Secretary to the Government of India   | <b>Chairman</b>        |
| (2) | Shri H.D. Shourie, Director, Common Cause  | <b>Member</b>          |
| (3) | Shri S. Ramaiah, Retired Legislative Secretary, Government of India  | <b>Member</b>          |
| (4) | Dr. P.S.A. Sundaram, Additional Secretary (AR&T), Department of Administrative Reforms & Public Grievances | <b>Member-Convenor</b> |

2. The terms of reference of the Commission were as follows:-
- a) To undertake an overview of steps taken by different Ministries/Departments for the review of administrative laws, regulations and procedures administered by them, and the follow-up steps thereafter, for repeal and amendment.
  - b) To identify, in consultation with Ministries/Departments and client groups, proposals for amendments to existing laws, regulations and procedures, where these are in the nature of law common to more than one department, or where they have a bearing on the effective working of more than one Ministry/Department and State Governments, or where a collectivity of laws impact on the performance of an economic or social sector, or where they have a bearing on industry and trade.
  - c) To examine, in the case of selected areas like environment, industry, trade and commerce, housing and real estate, specific changes in existing rules and procedures so as to make them objective, transparent and predictable.
  - d) To make, on the basis of this exercise, recommendations for repeal/amendments of laws, regulations and procedures, legislative process, etc.



3. Subsequently, the Government asked the Commission also to look into the report of the Inter-Ministerial Committee on Cyber Laws.

4. The Commission was initially required by the Government to submit its report within a period of three months. Subsequently, the period was extended by the Government till the end of September 1998. Copies of the Office Memorandum constituting the Commission as well as the subsequent Office Memorandum extending its tenure are enclosed as *Annexure-1*.

5. The Commission held all its meetings in the Committee Room of the Department of Administrative Reforms and Public Grievances. It had 43 meetings over the period starting from third week of May 1998 till the end of September 1998. The Commission interacted with the Secretaries and other senior officials of a large number of Ministries/ Departments and Central agencies, the representatives of Chambers of Commerce and Industry, such as Confederation of Indian Industry, ASSOCHAM, FICCI and PHD Chamber of Commerce and Industry. The Commission also interacted with representatives of consumer and user groups, the Pensioners' Association in addition to joint interactive discussions with the Ministries/Departments and user groups. The Commission was also provided with reports on regulatory reform prepared by individual Ministries/Departments, the Chambers of Commerce and Industry and consumer representatives. The Commission called on Union Minister of State for Personnel Shri K.M.R. Janarathanan to ascertain Government's views on the terms of reference. The Commission also called on Justice B.P. Jeevan Reddy, Chairman, Law Commission for discussion on specific issues. As desired by the Cabinet Secretariat, the Commission forwarded an interim report on Cyber Laws after discussions with Secretary, Department of Electronics and officials of National Informatics Centre.

6. The Commission is deeply appreciative of the excellent secretarial support provided by the Department of Administrative Reforms and Public Grievances including Director – Shri Nikhilesh Jha and other officials in the Department. Apart from the arrangements for conducting all the meetings of the Commission, the Secretariat was tireless in securing for the Commission virtually all the desired information and reports from different sources. The Commission also records its appreciation on the help provided by the Consultant, Shri Gautam Banerjee, Supreme Court Advocate.

## **The Statement of the Problem**

7. The task entrusted to the Commission is obviously huge. As will be evident from the Terms of Reference, it comprises: overview of administrative laws and the regulations, rules and procedures under them; to formulate proposals for amendment where required; to determine specific changes required in rules and procedures in relation to certain important economic and social areas; and to identify the laws, regulations, rules and procedures which need to be repealed. The task required a much longer time and far greater preparatory work than what was available to the Commission.

8. The other problem confronted by the Commission related to the term "Administrative Law" itself. Either on the basis of Supreme Court judgements or discussions with the Law Commission, the Commission was not able to locate an acceptable definition of this term. In the books written by some Indian authors on the subject of administrative law, the term has been largely defined in terms of what is known as subordinate legislation comprising rules, regulations, statutory orders and administrative instructions, flowing from the Ministry/Department/Central agency on the strength of the authority conferred by a statute on the executive. This is the broad sense in which the Parliamentary Committees on Subordinate Legislation review the various rules and regulations framed under different Central Acts. The famous work of Lord Hewart on "New Despotism", referring to the uncontrolled and despotic nature of the exercise of delegated power of the executive in U.K., also gives the same connotation to administrative law.

9. One way to resolve the problem was to interpret administrative law as distinct from constitutional law, in the sense of the laws and regulations administered by different Central Ministries/Departments by virtue of legislative authority, but subject to judicial review. It would also include the complex of bodies responsible for dispute resolution, ranging from civil courts, tribunals, quasi-judicial authorities, to officials exercising judicial powers, etc. From this interpretation, the Commission would not be confined merely to looking at subordinate legislation, but would also be required to look at related main legislations wherever it is necessary. In the context of containing proliferation of the problems of the people, which have inevitable relation to the administration of laws and procedures, the Commission considers it appropriate to focus attention on those regulations and procedures which affect people the most, and where alterations and amendments are required in the interest, especially, of industry, trade commerce, environment, housing, real estate and consumer protection.

10. While following this approach, the Commission was seriously constrained by the fact that it did not have access to a complete set of subordinate legislation in the form of rules, regulations and administrative instructions, issued under different Central Acts, by individual Ministries and Departments. It appears that the Legislative Department itself did not have such a complete compilation of rules, regulations and procedures issued by the Ministries. The problem is compounded by the fact that, in terms of certain laws like the Essential Commodities Act, as many as 13 Ministries have issued over 150 orders. The Expert Groups and Task Forces set up by most Ministries and Departments have chosen to concentrate on amendments to laws, and not on the rules and regulations. Another handicap was that the Central Ministries did not have full information about the rules and regulations issued by State Governments by virtue of the authority vested in them by Central laws such as Prevention of Food Adulteration Act, Drugs and Cosmetics Act, labour legislations, etc. The Commission was further struck by the fact that, excepting a few Ministries, the Ministries and Departments did not project the inter-related nature of legal and regulatory reform, and the extent to which the laws administered by other Departments impacted on their own efforts to improve the regulatory conditions in their sectors. This isolated approach was strengthened by the fact that different aspects of operation of particular sectors like industry and trade were fragmented among Departments in the same Ministry or among different Ministries. The Central agencies of direct and indirect taxation were more guided by revenue realisation, and did not always see eye to eye with the promotional Departments in charge of industry and trade. The Commission was concerned to find that there has been little effort to converge laws and regulations administered by different Departments, including the Legislative Department, in order to address the problems of industry and users in a focussed manner. The effort made in this regard, as a part of National Housing Policy, could be undertaken by other Ministries acting in concert.

11. In various important spheres in the Concurrent List, such as labour welfare, land acquisition, levy of stamp duty, registration of instruments, etc., State Governments have enacted their own legislation, and have provided their own procedures for enforcement. Thus, a strategy for tackling the procedural aspects of constraints faced by industry, trade and consumer groups can emerge only after examining procedures and related laws at the state level. The State Governments, on the other hand, have been representing to the Central Government about the effect on industry and trade of Central laws and procedures in the field of environmental protection and forest, the Urban Land (Ceiling and Regulation) Act, Boilers Act, general laws like Transfer of Property Act, and sectoral laws in the areas of Power, Telecommunications, Railways and Surface Transport. The entire question of Centre-State interface in the

administration of laws and regulations is beyond the scope of this report. It has also not been comprehensively addressed either by the Law Commissions or the Task Forces. The Commission feels that this important exercise may be taken up immediately by the Inter-State Council with the help of an Expert Group comprising Central and State officials and legal experts. Meanwhile, State Governments may take up the task of integrating their laws on the same subject applicable to different regions of a State, such as Vidarbha and other regions in Maharashtra, Acts in old Berar area, Pre-Reorganisation Acts in different parts of Kerala etc. As noted later, the State Governments also may consider incorporating sunset provisions in their operative laws, wherever possible.

12. In the case of the Central Government Committees, the Commission noted that the Fifteenth Law Commission has been asked by the Government, inter-alia, to look at the review/repeal of obsolete laws, to consider in a wider perspective suggestions given by Expert Groups in various Ministries/Departments, and to consider references made to the Law Commission by Ministries in respect of legislation having a bearing on the working of more than one Ministry/Department. It is understood that a number of Ministries have forwarded specific suggestions to the Law Commission on these issues, and that the Commission has sent an interim report to the Government. Given the limited inputs received by the Commission on the issue of interrelated legal reform, and the problems faced by State Governments, this report has naturally addressed the issues on the basis of available material.

13. Another issue which is of paramount importance in a democratic country with a large number of people below the poverty line, and over 70% of the population living in rural areas, is the entire complex of laws, regulations and procedures which affect the quality of life of poor people and disadvantaged sections of the population, their access to basic services like education, healthcare and nutrition, and their inability to take advantage of the opportunities and benefits provided under various schemes administered by the Central and State Governments, financial institutions, etc. More than the question of securing access to basic services is often the basic question of survival and economic activity itself for sections of the population like the tribals, poor women in many remote villages or even cities, the tardy implementation of land reform and tenancy legislation, difficulty of women in the inheritance of properties, violence and oppression of majority groups, insensitive attitude of administration, etc. The problem has been highlighted in a number of studies made by officials and voluntary groups in different States. Specific proposals in respect of shelter for the poor, security of tenure for slum dwellers, rehabilitation of hawkers and pavement dwellers, assistance

to tribal women to form associations, etc. have been mooted. However, a widespread effort to amend the laws, regulations and procedures to focus specifically on their disabilities, or to reform procedures and inherent political factors to ensure the flow of assured benefits to the poor, or to sensitise banks and financial institutions for making prompt loans to the poor are yet to be initiated on a larger scale at the Central and State level. Again, for want of specific submissions on the subject by individual Ministries and Departments, the Commission has not been able to address the issue, but would like to suggest a separate deeper study by the Government as soon as possible. The Law Commission could also consider this issue as it falls within its present terms of reference.

## APPROACH

14. Against this background, the Commission approached the overall question of legal and regulatory reform from the point of view of :

- a) The repeal of old and dysfunctional legislation.
- b) Unification and harmonisation of statutes and regulations.
- c) Procedural law and dispute resolution.
- d) Subordinate legislation and procedures of Government agencies.
- e) Proposals for necessary new legislation in the present context of economic and social reform, and compliance with international Conventions.
- f) The inter-face of State legislation.

15. It has been noted by the Commission that it is only in the last few years that the importance of legal and regulatory changes for the success of macro economic policies and people-friendly administration have been universally recognised by Central and State Governments. What is important is that there is a consensus amongst the political leadership as reflected in the Statement issued after the Conference of Chief Ministers held in May 1997. The progress so far on statutory reform has been on three fronts. Firstly, there are changes found necessary because of multilateral agreements such as the Conventions of World Trade Organisation and bio-diversity. These include proposed amendments in the Patents Act, 1970 and Copyright Act, 1957. Secondly, there are changes connected with deregulation and the reduction of State involvement in the number of sectors such as recent legislation in the power and highways sector, proposed amendments in the areas of telecommunications, insurance and banking. Thirdly, there are legislative changes which are part of economic reform as well as responses to the problems of abuse of the existing system such as the proposed repeal of the FERA and Urban Land (Ceiling and Regulation Act) 1976 an introduction of Money-Laundering Bill, 1998, an introduction of Amendments to Income Tax Act, etc. The related set of amendments flow from the perception of a need for review of a structure of penalties and prosecution such as Essential Commodities Act, 1955 and FERA. While some amending Acts have been passed quickly by Parliament, number of important Bills are still pending before either of the two Houses such as the Sick Industrial Companies (Special Provisions) Amendment Bill, the Urban Land (Ceiling and Regulation)

Amendment Bill, the Delhi Rent Control Amendment Bill, the Essential Commodities Amendment Bill, the Code of Civil Procedure Amendment Bill, the Companies Amendment Bill, Insurance Regulatory Authority Bill, the Conservation of Bio-diversity Bill, and a number of Bills related to the organisational structure for coffee, aquaculture, narcotic drugs and psychotropic substances, National Cooperative Development Corporation, Multi-State Cooperative Societies, etc. There are some Acts which have been passed but not notified such as the Hire-Purchase Act and the Delhi Rent Control Act. The time available to Parliament to take up and conclude legislative business quickly will be a critical factor in promoting reform of legislation in the country.

## **RECOMMENDATIONS ON TERMS OF REFERENCE**

16. We shall now outline the specific observations and recommendations on various terms of reference:

### **16.1 THE OVERVIEW OF STEPS TAKEN BY DIFFERENT MINISTRIES/ DEPARTMENTS**

With the help of the Secretariat, the Commission has been able to obtain from 45 Ministries/Departments, the present status of review of laws and orders administered by them. A statement containing present status and the observations of the Commission in respect of the suggestions made by Task Forces/Expert Committees appointed by Ministries/Departments is placed at Statement 1 (Vol.II). It has not been possible within the given time, nor found necessary, to comment on specific legal provisions for amendments in all the Central laws numbering 1079 (the exact number of Central laws at present is not clear although the Legislative Department mentioned that the entire set of laws has been placed on the internet). Some referred to the number as 2,000 inclusive of Regulations. The position is elaborated in Para 16.4.. The Commission does not consider it necessary, given the limited managerial time with the Government and the pressing business before Parliament, to take up simultaneous amendment to all the Central laws. It would be more useful to focus attention on about 109 important laws, from the point of view of decision-making and impact on users, that would require significant changes. Given the focus of the Prime Minister in suggesting repeal/amendment of administrative laws and regulations during his address to the Confederation of Indian Industry, the perspective of industry, trade and the consumers in respect of laws affecting their transactions between themselves and the Government, as well as at the global level, ought to dictate the selection of the priority list for enactment. While many of these Acts are included in the review of the status of action taken by the Ministries in the Statement 1 (Vol II), many have been added by the Commission. The list of these important Acts is enclosed separately in Appendix-E and also they are highlighted in the status of action.

16.1.1 As mentioned earlier, the specific details of proposed amendments to legislations are given by very few Ministries/Departments in the course of their reply to the Secretariat. The reports of the Expert Committees/Task Forces are also available only in the case of a few like the Department of Consumer Affairs, Ministry of Mines and the Department of Agriculture and Cooperation. It is possible that number of Ministries have not given the details of amendments since they are reflected in the Cabinet Note under submission, but it would have been useful if at least the nature of amendments had been indicated by these Ministries. The Commission noted that action has been initiated/taken already by concerned Ministries/Departments to amend/replace the following legislations :

- i. Air Corporations Act, 1953.
- ii. Agricultural Produce Cess Act, 1940.
- iii. The Agricultural and Processed Food Products Export Development Authority Act, 1983.
- iv. Advocates Act, 1961.
- v. Arms Act, 1959.
- vi. Bankers' Books Evidence Act, 1891 (Bill drafted).
- vii. Bureau of Indian Standards Act, 1986.
- viii. Banking Regulation Act, 1949 (Bill drafted).
- ix. Central Excises and Salt Act, 1944.
- x. Central Sales Tax Act, 1956.
- xi. Code of Civil Procedure, 1908 (Bill introduced).
- xii. Code of Criminal Procedure, 1973 (Bill being drafted).
- xiii. Companies Act, 1956 (for repeal and replacement).
- xiv. Coffee Act, 1942.
- xv. Contract Labour(Abolition and Regulation) Act, 1970.
- xvi. Child Labour (Prohibition and Regulation) Act, 1986.
- xvii. Consumer Protection Act, 1986.
- xviii. Customs Act, 1962.
- xix. Drugs and Cosmetics Act, 1940.
- xx. Destructive Insects and Pests (DIP) Act, 1914.
- xxi. Dentists Act, 1948.
- xxii. Designs Act, 1911.
- xxiii. Electricity (Supply) Act, 1948 (Bill passed).
- xxiv. Environment (Protection) Act, 1986.
- xxv. Essential Commodities Act, 1955 (Bill introduced).
- xxvi. Evidence Act, 1872.
- xxvii. Emblems and Names (Prevention of Improper Use) Act, 1950.



- xxviii. Explosives Act, 1884.
- xxix. FERA Act, 1973 (for repeal and replacement).
- xxx. Forward Contracts (Regulation) Act, 1952.
- xxxi. Foreign Trade (Development and Regulation) Act, 1992.
- xxxii. Hire Purchase Act, 1972 (Act not yet notified).
- xxxiii. Income tax Act, 1961 (some amendments already passed).
- xxxiv. Indian Penal Code.
- xxxv. Indian Stamp Act, 1899 .
- xxxvi. Indian Telegraph Act, 1885.
- xxxvii. Industries (D and R) Act, 1951.
- xxxviii. Prisons Act, 1894.
- xxxix. Indian Boilers Act, 1923.
- xl. Indian Medical Council Act, 1956.
- xli. Industrial Disputes Act, 1947.
- xlii. Insecticides Act, 1968.
- xliii. Land Acquisition Act, 1894.
- xliv. Multi State Cooperative Societies Act, 1984.
- xlv. Marine Products Export Development Authority Act, 1972.
- xlvi. Medical Termination of Pregnancy Act, 1971.
- xlvii. Mines and Minerals (Regulation and Development) Act, 1957.
- xlviii. Merchant Shipping Act, 1958.
- xlix. Multi-modal Transportation of Goods Act, 1993.
- I. National Cooperative Development Corporation Act, 1962.
- li. Notaries Act, 1952.
- lii. Official Secrets Act, 1923.
- liii. Prevention of Food Adulteration Act, 1954.
- liv. Patents Act, 1970.
- Iv. Produce Cess Act, 1966.
- Ivi. Payment of Bonus Act, 1965.
- Ivii. Payment of Wages Act, 1936.
- Iviii. Reserve Bank of India Act, 1934.
- lix. Rubber Act, 1947.
- Ix. Standards of Weights and Measures Act, 1976.
- Ixi. Standards of Weights and Measures (Enforcement) Act, 1985.
- Ixii. Spices Board Act, 1986.
- Ixiii. Tea Act, 1953.
- Ixiv. Trade and Merchandise Marks Act, 1958.
- Ixv. Trade Unions Act, 1926.



16.1.2 A number of Ministries have moved proposals to introduce new laws to meet the WTO obligations such as the appointment of an Expert Committee to consider amendments to Patent Law and Copyright Law, and to fill the missing gaps in legislation such as trade secrets. In order to reduce the controls on industry and trade and to minimise the curbs on movement of essential commodities, a number of orders and rules have been repealed, or taken up for simplification by Departments like Agriculture and Cooperation, Sugar and Edible Oil, and the Ministry of Mines. Many Central agencies have continued to pursue action to amend and simplify procedures, issue consolidated instructions, open websites on the internet, reduce forms and returns, integrate processing of matters involving inter-departmental consultation, etc. The Department of Industrial Policy and Promotion has been successfully operating an inter-Ministerial mechanism for the sanction of industrial licences and approvals for foreign investment.

16.1.3. While the Commission was encouraged by the fact that many Ministries/ Departments are contemplating amendments to legislation and orders, it was not clear as to how long it would take for them actually to bring the amending legislation, rules and orders before Parliament or carry out the repeal/amendment of regulations, rules and orders. The latter process ought to be less time consuming since it does not require approval of Parliament. It was, however, mentioned that even this process takes considerable time for concurrence by the Law Ministry, subsequent translation and notification. In some cases, the Commission had the benefit of only views of the Expert Group, but it is not clear as to whether the Department has taken a decision on the report of the Expert Group and what if any and the proposed amendments. The Departments like Food and Civil Supplies which deal with State Governments had proposed initial consultations with State Governments for the review of rules and regulations relating to food grains policy/ procedures but it was not indicated when this consideration would be completed.

16.1.4. Some specific points relating to other areas may be noted to supplement the Commission's observations in the overview statement. There is firstly the question of the continued justification of regulation and supervision under the IDR Act over licensed industries, when they are liable to control by other Central agencies under sectoral laws. Secondly, there is the oft-repeated exercise of legislation and re-legislation with every change in the incumbency of the Secretary and Minister in charge of a Department. Thirdly, legislation in certain areas like labour seems to call for early tripartite discussions to evolve a consensus, while in other areas like Civil Aviation or Environment, a national policy has to emerge first. Fourthly, there is the criticality of nodal responsibility by one designated agency in areas like Essential Commodities Act, Drugs manufacture and pricing, food adulteration and standards, etc., to whom other Central agencies would pay adequate regard for harmonising their own orders.

16.1.5 A number of Ministries have moved energetically to introduce new laws to meet the needs of economic reform, or to remove disabilities faced by sections of the population. These proposals include Money Laundering Bill, FEMA Bill, Electricity Conservation Bill and Electricity Regulatory Authority Bill (passed by Parliament). A number of orders and rules have been repealed or taken up for repeal. Considerable action has been taken to amend and simplify procedures, issue consolidated instructions, reduce forms and returns, integrate inter-departmental consultation on approvals, etc.

16.1.6 Some Acts have become obsolete due to the pace of development. The Copyright Act, inter-alia, had to be amended in 1994 to define the special rights of the author of the work to authorship or to claim damages. The Electricity (Supply) Act, 1948 was amended only recently to define transmission services independently, and to bring the Act in line with power sector reform. The Patents Act, 1970 requires urgent amendment to bring it in line with WTO obligations. A number of laws need changes to enable electronic data and fund transfer, digital rights, computer crime and electronic commerce, simply because these developments have overtaken the scheme of the Acts. The emergence of multi-storeyed construction and apartment ownership and commercial condominiums has been blocked by the concept of title tied to land ownership rather than alienable occupancy rights, and this has led to independent laws to provide for apartment ownership. Definitions have to be changed in many Acts such as for Aircraft, Electricity Supply, Telegraph or even the connotation of document. New forms of instruments in the financial sector and capital market, and of conveyance and mortgage, and innovative ways of evading registration of documents, have necessitated amendments in relevant legislations. The tortuous process of foreclosure of mortgage and huge delays suffered by financial institutions have led to alternate laws for debt recovery. The entire process of Alternate Disputes Resolution is more a commentary on the failure of the legal system to use the Civil Procedure Code for speedy disposal of civil cases.

16.1.7 Even if statutory reform is taken up, it will be of little utility in the expeditious and proper disposal of cases without the reform of procedural laws, and operative general laws like Transfer of property Act, 1882, Contract Act, 1872, Limitation Act, 1963 as well as Land Acquisition Act, 1894 and the Environment (Protection) Act, 1986, which affect the functioning of different sectors. Then, there are demands for liberalisation of older laws like EC Act containing excessive provisions for penalties and minimum punishment, and, on the other hand, steps to enable the enforcement agencies to have greater probability of prosecution and conviction in the face of devious methods employed by evaders of law. There are complications introduced by parallel State laws in Concurrent List on related fields or rules under Central Acts, either by way of powers to appropriate Government to make rules or by way of delegated powers under Central Act.

16.1.8 The recommendations on repeal of certain laws and amendments to identified Acts follow from these considerations. These are described separately in Para 16.4.

16.1.9. Among the Terms of Reference, the issue of determination of repeal and amendments in the laws is obviously of primary importance, and the Commission has considered it necessary to highlight it at this stage before putting forth our recommendations. There are now nearly 2500 Central laws in force. While our focus in this study has been on the Central laws, it is worthwhile keeping in view the fact that there is not even a rough estimate available about the number of laws operating as State laws. In one State alone the number is stated to be of the order of 1100. There might, thus, be 25000 to 30000 laws of States. Such proliferation of the laws and ineffective enforcement of large numbers of these Laws inevitably lead to various problems of functioning of Government and the administration of justice. These contain, among them, laws enacted a century ago or numerous decades ago. They are antique and have long outlived their utility and are now anachronisms. Particulars of analysis of these outdated Central laws appear in Para 16.4.

16.1.10. Another matter of major importance connected with the repeal of obsolete and outdated laws is the amendment of those laws which are old but have a bearing on certain religious customs and practices and rights which cannot be disregarded. These laws are contained in Appendix D.

The Commission feels that all such laws should be urgently examined by constituted groups of experts who should have the competence and expertise to re-draft them to bring them to be in accord with the present day requirements. These should, thus, be given the new garb, retaining the basic rights and privileges embodied in the old statutes.

16.1.11 Connected with the requirements of thus giving new garb to such antique laws which in essence have to be retained, the Commission is of the definite view that each of the various Pre-Constitution statutes which have to be retained on the Statute Book, should be reviewed in order to bring their provisions in accord with the present day requirements. The overview has referred to the need for amendments in the case of many Acts. Presently, most of such Statutes are loaded with amendments which from time to time have been necessitated. Indian Penal Code, as an instance, was enacted as long ago as 1860; it continues to be in force as such, having been amended quite a few times. Civil Procedure Code, which prescribes the entire gamut of procedures determining the administration of justice in the civil courts, and was enacted in 1908, has had about 100 amendments. The amendments inevitably make the

phraseology of relevant clauses complex, making them open to various interpretations by legal experts and complicating the processes of justice. Indian Electricity Act, Indian Posts Act and Indian Telegraph Act were enacted many decades ago which, in the context of far reaching changes that have come about in these fields, give the feeling of these enactments being anachronistic. The Commission hopes that all such laws will be included in the list of those which require to be re-drafted by Groups of Experts. Thereafter, relevant rules, regulations and procedures can be recast. In this context, the Commission refers particularly to a practice now adopted in the U.S.A. which comprises of incorporation of "sunset provision" in the Statute which would automatically make the Statute inoperative after the date prescribed for the purpose in the Statute. This would of course primarily apply to laws of a temporary nature or dealing with dynamic situation such as that in infra-structure. This would inevitably persuade the concerned authorities to take necessary steps to re-enact the provisions of such Statute with suitable and requisite modifications which would bring the Statute up-to-date.

## **16.2 HARMONY AND INTEGRATION**

16.2.1 We need to look at laws harmoniously from the point of view of groups like domestic and foreign investors, trade, industry, consumer protection, builders, exporters importers, etc. This is as much an issue of unification and harmonisation of laws, as of assessing the impact of individual provisions of different Acts with reference to the objectives of specific sectoral policies and the need matrix of the stakeholders. Unfortunately, this has not been addressed by most Ministries in the course of review of laws and regulations, barring the Ministry of Urban Affairs and Employment. The lack of harmonious approach has a number of facets such as not looking at Statutes enacted at different points of time in the same subject area or having impact on other sectors, such as Labour Laws stretching from 1855 to 1991, and informal sector, or the Statutes from 1860 to 1971 covering currency and coins; varying definitions in the Statutes such as definitions of child, workmen, employee, wages, factory and industry in Labour Laws, and the varying concepts of compensation in laws providing for acquisition of land and property at Central and State level; proliferation of orders under one Act by different Ministries, sometimes with differing definitions, as in the case of EC Act in Central Government or the rules under Labour Laws by States, or the Prevention of Food Adulteration Rules in States, or the individual practices of State Pollution Control Boards; or the laws on the subjects in the Concurrent List by Central and State Governments and transactions on different States being subject to different treatment. On a different footing, there are contrasting perspectives of the Government, industry and the consumer/users on the implementation of laws, rules and procedures such as the City Master Plan, or EC Act, Pollution Control, Banking Regulations and Building Regulations, Capital Market Regulation, Consumer Protection, Land Acquisition, Industrial Disputes, Contract Labour Abolition, Sick Industries, Registration of Societies and Control of Voluntary Agencies, nature of penalties and prosecution, dispute resolution, etc.

This is aggravated by differing approaches among different Central Ministries on important issues like EXIM policy and concessions to trade, environmental preservation, patents, land acquisition, direct and indirect taxation, consumer protection, enforcement of standards and quality, removal of regulation and barriers to entry and movement, transparency and release of information, administered pricing, privatisation, role of public sector, approach to NGOs and citizen participation. The revenue agencies like CBDT and CBEC look askance at concessions and look with suspicion on motives of trade and assesses, while Directorate General of Foreign Trade and the Department of Industrial Policy and Promotion are promotional agencies that try forever to counter biases of regulatory agencies. The Ministry of Environment and Forests has posed problems for all development Ministries and the States, as well as the industry. But, the efforts of the Ministry and public interest litigation petitions before Supreme Court seek to uphold environment quality, forests and rehabilitation over timely approval. The effect of Master Plan standards on the cost of shelter for the poor is often not seen, and has led to slums and unregulated development. Old laws create their own mindset in officials. As Keynes put it, the biggest problem before society is not original sin but uncorrected obsolescence.

16.2.2 As noted earlier, the Commission did not have the time or opportunity to interact with State officials on the reform of State laws and regulations. However, the user organisations brought to the notice of the Commission, the criticality and urgency of amending State laws and procedures in the areas of industry, trade, environment, real estate, urban development, labour, consumer protection, levy and collection of various State and local taxes, and approvals for starting different activities. This was mentioned prominently as seen from report relating to foreign investors and financial institutions in the course of their interactions with Indian delegations which visited different countries. As the State Governments account for majority of transactions involving interface of the public and the delivery of basic services, and the administration of various schemes for rural population, the State and local laws have a significant bearing on the quality of life of the population as a whole. Apart from the large body of Central laws, there are on an average 700 to 800 laws in each State besides rules, regulations and procedures framed under them. Karnataka is in fact in favour of a separate law on administrative procedures. The State Government have enacted laws in respect of subjects in the State List and Concurrent List. More importantly, many Central laws such as those relating to urban land ceiling, prevention of food adulteration, and the entire labour sector, are implemented through State agencies. Prosecution for the violations and offences under these Acts are initiated often by competent authorities in the State. Majority of inspections of factories and industrial units are carried out by State and local officials. It is these inspections which have attracted the criticism of *inspector raj*. The functional Departments of the State Governments prescribe a large number of forms and returns, and often act as outposts for Central Government Ministries like Industry. The judicial administration through the civil courts, and many tribunals set up under Central and State Acts are dependent on the State Governments for funds, infrastructure and staff. This explains the variation in the level of enforcement of Central laws such as Consumer Protection Act, 1986, labour legislation, Prevention of Food Adulteration Act, 1954, Essential Commodities Act, 1955, etc.

16.2.3 In addition to this, the functioning of the economic and social sectors is affected by State laws like Rent Control Act, parallel laws for acquisition of land and property, land revenue and land reform laws, legislation governing different utilities in the field of health, industry, housing, transport, etc., laws for town planning, municipality, building bye-laws and regulations, State and local taxation of land and property, etc. The burden of levies on housing and real estate and the recurring costs of industries are enforced by the level of incidence of State and municipal taxes, and the systems for registration of documents. A study by National Institute of Public Finance and Policy showed how the administration of the Registration Act, 1908 and Stamp Act, 1899 in different States distort the operations of capital market and the establishment of companies, because of the differing procedures and duties.

### 16.3. CHANGES IN RULES AND PROCEDURES

16.3.1 The Commission has been asked to examine in the case of selected areas like environment, industry, trade and commerce, housing and real estate, specific changes in existing rules and procedures so as to make them objective, transparent and predictable. The Commission was provided by the Secretariat with a paper on the subject of Regulatory Reform for Responsive Administration in India, which was written by the Member-Convener. Copy of the paper is enclosed at **Annexure-2**. The paper brings out the context of regulatory reform in the light of people-friendly and responsive administration. It has also provided the historic background of reform measures in the past including the exercise undertaken by different Central Government Departments at the instance of the Finance Ministry in 1995.

16.3.2 The Commission received considerable inputs from the Chambers of Commerce and user organisations on various regulatory and procedural aspects covering the Industries (Development and Regulation) Act, Company Law, foreign investment, environment, excise, direct taxation, banking, investor protection, labour, power, working of the judicial system, urban development and housing authorities, and health authorities. Suggestions were also received from Consumer Coordination Council and the Consumer Education and Research Council, Ahmedabad as well as some members of the public. The Pensioners' Association presented problems relating to treatment and reimbursement of expenses in the CGHS. The Chambers of Commerce drew attention to the excessive penalties provided in different Statutes and the scope for arbitrary prosecution and award of punishment under different laws. The Small Scale Industries represented specific difficulties faced at the State level. The Commission had the opportunity to interact with Secretaries and senior officials of different Ministries/Departments and Central agencies. It was able to obtain oral and written responses to various suggestions received by the Commission as well as specific queries made by the Commission except in a few cases. The list of persons and organisations with whom the Commission interacted, is at List 1 **Vol.II**.



16.3.3 In order to facilitate the analysis of the issues, the views of the concerned Ministry/Department, the observations of the Commission, and the subject areas have been grouped in a number of statements relating to power, industry, foreign investment, foreign trade, company laws, environment, Central excise and customs, income tax, labour, banking, housing and real estate, consumer protection, and health. Separate notes received from railways, surface transport and telecommunications departments are also *annexed (Notes 1,2 & 3 – Vol.II)* These statements contain suggestions for specific changes in existing rules and procedures so as to make them objective and more user friendly. As mentioned earlier, the problem is not only that of laws and regulations, but also of the existing administrative procedures and practices, requirement of approvals from multiple agencies, centralisation of authority in the Central or State Government, lack of delegation and decentralisation, conflicting instructions to different Departments dealing with industry and trade, lack of transparency, inter-manoeuvre of location and time limits, inaccessibility of authorised officials, problem of accessing necessary forms and returns, and above all the unhelpful and apathetic attitude of officials at different levels. It is encouraging to note recent instructions by Central and State Governments about the widespread and easy access of public to information about regulations and procedures, circulars of different Departments, and details of decisions on land acquisition, award of tenders, issue of licences, etc. This has been facilitated by the thrust for computerisation and the use of internet, and the access of the public to information provided on the website as well as information counters opened by different Departments. It is hoped that the enactment of the Freedom of Information Act will confer enforceable Right to Information for the citizens.

#### 16.3.4 Evaluation

Despite this long narration of the activities reported by Central and State agencies, the submissions made by CII, FICCI, ASSOCHAM and different user groups, a number of evaluations at the field level as well as responses received in seminars attended by Indian and international delegates reveal the persistence of dissatisfaction with existing procedures, red tape, delays and harassment, the complexity of administrative laws in India, attitude of officials, etc. There is also continuing concern about a huge volume of pending cases in the High Courts and subordinate courts, and delay in the disposal of cases in various tribunals. While it is difficult to narrate fully evaluations which have been done by the Chambers of Commerce and different experts, the following is a broad idea of the perception of the clients of Government.

- A citizen was required to incur three types of costs for the use of public service namely, the official fees and charges, the speed money at different stages, and finally the cost of unproductive investments the citizens incur in order to compensate for the inefficiency and unreliability of the service provided such as water tank, water pump, bore well, voltage stabiliser, generating set, etc.

- The responsiveness of agencies varied widely across villages, cities and States in terms of staff helpfulness, time taken to attend to the problem, time taken to solve the problem, number of visits required to be made to the agency and the number of problems actually solved.
- Lack of customer orientation, inadequate provision of information, non-transparent procedures and practices, inefficient management systems, multiple windows for approvals and permits, lack of accountability for outputs and services, and failure to evaluate performance in terms of user satisfaction.
- Problems of delays, harassment and corruption after starting the business or manufacture in the form of multiple inspections by inspectors from different Departments, difficulty in securing services from different utilities, demand for extortion payments by inspectors and staff, and generally a lack of responsive attitude. Here again, the position varied across different States.

### 16.3.5 Highlighting Sectoral Issues

The Commission particularly wishes to highlight the following issues :

- a) Amendments to Company Law including cumbersome procedures for winding up companies, and protection of investors.
- b) The draft Bill to amend Sick Industrial Companies (Special Provisions) Act, 1985 to address the deficiencies pointed out by Expert Committees, industry and financial institutions.
- c) To ensure a balance among all laws relating to trade and consumers like the Essential Commodities Act, 1955, Standards of Weights and Measures Act, 1976, Prevention of Food Adulteration Act, 1954, and the Bureau of Indian Standards Act, 1986.
- d) The deficiencies in the working of the Consumer Protection Act, and the need for comprehensive steps for informing, enabling and protecting consumers of various services provided by public and private agencies, whether paid for or not.
- e) Reduction of cases filed by Government agencies, especially at the appellate level.
- f) The procedures for dispute resolution in civil courts, tribunals and alternate mechanisms.
- g) Problems of foreign investors.
- h) Inspector Raj.
- i) Labour Laws.
- j) Import and Export Procedures.



### 16.3.6 Penal Provisions

16.3.6(1) The amendment proposed in the Civil Procedure Code Amendment Bill in so far as they relate to expeditious disposal of cases can be extended to the cases before tribunals, etc. This can be facilitated by the use of computer software for monitoring cases and sharing information on decisions similar to that adopted in the Supreme Court. Another way to reduce frivolous appeals on minor technical details is to provide powers with superior officers for the rectification of obvious deficiencies in the order.

16.3.6(2) The Federation of Indian Chambers of Commerce and Industry laid emphasis on the need to distinguish economic offences from criminal offences for purposes of trial and punishment. It may not be easy to make such a distinction across the boards, but the Government could consider provisions of commercial legislation where such a distinction could rightfully be made and then adopt corrective legal measures. The penal and punitive provisions under some major Acts could be reviewed for necessary amendments in order to distinguish economic offences from criminal offences. This is the approach adopted in the FEMA Bill.

16.3.6(3) This leads to the general suggestions from different quarters about reforms in the judicial system where the enormous delays in the disposal of cases affect all sections of citizens and business for which The Commission has made a reference later.

### 16.3.7 Housing and Urban Development

16.3.7(1) A major regulatory constraint confronting both the real estate industry and the ordinary citizens is the complex of laws, regulations and procedures at the Central and State level which cover the housing sector also. These have been listed in the revised National Housing Policy placed before Parliament in 1998, and analysed with considerable force by different research institutions, Chambers of Commerce, real estate industry, etc. As in the case of a number of economic sectors, the laws and regulations affecting housing activities are implemented by a number of Departments and agencies at the Central, State and local level, all of whom may not have the same objectives, but the net result had been a freeze on land and housing supply, steady increase in the growth of slums and unauthorised colonies, and placing decent housing beyond the reach of bulk of the population. Government has introduced in the 1998 Budget Session a Bill to repeal the Urban Land (Ceiling and Regulation) Act, 1976 while the proposal to amend the Delhi Rent Control Act, 1995 is also pending consideration in Parliament. The laws include :

- (1) Relating to land such as the Urban Land (Ceiling and Regulation) Act, 1976, the Land Acquisition Act, 1894, Land Revenue and Tenancy Laws.
- (2) Laws relating to rental housing and rent control.

- (3) Town and Country Planning legislations and building bye-laws, and development authorities, slum improvement boards, laws regulating industrial planning and environmental planning.
- (4) Laws concerning transfer of house property and taxation of conveyance of properties.
- (5) Fiscal laws.
- (6) Regulation of apartment ownership and activities of promoters and builders as well as laws regulating cooperatives (this has been effected in a number of States already).
- (7) Laws relating to housing agencies and municipal corporations.

16.3.7(2) This legal structure for housing is overlaid with procedures specified at the State and local levels for securing approvals to land development and housing activity, repairs and re-constructions of property, securing various services, development of new township, etc. and often permissions are required to be obtained from a large number of Central, State and local agencies before construction can be started. The amended bye-laws in a number of States eliminate the need for permissions in the case of construction as per standard plan for small plots or low income development, and for authorising architects to issue permission subject to broad controls. However, no significant break through has been made on a perceptible scale in any urban area in checking unauthorised construction and use conversion or unregulated development. The regularisation of this development is dictated by political decisions, but imposes huge costs on the budget and pressure on scarce urban infra-structure. The legitimisation of deliberate violation of law by illegal developers penalises law-abiding individuals.

### 16.3.7(3) **Land Acquisition, Urban Regulations and Conveyance**

On the land acquisition law, the approach to acquisition of land in urban areas has to be a mix of compulsory acquisition within a more flexible legal framework, and efforts to induce voluntary use/surrender of land by land owners for different purposes required for orderly urban development and services. The Commission commends various proposals drafted by the Department of Rural Development for amending the Land Acquisition Act, 1894 as mentioned in the Statement 2, Vol.II. At the same time, the Commission emphasised the need to fundamentally alter the present cycle of land acquisition in order to delink the process of vesting possession of land to Government officials' from the process of determining compensation. This has been universally recommended by a number of bodies including the National Commission for Urbanisation, 1988, and is envisaged also in the draft law prepared by the Department of Urban Development. This practice is also followed in countries like Singapore and has led to rapid acquisition of land without affecting right of land owners to secure adequate compensation at the level of administration and through appeals to tribunals.

The Commission would further recommend that the acquiring Departments should clearly identify the purpose for which land is required, propose for acquisition only as much land as is really required, and complete all preparatory actions for commencing the project as soon as possession is given. Wide publicity should be given for the purpose of acquisition including public hearing in the case of large projects as envisaged in the draft Bill for Freedom of Information. In order to prevent the tendency for unnecessary acquisition of land, the Commission recommends that in case the acquired land is not utilised for public purpose in demonstrable terms within five years of taking possession, the land should be reverted to the original land owner on terms to be prescribed by Government.

16.3.7(4) The other aspect of land assembly is to emulate the practice followed in Maharashtra to secure land for road widening, essential public services and preservations by granting transferable development rights, permission to develop the land by the owner subject to construction of the reserved facility, negotiated land sharing, alternate methods of payment of compensation, etc. The Commission understands that these measures have been recommended to all the State Governments by the Department of Urban Development. This will help reduce the burden on the administration for compulsory land acquisition, promote speedy availability of land for public purposes, encourage negotiated compensation, and result in greater involvement of land owners in the development process. Along with this, land acquisition should be accompanied by measures for rehabilitation of the displaced families, grant of alternate plots etc. as attempted in a number of Cities like New Bombay.

16.3.7(5) The Commission is aware of the efforts being made by Central and State Governments to simplify and streamline planning standards and building regulations, which are demonstrated by development authorities, Town Planning Departments and municipalities. However, both the common man, business and builders continue to suffer from cumbersome complex standards and norms, multiple authorities for approval, lack of coordination, lack of transparency, failure to update regulations, lack of delegation, etc. which has led to the complaints about corruption, delays and harassment. We recommend that the innovative efforts of city authorities for single window systems, planning standards, automatic approval for construction by slum dwellers and poor families, approvals to architects, delegation and decentralisation, simplified systems for repairs, reduction and simplification of documents, computerisation, updating rules and regulations, dialogue with users, etc. should be widely adopted. It should be recognised that past policies of monopolistic land acquisition and development and unrealistic standards have in fact led to the growth of unauthorised colonies and slums. The liberalisation of land policy and the entry of private sector should reduce the incentive for unregulatory development. At the same time, it should be ensured that the regularisation of unauthorised settlements is only on the basis of payment of cost-covering payments for services since such subsidies are at the expense of revenue collected for other productive purposes, and will invite similar unauthorised development in future.

16.3.7(6) Along with the question of policies and procedures for promoting housing activity, the Commission would like to lay emphasis on the constraints and levies of duties for the holding and conveyance of land and property in urban and rural areas. These issues have been substantially addressed in a report prepared by the National Institute of Public Finance and Policy for the Ministry of Finance in 1995. It is necessary, in the interest of both the housing industry and financial institutions, to consider the complete revamping of the structure of the ancient Transfer of Property Act, 1882, in order to amend the concept of categorisation of mortgages in line with recent practices of housing and financial institutions, in particular English mortgage and equitable mortgage, lay down uniform mortgage documents, introduce speedy and predictable systems of foreclosure of mortgages for default, and give legal shape to rights of owners in multi-storeyed cooperative societies or apartments. Amendments to the Indian Registration Act, 1908 and the Indian Stamp Act, 1899 should be considered together by the Legislative Department on the basis of proposals being formulated by the Department of Revenue in consultation with State Governments. This is because of the fact that the payment of stamp duty is integrally linked with registration of documents, especially those involving transfer of land and property. The Commission supports the suggestion for de-linking registration process from the payment of stamp duty as in advanced countries, and to liberate the registration process from the requirement of submitting various no objection certificates under Income Tax Act, 1961, Urban Land (Ceiling & Regulation) Act, 1976 Land Reforms legislation, etc. The high rates of stamp duty and the cumbersome procedures of registration are mainly responsible for the avoidance of registration of sale deeds, and the recourse to evasive methods like the power of attorney and the Will for the transfer of possession of properties in a number of Cities. It is estimated that the power of attorney transactions lead to the loss of huge amounts of revenue for Central, State and local Governments, generate black money, and compel even law-abiding citizens to violate the law. The solution to the problem has been well-stated in the report of the Committee of State Finance Ministers on Stamp Act. While implementing this report, Government should take immediate steps in consultation with the States to rationalise stamp duties on various instruments, reduce the level of duty to less than 10% of the value of conveyance, introduce alternate systems for payment of stamp duty by financial institutions and the capital market, simplify and speed-up procedures for registration, and computerise the entire process as has been done in Andhra Pradesh. Over a period, the system of power of attorney for transfer of possession should be discouraged by equating it with conveyance for the levy of stamp duty, and by reducing the rates of duty. These measures will also take care of the problems posed by banks and financial institutions in concluding transactions, especially for major infrastructure projects.

16.3.7(7) Another important area of reform is the assessment of rateable value of land and property in different municipal areas. Due to successive Supreme Court judgements, the fixation of rateable value has been linked to the concept of standard rent under Rent Control laws. This has led to stagnation of municipal revenues, unequal burden of property tax on similar properties constructed or transferred at different times, abuse of discretionary powers vested in the officials, and lack of relationship of property tax to the level of services in a locality. The Commission has noted the reform of the existing systems in Andhra Pradesh and Patna, and an alternate proposal for the assessment of rateable value made to State Governments by the Department of Urban Development in the course of the communication sent recently. In the interest of buoyant revenues of municipalities, equitable assessment of rateable value on similar properties in a City, and fixation of property tax based on rational and transparent parameters, the Commission would urge the Department of Urban Development to frame a model chapter on property law for inclusion in all the State municipal laws as well as the Cantonment Boards Act. The passage of this legislation can be leveraged through conditions attached to distributions by the Eleventh Finance Commission as well as grants under Central Schemes. Along with this, the State Governments should also reform other aspects of property tax administration such as the structure of property tax, separation of user charges from consolidated tax, exemptions, liability of Central Government properties for taxation, database on properties, computerised systems of assessment and collection, improving the skills of personnel etc. Ultimately, it would be useful to develop common systems of valuation for property tax, stamp duty, income tax, wealth tax, etc. as envisaged by the Department of Revenue, and as already adopted in a number of countries. This will also provide acceptable systems of valuation for land acquisition also.

### **16.3.8 Company Law**

16.3.8(1) The Commission found that considerable problems were faced by the industry, and even foreign investors, on account of the complex provisions of company law, the registration process, elaborate forms, returns and registers, inconvenience to companies in making various operational changes, payment of fees, issue and buy-back of shares, merger, winding up of companies, payment of dividends, etc. This was aggravated by the bureaucratic ways of the offices of Registrar of Companies, manual systems, delays in settling disputes through Company Law Board, etc. The industry has welcomed the introduction of the comprehensive Bill for revision of the Act in Parliament, based on the report of the Working Group and consultation with industry and other groups. However, the Bill has not been taken up for enactment and only a few urgent amendments are processed. The Commission would urge that the Government refer the Bill to a Select Committee for taking note of all suggested improvements from Government agencies, industry, and consumer groups, and then enact the Bill in the next six months. This is a much needed legal measure. The rules

in force may then be revised and consolidated. Along with this, the proposed steps by the Department of Company Affairs to computerise operations, inter-link various offices, increased staff, professionalise the management, minimise forms and returns, and reduce paperwork for companies should be completed in three months with adequate support from Finance Ministry. The Company Law Board needs to be streamlined in terms of procedures and infrastructure to handle the new responsibilities.

16.3.8(2) While finalising the draft Bill, the Government may take note of the views of the Commission in Statement-3, Vol.II such as greatly improved winding up procedures, as suggested earlier, buy-back of shares, investor protection, setting up separate fund out of unpaid dividends, etc.

16.3.8(3) While revising the legal structure for companies, the Government should simultaneously resolve the confusion surrounding the role of SEBI and RBI as regards the jurisdiction over companies, in matters like issue of shares, acceptance of deposits, capital market operations, etc. It appears that the amendment proposed in 1993 to define their respective jurisdictions in relation to the Department of Company Affairs and Company Law Board is still not clear. It is proposed to bring listed companies under SEBI, unlisted companies under the Department of Company Affairs, and the non-banking finance companies under the Reserve Bank of India. However, the Company Law Board is still the tribunal for dealing with violations, but it has no powers to enforce its decisions. In this process, the investor is tossed from one authority to another to get redress and recover his losses. Since the Finance Ministry already deals with SEBI and Reserve Bank of India, it might be useful for a harmonious policy to place the Department of Company Affairs in the form of a Division in the Department of Economic Affairs.

16.3.8(4) On the subject of winding up of companies, the deficiencies in the present procedures for sick and non-sick companies have been well-described in the report of the Goswami Committee on Sick Companies set up by the Department of Banking. The Commission has given its observations on this subject in the statement relating to Company Law in Vol. II. While the Government pursues the possibility of setting up an alternate legislation for winding up of companies and bankruptcy similar to U.K., it could consider amendments to the Company Law and the suggestions made by the Goswami Committee to minimise the procedures involved in appointing the liquidator, take over of assets and books of the company, effecting the sale of assets, and distribute the proceedings of sale to various creditors. Instead of burdening the Company Law Board with winding up of companies, it would be better to rely on fast track tribunals proposed by the Goswami Committee. At the same time, it is necessary to explore the reasons for growing volume of non-performing assets and bad debts of banks and financial institutions, and investigate the reasons for providing new loans to incipient sick companies



### **16.3.9 Sick Industrial Companies**

16.3.9(1) The Commission noted that the Department of Banking had introduced in 1997, a Bill for comprehensive amendment of Sick Industrial Companies (Special Provisions) Act 1985, but this Bill lapsed with the dissolution of Parliament. This Bill was based on the recommendations of the Goswami Committee report and hoped to address the deficiencies in the existing Act. It aims at changes in the definition of sickness of companies, the overall procedure to be adopted by BIFR, the increased powers of BIFR for enforcing the scheme, takeover and sale of assets, etc. It is, however, found by the Commission that, despite many improvements made in the 1985 Act, the Draft Bill does not fully address the deficiencies pointed out by Expert Committees, industry and financial institutions.

16.3.9(2) The Draft Bill may not shorten the time for finalising the scheme for rehabilitation or winding up the sick company, because it prescribes a number of sequential procedures. It is possible to combine sections 15 to 17 and enable BIFR to finalise a mandatory scheme based on concurrent consultation of the company, creditors and employees' representatives. The provisions relating to bar of jurisdiction of all civil courts have to be clarified to retain the writ jurisdiction of High Courts and the Supreme Court.

16.3.9(3) Section 22 should be retained in the present form to freeze existing litigation. With the changes proposed by us in the Statement-6, Vol.II, Government should take expeditious action to introduce a new Bill.

### **16.3.10 Investor Protection and Non-Banking Finance Companies**

16.3.10(1) On the subject of investor protection, the Commission is concerned both about the large volume of small investors who are exploited and defrauded by shady companies and promoters, as well as the depositors who are unable to claim refund from non-banking finance companies (NBFCs) and other companies who accept deposits. It is recognised that existing mechanisms devised by SEBI for appeals against brokers and promoters by small investors are inadequate, and the Company Law Board is not able to provide relief and compensation in time for the investor. It is not within the scope of this report to discuss the reasons for the speculation and rigging of shares by a few operators in the capital market and the failure of SEBI to check such practices which lead to huge losses for unsuspecting investors. However, the Commission would emphasise the urgency of Government and SEBI acting together to improve disclosure requirements for companies issuing prospectus and shares, discipline violators of SEBI directives, and arrange for speedy compensation to the investors by adjudicating bodies. It is also possible to consider starting an insurance scheme for investors similar to the

one in the banks through contributions from various companies listed for trading. It is also possible to consider enacting a provision in the Company Law similar to the recommendation made by the Working Group for setting-up an investor protection fund by utilising the unpaid dividends which accrue to the Government after seven years. This fund could be administered by an independent body which will have the objective of administering an insurance scheme, providing partial or full compensation to investors similar to deposit insurance scheme, disseminate information to investors and depositors about companies and institutions offering different products, and also providing legal advice.

16.3.10(2) The Commission noted with great concern that the regulatory framework in regard to the NBFCs came into existence only very recently, i.e. in January 1997 through an Ordinance issued by the Government, but the actual implementation of this mechanism by the Reserve Bank of India started after one year. However, judging from the representations received by the Commission, and as seen from frequent reports in the newspapers, even present regulatory machinery devised by the Reserve Bank of India cannot be said to be either adequate or effective. The Commission was concerned to note that huge sums of money of the public, many of them belonging to the middle and lower income groups, which were deposited with defaulting NBFCs before and after the date of the above Ordinance, have been jeopardised with no sign of a reasonable solution to the problem or actual repayment to the investors. The ineffective role of the Reserve Bank of India and Company Law Board in this connection has come under severe criticism. It was the Commission's view that Government cannot shirk its overall responsibility in the matter of protection of depositors in the NBFCs.

16.3.10(3) The Commission was informed by officials of Reserve Bank of India that number of steps have been taken after the enactment of the Reserve Bank of India (Amendment) Act 1997. These include :

- a) The introduction of the statutory registration scheme, according to which all NBFCs existing as on 1<sup>st</sup> January 1997 and the new NBFCs, were required to submit application for certificate of registration by 8<sup>th</sup> July 1997. Certificates of registration were issued to about 6,000 companies out of 37,500 applicants.
- b) The introduction of a new regulatory framework in January 1997 to ensure healthy growth of NBFCs and to provide greater protection to the depositors. This covers the categorisation of NBFCs, the definition of public deposits, and the requirement of capital adequacy for borrowing, eligibility requirement of net owned fund of more than Rs. 25.00 lakhs, and linking the raising of deposits to the level of credit rating. Two-dimensional norms have been prescribed for NBFCs, along with percentage of liquid assets, and greater degree of disclosure.



- c) Constitution of study group to identify difficulties and inadequacies in the existing system and to propose further amendments.
- d) Mass publicity campaign for educating the public on the regulatory system and the risks involved in placing deposits with unregistered NBFCs.

The Commission was informed that Reserve Bank of India has appointed a Working Group for considering the extension of deposit protection scheme for the NBFC depositors, but it is envisaged that the scheme would be considered only for registered and rated NBFCs. It was clarified that the *nidhi* companies which are notified under Section 620(A) of the Companies Act are administered by the Department of Company Affairs, and hence they are exempted from the provisions of the NBFC directions. Similarly, NBFCs like insurance and housing finance companies which are regulated by other statutory bodies are also exempted from RBI regulations.

16.3.10(4) Under the amended Act, the RBI has acquired power to impose penalties directly on the NBFCs for non-compliance of the provisions of the Act, and to file winding up petitions against them. The RBI can require the NBFCs to create reserve fund and compulsorily transfer at least 20% of their profits to this fund. They can also give directions to the companies and the auditors on matters relating to balance sheet. If any NBFC fails to repay deposits, the affected depositor can file a complaint with the concerned regional branch of CLB or with the consumer disputes forum. If the company fails to honour the order of the CLB, the Reserve Bank of India can launch prosecution against the erring company. It was stated that the Bank has appointed nodal officers at its regional offices for instituting prosecution, although it was admitted that the present administrative machinery of Reserve Bank of India would be highly inadequate to launch large number of prosecutions, especially against unregistered NBFCs.

16.3.10(5) The Commission was encouraged to know that the Government has recognised the severity of the problems faced by organisations and individuals who had deposited their savings with the NBFCs, and the need for increased regulation as well as transparency in the operation of NBFCs. The Commission recognises that these companies have some inherent advantages as they have greater reach and flexibility in attracting resources, provide better returns, and offer retail services to small and middle level borrowers and road transport operators. However, because of the inherent greater risk involved in NBFC operations, the depositors are exposed to larger risks. The objective of a regulatory framework should be to promote the growth of a healthy NBFC sector while at the same time providing greater confidence and

security to the depositors by enabling them to take well informed decisions on investment, and by providing them avenues for quick and inexpensive justice for securing repayment from defaulting companies. The Commission was informed that the Government has constituted a Task Force to go into the adequacy of the present legislative framework, to devise improvements in procedures relating to customer complaints, and involvement of the State Governments in the regulation of NBFCs. The Commission was also informed that a Conference was convened on 14<sup>th</sup> September, 1998 by the Finance Minister for discussions with Chief Ministers and Finance Ministers of the State Governments on this issue. This Conference has resulted in the expression of strong support by the State Governments to the effective implementation of the regulatory system introduced recently by the Reserve Bank of India, and for initiating swift action against unregistered NBFCs accepting deposits in violation of the provisions of the Reserve Bank of India Act. In particular, there was an agreement for enacting legislation in all the States similar to Tamil Nadu Protection of interests of Depositors (in Financial Establishments) Act, 1997 to take action against unincorporated bodies which have defaulted in repayment of deposits. It has been decided that the Reserve Bank of India and State Governments will make joint efforts to prosecute unregistered NBFCs and warn the depositors against investing their savings in such companies. It is also proposed that Reserve Bank of India may authorise officials of State Governments to launch prosecutions against NBFCs for failure to implement the decisions of the CLB.

16.3.10(6) The Commission urges that the Government should clearly vest responsibility in the Reserve Bank of India for strictly and effectively enforcing the regulatory mechanism, and give wide publicity to various measures which are proposed to be undertaken by the Central and State Governments for registration and regulation of NBFCs, protection of depositors, action against erring companies, and easily accessible avenues for grievance redressal. The mechanism should concentrate not only at prosecuting the offenders but also in arranging for the early repayment of deposits. The immediate introduction of the proposed insurance scheme would be helpful in this regard. Along with the regulation of NBFCs, the Central and State Governments should also install and enforce regulatory system for the NBFCs and unincorporated bodies not covered by the Reserve Bank of India regulations, but which are accepting deposits from the public. It would be useful if the Expert Group and the Special Secretary(Banking) also evaluate the Tamil Nadu legislation so as to devise a more improved model legislation for States. It is hoped that the Government would take urgent action on the recommendations of this Expert Group.

### 16.3.10(7) Problems of Foreign Investors

The Commission noted the sustained efforts made by Government since 1991, and in recent months, to increase the inflow of foreign investment in different sectors, especially infrastructure. The Department of Industrial Policy and Promotion, Department of Economic Affairs and Reserve Bank of India acquainted the Commission with steps to opening most of the sectors of industry, trade and services to NRI and foreign investors and institutions, automatic entry according to specified norms for equity holding, approvals within 90 days, single point registration, liberal repatriation of dividends and profits, counselling and guidance services etc. Despite these measures, the general perception of foreign institutions and investors is one of red tape, bureaucratic hurdles, inconsistent and unpredictable standards, cumbersome documentation, problems of purchase and renting of property, multi-tier approvals, delays in clearance, field level hassles, etc. This is reflected in the low proportion of actual inflows to the approved levels of foreign investment. Thus, despite a policy regime comparable to other Asian countries, the benefits are not commensurate with efforts on account of general problems common to foreign and domestic investors and entrepreneurs, and problems unique to the leading sectors like telecom, power, petroleum, etc. This was emphasised by the officials from Industry and Finance Ministries. No doubt, actual inflows are related to perceptions of stability of policy environment and global developments. They are also governed by sectoral policy issues like fuel linkage, counter guarantees, etc. But they are equally influenced by the perceived lack of consistency in policy norms, non-transparency of guidelines and selection procedures, State level delays in approvals, confusion over the role of regulatory authorities in Power, Telecom and other sectors, apprehensions over the delays in dispute resolution and contract enforcement, etc. These apprehensions and impressions need to be detailed and reduced to actionable issues at the level of different authorities, and harmoniously resolved by inter-Ministerial groups. A comparative study of conception to commencement in successful Asian countries and India will facilitate this exercise.

### 16.3.11 Industry

16.3.11(1) The PHD Chamber of Commerce and Industry and other Chambers have conducted a number of studies in a number of States about the factors affecting the growth of industry and trade, and the problems of small industry in particular. These surveys and other inter-actions with officials at different levels reveal :

- The plethora of rules, regulations and procedures and their administration by a huge and unmanageable bureaucracy, which results in alienation of the entrepreneur and promotes corruption.

- The multiplicity of Departments at the State level and the local agencies which an entrepreneur has to deal with in order to set up and continue operations, and his consequent willingness to make payment to middlemen for even legal tasks.
- The failure of the concept of single window service to the entrepreneur in the form of District Industries Centre (DIC), since the officers of the DIC are not provided with adequate information or powers over other Departments for achieving the objective of single window service which alone can reduce delays and cost overruns.
- The lack of a mechanism for dissemination of information of any kind to the officials of State Governments in different directorates and local agencies affecting industrial and urban development, including notifications of a policy and procedural nature, and the very low level of computerisation and computer skills at the operational level.
- The problems created by water-tight compartmentalisation of activities in a number of Departments in the State Governments, especially in the present context of proliferating portfolios of Ministers, and which works against the need for coordination between different Departments to avoid conflicting signals from different field officials.
- Excessively long periods taken for obtaining loan from banks and state financial institutions, especially for small scale units, which results from conservative procedures, eligibility and collateral criteria, type of security, requirements of approval from Government agencies such as electricity board or pollution control board, and the lack of coordination between financial institutions and directorates of industries.
- Problems with urban agencies, land revenue authorities and development authorities in securing land for industrial and other projects, proposals for land use conversion, securing connections for water supply and electricity, problems of compliance with pollution control requirements, problems in securing licences, etc. for rice mills, for establishments requiring municipal and health licences, etc.

16.3.11(2) Continuing exercise for legal and procedural reform to remove redundant rules and regulations, for the revision and consolidation of forms, reduction/elimination of inspection requirements, minimise sequential processing of files, genuine single window services at State and local levels, etc. has been attempted by a number of States, and to disseminate successful examples in the whole country; the industry associations should pro-actively interact with the Government for revision of rules, regulations and forms and overcome the vested interest of bureaucracy in continuing the existing systems.

### 16.3.11(3) Inspector Raj

In the course of this report, the Commission has made a number of references to representations from industry and trade about the harassment and alleged corrupt practices of inspectors and enforcement agencies at different levels and different Departments, which has been described both by Government functionaries as well as industry as the *inspector raj*. This takes the form of :

- a) Large number of forms and returns prescribed under different Central and State laws for compulsory submission by industry and trade in the course of manufacturing operations, at the time of exports and imports, or under different revenue laws.
- b) The approach to different regulatory and development agencies for securing licenses and permits, or for periodic renewal, or for additions to existing licences, or for change of location of business, or compliance with various provisions of company law.
- c) Periodic inspections by employees of different Departments and Central and State Governments, in the course of the enforcement of various provisions of law, rules, regulations and procedures, and complying with various requests made by the inspectors during their visit to the establishment.
- d) Taking follow up action by way of compliance with various inspection reports, or defending before the court of law or any authority the charges brought against the establishment on account of penalties and violations pointed out by the inspectors.

16.3.11(4) As pointed out in field services in a number of cities, the *licence raj* may have been diluted because of recent industrial policies, but *inspector raj* is still thriving. The Users' Associations pointed out that on an average at least two to three inspectors of various regulatory agencies like Excise, Electricity, Sales Tax, Labour etc. visit the enterprises every month. The frequency of inspections varies across States, depending on the number of laws and inspections enforced by the State Governments, and the extent of reforms introduced recently to reduce such inspections. It is reported that unofficial payments are made to the inspectors on a monthly basis as a result of both collusion and extortion, and further that the size of payments has in fact increased in the last two years. It appears that while the State Governments and Central agencies have been active and aggressive in promoting new investment and the establishment of enterprises, similar attention has not been devoted to the problems of these enterprises after they start operations, or when they conduct transactions with different regulatory agencies. The persistence of the phenomenon of *inspector raj* calls for urgent review of the rationale for inspections and documentation under different Central and State Departments, the laws and practices governing inspections, and the need for the adoption of more efficient and transparent surveillance and audit mechanisms. The Commission noted the efforts made by a number of States to rationalise, consolidate, simplify and reduce forms and returns, to introduce single forms with multiple columns for different agencies, and reduce the requirements for the submission

of documentation. Some States have started the practice of giving licences and permits for long periods and for giving renewals for a similar period, subject to stringent action for violation of licence conditions. Some States follow the practice of different inspectors under the same Department or related Departments like Labour and Environment combining the inspection forms and returns in order to share common set of information, and arranging for inspectors of one Department to record observations for other Departments also. The Chambers of Commerce have welcomed such initiatives, and have requested that this may be extended to other States and Central agencies. They have offered to take up the inspection of enterprises themselves and to cooperate with the authorities in streamlining the present systems. At the same time, they have also pleaded for simple and easily understood sets of procedures and instructions implemented by Excise and Customs, Sales Tax, etc., which are uniformly interpreted by all the field staff, without any scope for displeasure. The Commission supports these suggestions and requests the Central Ministries in charge of Industry, Labour, Environment, Power and other Departments to interact with State Governments for widespread adoption of various good practices. Along with these measures for reduction of the *inspector raj* and red tape, it is equally important to look into the genuine problems faced by inspectors and field staff as regards overload of work, transport, working conditions, career improvement, political pressure, etc. in order that these problems are discussed periodically by the top management with staff representatives for prompt resolution.

#### 16.3.12 **Essential Commodities Act, 1955.**

16.3.12(1) This is of considerable significance for the orderly conduct of wholesale trade, to ensure fair practices and protect the interests of consumers. However, the traders have been representing against the draconian provisions of the Essential Commodities (Special Provisions) Act, 1981, about the penal provisions of the principal Act, the scope for misuse of power by field functionaries, provisions for seizure of entire stock, problems of licensing and stock limits. It was encouraging to note that, based on the report of the Expert Committee, the Government decided not to extend the Essential Commodities (Special Provisions) Act, 1981, and to issue an Ordinance in April 1998 to amend the Act. Subsequently, a Bill was introduced in the Budget Session 1998 to amend the Essential Commodities Act, 1955, in order to implement most of the suggestions of the Expert Committee, and this was welcomed by the trade associations.

16.3.12(2) The Commission considers that some improvements are needed in the amending Bill as noted in the Statement-7, Vol.II. These include a provision to enable Government to review the list of essential commodities periodically and reduce the number gradually, to raise the period of imprisonment for grave offences to more than two years, and to enable the removal of confusion on account of varying specifications in the orders issued by different Ministries under the Essential Commodities Act.



16.3.12(3) More importantly, there is an urgent need to harmonise the various control orders issued by different Ministries from the point of view of specifications for essential commodities, and further to harmonise the standards for the same foodstuff (such as use of artificial sweetener in pan masala) under Prevention of Food Adulteration Act, 1954 and Essential Commodities orders. Government should back the on-going efforts of the Department of Consumer Affairs to persuade the 13 Ministries (mentioned in Annexure 10, Statement-7) to reduce the list of essential commodities, review repeal/consolidate the 129 orders, promote long term licensing, simplify provisions for licensing and stock limits, remove restrictions on movement wherever not found necessary, and reduce the scope for arbitrary exercise of powers by field staff.

16.3.12(4) Ultimately, in the case of laws relating to trade and consumers like the Essential Commodities Act, 1955, Standards of Weights and Measures Act, 1976, Prevention of Food Adulteration Act, 1954, and the Bureau of Indian Standards Act, 1976, the interests of trade and consumers have to be balanced. In this process, the problems of the distributive trade and commercial long distance transport should be resolved amicably in order to avoid frequent disruption of movement of goods at great cost and trouble to the economy and the public.

### 16.3.13 Health Sector

16.3.13(1) The Commission considered the health sector primarily from the viewpoint of the legislation to prevent and punish food adulteration, the manufacture and sale of drugs, regulation of private nursing homes, the disposal of hospital wastes, problems of CGHS pensioners, etc. We have not had occasion to look at issues relating to treatment in public hospitals, control of epidemic diseases, frequent disruption in the working of public hospitals, regulation of unauthorised and unqualified practitioners, etc. important as they are for the general public.

16.3.13(2) Our views on proposed amendments to the Prevention of Food Adulteration Act, 1954, Drugs and Cosmetics Act, 1940, and the regulation of private nursing homes are available in the Statement-8 Vol.II. The Commission agrees with many observations of Justice Venkatramiah Task Force (set up by the Confederation of Indian Industry) on the rationalisation of Prevention of Food Adulteration Act, especially the reorganization and strengthening of the present administrative set up in the Centre for laying down standards, and proposing periodic improvements and legal amendments for better administration of the Act. The time taken to revise or fix standards, through various Committees and then the Governmental hierarchy, is too long, and is not also aligned with the BIS standards due to lack of communication between concerned organisations. The standards are also required to be aligned with international standards over a period as the basis for defining adulteration in India is different from many countries. The Prevention of Food Adulteration Act, 1954, and the rules and orders made by Centre and State are so riddled with technicalities, and the staff so insufficient, that they are powerless to prevent or move against adulteration, or when a crisis like mustard oil dropsy erupts. For example, the definition of adulteration mentions insects

but not worms or micro-organisms, and so the person selling mirchi powder with worms is acquitted. Delays in Central Food Laboratory reports lead to acquittal. The approach has to be one of action to amend the Act and the Rules after consideration of the recommendations of Confederation of Indian Industry Task Force, restructuring the Central Committee for Food Standards and streamlining its procedures, strengthening its staff support, and revamping field machinery.

16.3.13(3) The Commission favours a unified administrative set up in the Central Government for implementing the Drug Policy covering manufacture, quality control and pricing, instead of the present division between the Ministry of Health and Family Welfare, and the Ministry of Chemicals and Fertilizers. We have referred earlier to the inadequate enforcement of the Drug Policy and exploitation of consumers. The authorities do not appear to be in a position to ensure that drugs and formulations, banned from time to time under section 26(A) of the Drugs and Cosmetics Act, 1940, through various Central Gazette Notifications, do not surface in the market, or enforce a mechanism to recall such drugs quickly. The report of Expert Committee set up by the Supreme Court in May 1998 on this issue needs to be processed urgently for early action by Central and State Governments. It is possible in this context to pursue the Ministry's idea of permitting authorised citizen's groups to inspect retail drug dealers. This is, however, no substitute for strengthening the enforcement staff in the States, rationalising the cadre and career prospects for inspectors, improving inspection procedures without harassment, etc. One aspect of reform would be to bring the over-the-counter drugs in India on par with the practice in developed countries. This would reduce the need for getting doctor's prescription for drugs and also the workload on retailers to keep registers.

16.3.13(4) As regards nursing homes, the Commission noted that only a few States have legislation regulating them, but the enforcement of standards is inadequate. It is necessary to proceed on the basis of a model legislation for statutory control in all the States. It would be desirable to start with accreditation of nursing homes and private clinics by medical associations.

16.3.13(5) This brings us to the problem of controlling the practice of quacks and unauthorised practitioners. This practice flourishes in part because of the poor and insensitive functioning of Primary Health Centres and public hospitals, and the non-availability of health care in remote villages and even parts of cities. The indiscriminate disposal of hazardous hospital waste poses huge health problems for rag-pickers and for environmental health. The Central Pollution Control Board had notified guidelines under the directions of the Supreme Court. These need to be enforced by the Central and State authorities.

16.3.13(6) The frequent disruption of hospital services and emergency care by striking workers has brought to fore the need to amend the Contract Labour (Regulation and Abolition) Act, 1970 to exempt emergency services in hospitals from the purview of the Act, and permit contracting of sweeping, cleaning, security, and emergency services in hospitals as proposed by the Health Ministry. The pro-active effort by Government would be the implementation of a Patient's Charter with full commitment at all levels.



16.3.13(7) The Health Ministry operates a large network of dispensaries and health care for serving and retired employees. The Ministry referred to a number of employee-friendly initiatives for improving services, including the computerised processing of claims, permitting treatment in accredited private hospitals, decentralisation of powers to doctors in charge of dispensaries, and arrangements for visits by specialists. The pensioners' representatives pointed out a number of disabilities unique to the pensioners in contrast to serving employees. They referred to the inadequacy of dispensaries, lack of information on procedures for reimbursement of claims and treatment, non-access to treatment in State hospitals, lack of specialist's presence in dispensaries, difficulty in securing medicines, etc. The Commission hopes that the shortfall in dispensaries would be redressed soon, and that the problems pointed out by pensioners are attended to as soon as possible on the basis of regular dialogue and attention to issues like prompt reimbursement of claims, direct payment to accredited hospitals for treatment including in emergencies, quality of medicines supplied, treatment in State hospitals, etc. Unless there are special reasons for a different approach, the objective should be to treat the pensioners on par with the serving employees in the matter of medical care and treatment in the CGHS. The programme for opening of new dispensaries should be prepared in advance and adequately publicised. In this connection, requirement of facilities in areas where these do not exist should be given priority.

#### 16.3.14 Environment

16.3.14(1) The Ministry of Environment and Forests is considering consolidation of Water (Prevention and Control of Pollution) Act, 1974 Air (PCP) Act, 1981 and the Environment (Protection) Act, 1986 but no definite exercise has been initiated for this purpose. Indian Forest Act is more than 70 years old, but amendments to the Act are yet to be formulated. More important would appear to be the rules, regulations and procedures, and the notifications issued under the Act relating to approvals to be obtained by the industries from Central and State authorities under Forest (Conservation) Act and the three environment laws before and during operations. The Commission noted that the Ministry was taking action to delegate powers to State agencies, and to reduce the delays and problems involved in compliance with the regulations and procedures. It also noted the countervailing pressures on the Ministry on account of the demand of environmental groups for protecting environment, and of the Supreme Court decisions for strict enforcement of regulations relating to coastal zones, forest preservation, air and water pollution, etc. Often the grant of approval for location of projects on forest areas requires the acquisition of alternate land for forests and the rehabilitation of affected families. This process leads to delays of over two years due to shortage of funds, difficulty in land acquisition, agitation of local groups and court orders. The issue of environment clearance for the 29 notified activities involved the preparation of environment impact assessment report, public hearings, and recommendation by the Appraisal Committee. Apart from the expense over engaging Consultants, this results in delays, which varies according to the time taken by individual Pollution Control Boards to forward reports to Central Government.

16.3.14(2) The Commission appreciates the concern of the Ministry of Environment and Forests for protecting the quality of environment and preventing the pollution of air and water, especially as this had significant implications on the health and well-being of the population in urban and rural areas. At the same time, the Central and State Departments concerned with approvals for infrastructure projects and industrial activity, as well as industry and trade, express serious concern about delays and cost escalation in respect of these projects because of the existing procedures of getting clearance under different environment and forest legislation and rules. Consistent with the enforcement of existing legislation to protect environment and maintain the forest areas, it is possible to streamline and simplify existing procedures such as :

- a) A common consent under the three legislations for air, water and environment protection, along with a supplementary consent for hazardous activities.
- b) Grant of approvals on the basis of uniform guidelines agreed between the Central and State Pollution Control Boards, and the avoidance of the imposition of supplementary conditions by the State Boards.
- c) Agreements on renewal of consents upto three years, to be given on a decentralised basis.
- d) Depending on further dialogue with Chambers of Industry and Commerce, consider the grant of environmental clearance on the basis of recommendations made by the State Pollution Control Board, subject to clearances under other laws and regulations being obtained simultaneously.
- e) Finalise the exercise for prescribing a consolidated form for approval, of which the first part could be filled up by the applicant with all relevant information contained in a floppy; the second part to consist of the comments of concerned authorities, which would be directly obtained by the Ministry of Environment and Forests with the help of State Boards; the third part will consist of submission of the information to one of the six Environment Appraisal Committees headed by a non-official expert, which would submit the matter for decision by the Minister. This decision will be incorporated in Part III, and made available for the information of the applicant and all concerned agencies. This would also be disseminated through the Internet as done by the Ministry of Industry.
- f) Finalise and publicise the zonal atlas in order to guide the industry about the areas where different types of industries would be located and environmental clearance would be given automatically and also information on hot-spots which may generally be avoided unless alternate location is impossible or unless the industry could convince the authorities that the activity will not add to the pollution load.
- g) Reduce the cost of submission of environment impact assessment report, which will be facilitated also by the use of the revised form to avoid the duplication of information submitted for EIA and for getting clearances from State Pollution Control Boards.
- h) Realistic formulation of pollution and emission standards, and a beginning to be made of economic instruments for promoting voluntary compliance of industry with these standards, on the lines of developed countries.

- i) To document and disseminate good practices for environmental clearance in different States. For instance, the Punjab Government classifies the industries falling in red category (highly polluted) and a green category. The entrepreneur who wishes to set up industry falling in green category will apply in prescribed proforma to the Director of Industries. He will get clearance in seven days if the unit is not in the negative list of the State Electricity Board and the Pollution Control Board. For projects located in the red/hazardous category, the entrepreneur will submit the application by registered post for clearance with the Pollution Control Board with a copy to the *Udyog Sahayak*. On receipt of application complete in all respects, if the Board does not take a decision in 30 days, it would be deemed that a clearance has been given. The application would also be entered in the computer system of the Pollution Board which will be linked to the computer system of *Udyog Sahayak*, and the deemed or actual clearance would be communicated through this system to the Director of Industries. An important point to note here is the clearances under other legislations relating to internal environment of the industry such as Boilers Act and Factories Act are processed at the same time. Similar instances of automatic consent for non-polluting industries are available in other States.

16.3.14(3) The Commission would urge the Ministry of Environment and Forests to proceed expeditiously with various important moves for liberalisation and simplification undertaken by them, and the steps for consolidating different laws and regulations. At the same time, the Commission would recommend effective action on the part of Central and State Pollution Control agencies and local authorities for action against those responsible for improper and dangerous disposal of hospital and hazardous wastes, indiscriminate discharge of harmful effluents into water by tanneries and other polluting industries and the indiscriminate burning of material harmful to the population.

#### 16.3.15 **Labour Laws**

16.3.15(1) Out of the large number of labour laws administered by the Central Government, the Commission has confined its observations to the important provisions of the Industrial Disputes Act, 1947, Payment of Bonus Act, 1965, Factories Act, 1948, Employees Provident Fund Act, 1952, Employees State Insurance Act, 1948, Trade Unions Act, 1926 and the Contract Labour (Regulation and Abolition) Act, 1970. It was noted that the Mitra Committee set up by the Ministry of Labour in October 1997 has made a number of concrete suggestions for amendments to the Industrial Disputes Act, 1947. The Commission endorses the recommendations made by this Committee, and also agrees that the title of the Act should be amended as the Employment Relations Act, in order to shift the focus from disputes to measures for harmonious relations. Some of the important issues to be decided urgently in the context of amendments to this Act would be the concept of lock-outs and strikes, the definition of industry and workman, the establishment of grievance redressal machinery, and prior approval by

Government for lay-off, retrenchment and closure. It is necessary to move forward on the basis of negotiating councils as collective bargaining agents and discourage avoidable multiplicity of trade unions. At the Government level, it would be useful to set up independent and autonomous Industrial Relations Commission in order to relieve the executive from the work load for conciliation and arbitration of labour disputes. The legal norms for the notice for strikes and lock-outs, exemption of essential services, requirement of majority resolution of unions, etc. should be agreed to quickly with employers and labour for enactment. Effort should be to reduce the reference of disputes to labour courts and tribunals, given the huge pendency of cases and inadequate infrastructure, and to promote arbitration and conciliation. It is also possible to lay down norms for the registration of trade unions and their recognition on the lines suggested by the Commission in the Statement No.10, Vol.- II, and reduce the proportion of external office bearers in unions.

16.3.15(2) There is considerable demand from both public and private establishments and Central Government Departments for amending the existing provisions of the Contract Labour (Regulation and Abolition) Act, 1970. The Commission was informed that the matter has been considered in detail by the Committee of Secretaries and the Labour Ministry has been requested to draft proposals for amendments to the Act in a short time and take up formulation of a separate legislation as part of the overall exercise for reforming labour laws. The Commission would urge the Labour Ministry to bring forward these amendments as soon as possible in order to reduce or relax the present legal regime for engagement of contract labour in all the non-core peripheral activities of various Departments and establishments. The engagement of contract labour even in routine services like sweeping, cleaning, security in Government Departments and public sector organisations have been banned by a notification issued by the Labour Ministry, and public sector undertakings are obliged to engage departmental labour for tasks that are not part of their main functions. Because of the Supreme Court judgement in the Air India case, the Central agencies are required to absorb the contract labour after termination of the contract at considerable expense. Given the rate at which some activities will become obsolete because of changes in technologies, or where activities are of a seasonal and temporary nature, there is even greater need for permitting the engagement of contract labour. It should, of course, be ensured by the principal employer that the contractor complies with the requirements of payment of minimum wage, assuring proper working conditions, etc.

16.3.15(3) These observations on different specific laws and sectors should be read with the observations of the Commission on various individual laws and sectors in the statements in Vol. II.

### 16.3.16 Direct and Indirect Taxation

16.3.16(1) While the Commission obtained detailed responses from the officials of CBDT and CBEC, it became apparent after interaction with the user groups that it was necessary to look into the entire framework of Central, State and local taxation, the levy of taxes and duties and the procedures governing them, in order to make a definite impact on the problems faced by different sectors and industry. It was found by the Commission that various Departments in charge of specific sectors have definite expectations from the CBDT and CBEC for providing specific relief and concessions, relaxation of procedures and improving the machinery for resolving disputes. The banking sector made a number of suggestions for reducing the burden of taxation and for amending the existing system of direct taxation. This was contained in the presentations from the Indian Banks Association. The revised National Housing Policy contains a number of suggestions for fiscal concessions to promote housing and urban infrastructure, to raise the level of concessions to individuals, and to promote manufacture of low cost building materials. We have referred to the representations made by the Ministry of Commerce as regards excise and customs concessions and procedures relating to exports and imports. There were many sector specific fiscal concessions such as information technology, power, telecommunications, etc. It is important to note that the cases referred to the Commission were as much in the nature of reduction and relief in respect of direct and indirect taxation, as in the form of improvement and simplification of procedures, consistency of definitions across different laws, reduction of delays and complexities in the settlement of disputes, and reducing scope for harassment and corruption by field functionaries. The Commission notes with satisfaction that the Government has moved purposefully forward in the area of providing positive fiscal concessions relating to exports and imports, housing and real estate, information technology, production of low cost building materials and for the encouragement of various forms of industrial activity. Recent budget has led to positive changes in the rules and procedures governing settlement of disputes in the area of income tax, excise and customs, reduction of tiers for appeal, simplification of forms and returns, substitution of bank guarantees by legal undertakings and the *kar vivid samadhan* procedure for the settlement of taxes and duties under dispute. It is hoped that the *inspector raj* in the area of Central taxation will be considerably eliminated through these procedural changes and legal amendments.

16.3.16(2) The Commission was informed that CBDT has already implemented a number of suggestions submitted by the Working Group set up for comprehensive revision of Income tax Act. It is hoped that the remaining recommendations of the Working Group will be processed early. The Commission was assured by the CBEC that revised comprehensive legislation for Excise as well as Customs would also be finalised for introduction at the time of the next Budget. Meanwhile, the Commission would urge that the Department of Revenue consider the report submitted by the Working Group under the Chairmanship of Shri Chakraborty on amendments to excise rules and regulations, and introduce the amended rules, regulations, procedures and

handbooks as soon as possible. Similar exercise should be undertaken for customs also. It is equally important that improved procedures and regulations are widely communicated not only to industry and the public, but also to all the employees in these Departments, since inadequate understanding of the rules and regulations and the scope for interpretation at field levels often lead to delays and harassment. It is also important to ensure the long term consistency and predictability of the rules and regulations since frequent changes in the taxation regime affects the long term calculations of industry as well as exports and imports. This is equally true in respect of foreign investors where willingness to enter into long term projects like Power, Telecommunications, etc., would depend upon long term expectations about the tax regime.

### 16.3.17 **Consumer Protection**

16.3.17(1) Consumer Protection Act, 1986, is a very important legislation, enacted for protecting the interests of consumers. It has been in force since 1986 and has proved to be very useful. District Forums in the shape of consumer "courts" have been established in all the Districts, State Commissions are operating at the State levels, and there is National Commission at the apex level. Almost about eleven lakh cases have till now been filed before these consumer "courts", and over seven lakh cases are stated to have been disposed of. There are, however, certain aspects of functioning of these consumer "courts" which have been a matter of concern. It was expected that there would be expeditious decisions in these "courts". This, unfortunately is not happening. The Department of Consumer Affairs has claimed before the Commission that a number of cases have in fact been disposed of within the period of 90 days prescribed in the Rules framed under the Act. This does not appear to be in accord with the facts. Tendency has developed in these consumer "courts" to operate practically on the lines of civil courts, resorting to frequent adjournments, with the result that often the cases take a long time, in some cases two to three years, to be completed. It is important that the concerned Central Department, through the State Governments, should take concrete steps to ensure that the objectives of this Act are satisfactorily fulfilled.

16.3.17(2) The Commission has been informed that the consumer movement has till now spread mainly in urban areas, and people in the rural areas have not yet become adequately conscious of the benefits of this important legislation. Under the provisions of this Act, the National Commission at apex level has been given administrative control over the State Commissions in matters relating to disposal of cases, and has also been given the responsibility of generally overseeing the functioning of State Commissions and District Forums for ensuring their proper operation; the State Commissions have been given administrative control over the District Forums. The State Governments exercise the powers of appointing Presidents and Members of the State Commissions and District Forums, whereas the Central Government



appoints the President and Members of the National Commission. It is unfortunate that quite often enormous delay occurs in filling the vacancies caused in the positions of Presidents and Members, particularly of District Forums, with the result that cases languish. At certain places the Presidents of District Forums are operating on part time basis, which hampers the disposal of cases; it needs to be ensured that Presidents are appointed on whole time basis. The Commission notes that there have also been complaints that the Members of District Forums and State Commissions are not being paid appropriate honorarium, with the result that their regular attendance in these "courts" is handicapped. There are instances where the qualifications and background of the Members selected for the purpose are not adequate. Infrastructural requirements of these consumer "courts", including the provision of proper accommodation, staff, equipment and funds, are also not being appropriately attended to by the State Governments. Funds allocated for the purpose by the Central Government to the State Governments are not being fully and expeditiously utilised.

16.3.17(3) The Commission considers it desirable and necessary that the National Commission should decide to function also from a couple of benches at selected places in the country, to enable cases and appeals relating to those areas to be expeditiously disposed of, with the avoidance of expenditure in having to pursue all cases at Delhi. Likewise, the State Commissions should consider the desirability of holding circuit courts at selected places in their States, to take justice to the people rather than persons having to come to the State headquarters for securing adjudication of their cases.

16.3.17(4) The shortcomings and deficiencies can be effectively remedied, and the Commission emphasises the importance and urgency of more effective discharge of the administrative responsibilities in these matters which have been placed under the Act, respectively, on the National Commission and the State Commissions. There is also need of ensuring that Members of the State Commissions and District Forums should be persuaded to attend training courses which have been specially designed for these levels by the Indian Institute of Public Administration.

16.3.17(5) The Commission was surprised to note that, while the representations made by industry and companies about problems faced by them from regulatory authorities often receive prompt attention, there was not much attention given to the survey and documentation of the unethical practice of the industry itself or the exploitation and danger to life of the general public on account of the practices followed by public and private companies. In this context and with a view to reducing the load on consumer courts, the Act could have a provision to oblige each industry or group of manufacturers of different commodities to set up a mechanism to resolve consumer complaints voluntarily, provide information on products and enforce business ethics, through bodies like the Better Business Bureau as in the U.S.A. and Canada. This could go along with the existing Indian Council of Arbitration. At the same time, the Consumer Protection Act should incorporate provisions against unfair terms of contract and product liability similar to the law in U.K. and U.S.A.

16.3.17(6) The operation of Consumer Protection Act over the years has shown certain inadequacies and shortcomings which need to be expeditiously overcome. The Commission understands that certain specific and important recommendations in this regard were made by an Expert Group set up by the Centre, but it is a matter of concern that despite the lapse of three years these recommendations have not yet been incorporated in the Act by effecting the requisite amendments. The Commission also recommends that a provision on the lines of new Section 89 proposed to be included in the CPC by the CPC (Amendment) Bill, now pending in Parliament, may be included in the Consumer Protection Act, 1986, empowering the Consumer Courts to refer cases before them to arbitration, conciliation or to Lok Adalats for the purpose of expeditious disposal.

16.3.17(7) Consumer Protection Act, 1986 has over the past few years actually become the nodal point for protecting the interests of consumers in relation to various types of products and services. It can also be utilised for ensuring effective implementation of legislations in the areas relating, for instance, to health-care, prevention of food adulteration, basic civic services, protection of interests of small investors and depositors, through the intermediacy of concerned Ministries where necessary. It has, as an example, been reported that certain manufacturers of medicine and drugs are flouting the Central Government's price ceilings and that drug pricing policies are presently encountering various problems in regard to appropriate implementation. It is also observed that on occasions essential drugs get categorised as non-essential and unscheduled items for purposes of price control. Such problems are likely to get more complex on the introduction of product patents. Likewise, problems of enforcement of Prevention of Food Adulteration Act, 1954, and problems encountered in the recent years by non-institutional investors, need to be dealt with in such a manner that interests of consumers are safeguarded.

### **16.3.18 Import and Export Procedures**

16.3.18(1) As regards the import and export procedures, the Chambers of Commerce, National Institute of Public Finance and Policy and others have pointed out the deficiencies in the present system and the requirements for reform. These are described in the Statement -13, Vol.- II.

16.3.18(2) Both in the case of imports and exports, the problems arise much more from the continuous advice and changes in the Handbook of Procedures, circulars and notifications issued after each budget. This makes it difficult for exporters and importers to enter into long term commitments on the basis of predictable costs, and changes often erode their profit margin. Periodic increase in the number of conditions for compliance is not in consonance with the policy of liberalisation, since the more the authorities increase the number of certifications for getting exemption, the more difficult and harassment-prone becomes the implementation. A wide variety of certificates from different authorities in the Government of India are required to be produced for different



commodities such as the Ministry of Tourism, Directorate General of Health Services, Central Board of Film Certification, Ministry of Defence, Ministry of Information and Broadcasting, Council for Leather Exports, Ministry of Environment and Forest, Ministry of Urban Affairs and Employment, State Finance Corporations, Directorate General of Civil Aviation, Ministry of Petroleum and Natural Gas, Department of Electronics, etc. The Commission recommends that the requirement of various certificates should be closely examined, and the declarations by the party as regards end use should be accepted, as far as possible, subject to simple checks or instances of advance intelligence.

16.3.18(3) Another important area of reform in the case of imports and exports is the disputes over the interpretation of rules and finality of rulings on procedures and classification of goods. Since excise and customs are indirect taxes, simplicity, certainty and early finalisation of the tax liability are more important than a rule-based attitude. The lack of uniformity in classification only increases litigation. There are over 50,000 cases pending before the tribunal and each case takes at least six to seven years. The existing legal provisions have led to serious anomalies; directions given by the courts for classification do not bind the Commissioner (Appeals), and the latter is free to give a judgement at variance from the directions. In order to remove confusion in this regard, it is necessary to provide that the rulings given by the CBEC are binding on everyone, including the Commissioner (Appeals). It should also be possible for the parties to obtain advance rulings from the Board on specific matters. The amendments made in the 1998-99 in this regard, the concept of *samadhan*, reduction in levels for hearing, and the powers to a group of Chief Commissioners to give rulings are welcome.

16.3.18(4) In case of excise and customs duty structure, the Commission notes with satisfaction that the Government would be moving towards a three-fold structure, namely mean, merit and demerit rates. The early implementation of this rate structure would reduce the multiplicity of rates and ensure rationalisation of the present structure. Along with this, the Department could proceed towards delegation and decentralisation, computerisation, frequent training programmes and incentives for good performance. The inspections by the CBEC staff of industrial units should be coordinated with inspections by State authorities in charge of sales tax and other local taxes in order to relieve the establishment from multiple inspections. It is also possible to harmonise the systems of evaluation and commodity description for sales tax and excise as already proposed in the Conference of Finance Ministers. Both CBEC and CBDT have referred to a number of improvements under consideration for minimising forms and procedures, systems of reduction, sanction of MODVAT, refund of excise duty, etc. which should be quickly brought into force. Since excise and customs affect all areas of industrial and foreign trade activity, a non-confidential database in respect of various procedures and transactions should be linked by an Intranet system and inter-connected computer systems for sharing information and decisions based on common understanding. This common database should be extended to airports and sea-ports also. Certain problems pointed out by CBEC and CBDT should be taken into account by the Government. While the aim of the Departments is to reduce the scope of litigation and avoid

unnecessary appeals by the Government, it was stated that the officials were often constrained to file appeals, since they faced subsequent objections by audit that responsibilities be fixed for not filing appeals against decisions of the tribunal. There have also been vigilance proceedings for not filing appeals. This was stated to be a major reason for the employees looking at all the transactions from the point of view of revenue and not from the perspective of the assesseees and reduced litigation. Secondly, it is possible to reduce litigation in respect of sectorwise incentives and concessions in case concerned Departments themselves recommend the entities for which concessions are to be given during the year according to transparent guidelines. This will avoid the exercise of discretion by the assessing officer and reduce litigation. It was also mentioned by Chairman, CBDT that there is a limit beyond which existing rules and laws cannot be simplified since this exercise cannot be at the expense of effective enforcement and avoiding unnecessary discretion. He also felt that there was much greater improvement to be realised from simplification of rules, procedures and forms in the perspective of the Citizens' Charter. It is equally necessary to ensure the accessibility of officials at different levels to assess and to change their attitudes to one of trust and responsiveness rather than suspicion.

#### **16.3.19 Pendency of Cases and Administration of Justice**

16.3.19(1) The Commission feels particularly concerned with the accumulation of vast backlog of cases in courts, inadequate functioning and malfunctioning of subordinate courts, and generally the administration of justice. The backlog of cases is estimated to be about 28 million, which is a matter of extreme concern because such accumulation of backlog, and non-disposal of individual cases, sometimes for decades, gives a very poor impression about the functioning of our legal system.

16.3.19(2) There are many causes for this unsatisfactory state of affairs. The multiplicity, proliferation and complexity of our laws, rules, regulations and procedures are one of the major reasons. Every possible effort needs to be made to reduce the number of laws to those which are absolutely necessary, to repeal and delete the laws which have become redundant, anachronistic and unnecessary, and to make the laws simple and understandable, keeping them up-to-date. Procedures specified for implementation of the various laws needs to be improved. In this context, the Commission is constrained to observe that the Civil Procedure Code, which forms the basis of adoption of procedures regarding the functioning of civil courts, itself is full of such provisions which inevitably prolong the trial of cases and provides for multiplicity of appeals, and instruments for causing stay of proceedings of the trial of cases. The basic Civil Procedure Code is of the year 1908, nearly a century old; it has of course had a large number of amendments but the accumulation of amendments has inevitably brought about complexities. An Amendment Bill of the Civil Procedure Code has been prepared for effecting the basic and essential amendments in it, but the Bill has been waiting for more than one year for its enactment. The Commission suggests that the recommendations made by Justice Malimath Committee for the expeditious disposal of cases in courts be seriously and expeditiously considered for adoption.

16.3.19(3) The Commission noted that there exists an unfortunate tendency in the Government Departments to resort to filing of appeals practically in all cases where the verdict goes against the Government. There is disinclination on the part of every official to assume responsibility for not filing an appeal, particularly in cases relating to revenue matters, ostensibly on the ground that such an action might be considered motivated or subsequently objected to Audit and/or Vigilance. Definite directions needs to be issued in all Government Departments that appeals against adverse decisions should be filed only after very careful consideration. There is also a tendency to take the safer course of approaching the Court for adjudication of an issue rather than to take decision which normally would be within the scope of the powers of the executive.

16.3.19(4) In relation to criminal cases pending in courts, which are estimated to be of the order of about 10 million, a very important judgement has been secured through a public interest litigation submitted by Common Cause, which has laid down procedures to be followed for closing down cases which have been pending for more than prescribed periods, in relation to offences under various sections of the penal code. Arising from this one judgement, hundreds of thousands of cases which had for long languished, have been closed down. Similar action needs to be initiated in relation to the multiplicity of cases which are presently pending before various Tribunals and adjudicating bodies, and in cases relating to revenue, etc.

16.3.19(5) Initiatives such as 'Samadhan' scheme in the matter of Excise and Income Tax arrears, and the proposal for setting up a Settlement Commission recently announced by the Ministry of Finance, are welcome because these can substantially help to clear the backlog of cases. There are various other steps which need to be considered for streamlining the judicial system and expediting the administration of justice. Status of decisions of Tribunals needs to be kept in view for examining the avoidance of scope of appeals against their decisions to the High Courts where Tribunals are headed by persons of the level of retired Supreme Court judges. There is also need and scope for expansion of the concept of appointment of Ombudsmen; their appointment in the areas of Banking has presently opened up scope for such arrangements being made in the area of Insurance. Areas of appointment of Ombudsmen in other selected fields need to be explored.

#### 16.3.19(6) **Alternative Disputes Resolution**

A very important aspect which the Commission would like to emphasize is the need of expansion of the system of Alternative Disputes Resolution. More effective utilisation of the Arbitration and Conciliation Act, and greater use of mediation procedures, need to be encouraged and facilitated. An improvement of important significance has been effected through the enactment in 1987 of the Legal Authorities and Services Act which provides for the establishment of National Legal Authority at the apex level, State Legal Authorities at the level of each State, and penetration of this concept to the level of each district. This Act provides for the expansion of areas of functioning of Lok Adalats to all districts of the country. Under the initiative recently taken by the Supreme Court, the National Legal Authority has already been set up and State Legal Authorities are being established. The Commission feels that the States

need to be persuaded to pay special attention to the strengthening of legal authorities and to promote and encourage the establishment of Lok Adalats in the districts and talukas. Entrustment of pending cases of subordinate courts to the Lok Adalats will greatly help to deal with the problem of improvement of administration of justice and substantially reduce the pendency in courts. Simultaneously, there is scope of encouraging and facilitating voluntary arbitration and settlement of disputes, particularly relating to areas such as of employees, contractors, builders, consumers, businessmen, discrimination against women and weaker sections, etc. with the procurement of help of retired judges and lawyers. Builders Licensing Board may also be set up to enable the purchaser to get the benefit of inspection by the Board's inspectors and get a guarantee for defects in construction and obliging all builders to comply with this system.

#### **16.4. RECOMMENDATIONS FOR REPEAL/AMENDMENTS OF LAWS AND REGULATIONS**

16.4.1 The Commission is required to make recommendations for repeal/amendments of laws, regulations and procedures, legislative process, etc. on the basis of the exercise covered in the first three terms of reference. We have already referred to in the course of this report to proposals for repeal of laws, repeal/amendments of rules, orders, regulations and procedures for important sectors, and specific changes in existing approaches to legal and regulatory reform, as well as rules and procedures so as to make the entire process objective, transparent, simple, predictable and inter-related. The aim of the exercise has been to look at the impact of legal and regulatory framework, as well as the system of administering justice, on the general public and user groups in different sectors, including foreign investors. In the opening sections of this report, the Commission has referred to a number of important factors which should govern the entire process of legal and regulatory reform not only in the Central Government, but also the State Governments, and the need to develop a harmonious approach in the larger interest of efficient and responsive administration, and focus attention on the problems faced by the public and user groups.

16.4.2 On the request of the Commission, the Secretary, Legislative Department has sent an up-to-date list of unrepealed Central Acts. This list includes all the Acts passed by Parliament till the end of the last session. The commission has taken this as the basis for identifying the laws which could be recommended for repeal.

The list contains 1079 Acts. But it does not include the following, namely:-

1. 78 Constitution Amendment Acts.
2. About 70 annual Finance Acts.
3. About 700 Appropriation Acts.
4. About 315 Amending Acts (from 1984).
5. 11 British Statutes which are still in force (**Appendix A-3**)
6. 17 War-time permanent Ordinances. (**Appendix A-4**)
7. Old Bengal Regulations.

The total number of Central Laws in force will be about 2500 Acts. Out of these, Constitution Amendment Acts and annual Finance Acts would not be repealed.

16.4.3 In addition to the above, there are Central Regulations made by the President under article 240 of the Constitution for the peace, progress and good government of certain Union territories. Legislation for the Union territories of the Andaman and Nicobar Islands, Dadar and Nagar Haveli and the Lakshadweep are being enacted under this provision apart from the *proprio vigore* application of all the Acts of Parliament made applicable to the whole of India. These can be examined for the purpose of repeal.

16.4.4 The cluttering of the Statute Book is due to many reasons, the main reason being the Constitutional developments over the last two centuries which had ultimately resulted in the (quasi) federal structure of our Constitution. Prior to 1919, the entire British India (as it then was) was administered by the Governor-General-in-Council. After 1919, the Devolution Act, 1920 was passed and many of the subjects were allotted to the States and the process was continued by the Government of India Act, 1935, which ushered in the Provincial Autonomy. The Act of 1935 contained three lists of legislative heads as in our Constitution and our Constitution re-enacted the three lists with residuary powers being left to the Centre instead of the States in the 1935 Act. This process of reform brought many of the Acts of the Governor-General-in-Council into the State field and the Central Statute Book contains so many Acts which pertain to the State list and the State Governments are administering those Acts. A few of the Acts have been amended very sparingly by the States, but mostly they remain unaffected. A list of such 114 Acts is placed at **Appendix-A-5**. Most of these Acts are not being implemented, but they could be repealed only by the States. Some of the Acts which are of local application only, like the Bengal or the Bombay Acts could be repealed by the respective States.

16.4.5 Another reason for leaving a large number of enactments in the Statute Book is that no systematic and regular attempt had been made to examine these Acts in depth for the purpose of repeal. The Law Commission had made a detailed study of all the British Statutes in force and brought out a report in 1960 recommending the repeal of a large number of British Statutes. Simultaneously, another report suggesting the repeal of a number of Central Acts was also recommended, as a result of which, the British Statutes (Application to India) Repeal Act, 1960 and the Repealing and Amending Act of 1960, respectively were passed by Parliament. The former Act repealed 285 British Statutes in their application to India. Subsequently, two Law Commissions submitted 96<sup>th</sup> and 148<sup>th</sup> reports in 1984 and 1993 and each of them suggested repeal of 5 Acts without any conditions. The administrative Ministries were also not able to recommend repeal of many Acts. Even the Legislative Department which used to periodically "cleanse the Statute Book" by the enactment of Repealing and Amending Acts had also not initiated any such legislation after 1988 which covered legislations upto the end of 1984. This is the reason why such a large number of amendment Acts as 315 is retained in the Statute Book. Another major reason is that none of the authorities is prepared to take any risk in recommending the repeal of any enactment as everyone is apprehensive that the repeal may revive any pending matters which had been put at rest by those enactments. May be, this factor weighed with the Law Commission for not recommending the repeal of the Privy Council Abolition Act on the pretext that it may revive the operation of any British Statute which confer jurisdiction on the Privy Council. The Commission also recommends the repeal of about 700 Appropriation Acts passed by Parliament from time to time since 1950 as they are, in terms, temporary in nature. Last but not the least, nobody is prepared to take the responsibility of repealing Central Acts like Reorganisation Acts, Extension of Laws Acts, Acts dealing with High Courts, Validation Acts, etc.



16.4.6 In view of the above position, we have an unenviable task of scanning the Acts and recommend the repeal of those Acts which are either not in force or anachronistic or not implemented and retained for some reason. We have accordingly gone through the list supplied by the Secretary, Legislative Department and after going through the provisions of some of the Acts, which we thought could no longer be retained in the Statute Book, prepared a list of Central Acts, which we feel, may safely be recommended for repeal. This takes into account recommendations of Expert Groups and Law Commissions. This list is at **Appendix-A-1** and contains about 166 Acts. We have also prepared a list of Reorganisation Acts (**Appendix-B**) and laws relating to High Courts (**Appendix-C**) which may be considered for review and repeal. Reorganisation Acts should be reviewed to consider repeal of some of them which are not relevant. The High Courts Acts should be reviewed to bring in a uniform Act and the repeal of some of the Acts, with rules to provide for local variations. The Pre-Nationalisation Acts and Validation Acts (**Appendix-A-1**) can be repealed. All the Validation Acts can be repealed after providing savings clauses wherever necessary. In addition, there are a number of personal laws (**Appendix-D**) applicable to some religions and communities. Some of these may not be relevant now and are also indeed very old. The perception of the concerned religion or community would be relevant for their updating/codification/repeal. The Commission recommends that further action be taken accordingly. A list of Acts which are of general public importance has also been prepared and the same is placed at **Appendix-E**. Out of this list, those Acts which have not so far been taken up for review, should be reviewed immediately.

16.4.7 We recommend that the 166 Central Acts (**Appendix-A-1**) be repealed. The Legislative Department should introduce a repealing and amending Bill to repeal the 315 Amendment Acts (Appendix A-2) straight away. They should also consider inclusion in the Bill the various Delegation of Powers Acts (seven in number) enacted when the concerned States were under President's rule, the Appropriation Acts, British Statutes still in force and the permanent war-time Ordinances. The Legislative Department should also consider the repeal of the old Bengal Regulations which they consider no longer relevant. Regarding the Acts pertaining to a State subject, Government should circulate a list to all State Governments requesting them to examine whether they are in force in the State or part thereof, and if they are not being implemented, the State Governments may consider their repeal. If the above is done, we would have gone a long way in "excising the dead wood from the Statute Book"

16.4.8 As regards the legislative process, the Secretariat brought to the notice of the Commission an innovative legislation called "Deregulation and Contracting Out Act" passed in U.K. This is in the nature of a general enabling legislation which permits the authorised Minister under the Act to amend the provisions of various legislations through administrative orders, after inviting objections, so long as this is intended to reduce the burden and hardship imposed by the affected legislation, without imposing additional burden or hardships on the rest of the population. The Commission understands that this legislation has been utilised successfully by the Government of

U.K. for the deregulation of economy, and the hardships imposed by a number of existing legislations have been reduced by executive action subject to passing of an affirmative resolution by the Parliament. This has been possible in the case of U.K. because that country does not have a written Constitution like India and the courts do not have the same power of judicial review as in our country. All the same, the Commission considers that it would be advisable for the Law Ministry to examine in consultation with the Law Commission, if necessary, the feasibility of bringing about a similar legislation in our country. It may be mentioned in this connection that the provision of "affirmative resolution by Parliament" was in use in some of the earlier enactments, such as the Indian Tariff Act, 1934 and such other enactments wherein a power was given to indicate the effective rates of duty under a Statute. There have also been provisions in some of the enactments, such as the Mines Act, 1952, wherein even the rules to be made under the Act are made subject to the affirmative resolution by Parliament before they become effective.

16.4.9 The scheme for legislation in India is, inter-alia, based on the dictum that a Statute never dies unless specifically repealed. This has resulted in a situation where Statutes which are even more than 100 years old, as also the Statutes which were enacted for a temporary purpose/period have continued to exist in the Statute Books. More often than not, resort is made to amending the Statutes than enacting a fresh updated legislation. The Commission is, therefore, of the view that a time has come when the Government should seriously consider whether a sunset provision, as in the USA, be followed in our legislative practice also.

16.4.10 Apart from these legal and regulatory aspects, there are important administrative issues related to the fragmented functioning of Central and State agencies, to which the Fifth Central Pay Commission and other expert bodies on administrative reforms have also drawn attention. The restructuring of Government, as undertaken in a number of Commonwealth countries, would be accompanied by the energetic implementation of the elements of the Action Plan endorsed by the Chief Ministers for effective and responsive administration, training and orientation of employees, and the widespread use of information technology. An important administrative step mentioned by a number of Ministries/Departments is the need for equipping Departments requiring constant and up-to-date legal advice for the implementation of domestic and international laws, drafting of agreements and regulations, etc., with their own legal cells. These cells could be staffed by competent persons with legal knowledge and skills essential to the work of the Department, who could be selected by the Law Ministry and placed at the disposal of the Ministries. The Law Ministry should take a proactive stance not only in implementing the recommendations of the Law Commission, but also in responding to suggestions for legal reform received from different expert bodies, Chambers of Commerce, National Law School, etc. The Commission understands that the Asian Development Bank has, in fact, offered the benefits of regional network for improving the capacity of the Law Ministry, divisional administration and the legal education. This would enable specialised training in emerging branches of commerce and trade, cyber laws, consumer legislation, cross border litigation, drafting of treaties and agreements, etc.



16.4.11 In the course of amendments to various laws on the basis of exercises by different Ministries/Departments, it is necessary also to look at simplifying the language used in the legislation, Government rules and orders. A plain English movement has been in operation in the European countries for over 25 years. The idea is that the law, legal documents and Government forms should be in simple English so that the average citizen can understand their implications. This is particularly important in cases where there is regular inter-action between the public and the Government. For example, most of the forms prescribed by the Code of Criminal Procedure in its Second Schedule, which are frequently used by police and the courts are not comprehensible to the public. This can easily be rephrased in plain English without losing any legal meaning. This is true of a large number of Government notifications, circulars, etc. issued by revenue authorities like Excise, Customs and Sales tax.

16.4.12 It is also necessary to take account of the serious observations made by the Parliamentary Committees on Subordinate Legislation from time to time about the deficiencies in the manner in which the rules and regulations are framed and notified by administrative Departments. The Committees have drawn attention to the fact that the prescribed procedure for inviting objections to draft rules and regulations are not often followed, and the final notification is not adequately disseminated for the information of the general public. It is often difficult for the affected parties to get an up-to-date version of the rules, regulations and orders, and sometimes these are not available even with the field offices. We would recommend that the Law Ministry consolidate all the suggestions made by the Parliamentary Committees from time to time about subordinate legislation in general, and provide guidance to Ministries and Departments in adherence to the rule of law and norms of good drafting. They should also ensure that the definitions adopted by different Departments in respect of notifications under some Act, or involving the use of common terms available in different laws, are properly harmonised to avoid disputes in interpretation.

## 17.0 CONCLUSION

17.1 The Commission is conscious that it has not been able to do more than limited justice to the vast area of legal and regulatory reform in India. It did not even have the resources available to the Central Law Commission, nor the luxury of a long period in which to make substantive examination of different laws and regulations, obtain a detailed reply, interact with State Governments and experts, and thus prepare a larger canvas on which it could have made far greater recommendations on different regulatory aspects in the economic and social development. At the same time, the Commission understood the urgency underlying the establishment of the Commission by the Prime Minister and the great concern of the Government in addressing various constraints posed by the structure of administrative law in different critical sectors of the economy, as seen from the perspective of general public and user groups. Looking from this angle, the Commission feels that it has provided the Government a set of recommendations in different sectors, as well as the comprehensive framework within which the immediate constraints facing industry, trade, housing and real estate, tax payers and the general public could be tackled during the rest of this financial year.

17.2 In its report, the Commission has made a series of concrete recommendations in the respective areas of Government functioning for effecting improvements in the legal and regulatory framework of the country. It hopes that appropriate and urgent action will be initiated in the respective Departments and Ministries to consider the recommendations for implementation and to set up mechanisms for monitoring the progress of implementation.

17.3 The Commission places on record its satisfaction for the cooperation and help extended by officials of various Ministries/Departments and Central Agencies in providing valuable material, and its grateful thanks to Chambers of Commerce and Industry as well as the various user groups for their useful suggestions and oral presentation. The assistance provided to the Commission by the Secretariat under the guidance and direction of the Member-Convener, Dr. P.S.A. Sundaram, and the Director, Shri Nikhilesh Jha, has been invaluable.

Sd/=

(P.C. Jain)  
Chairman

Sd/=

(H.D. Shourie)  
Member

Sd/=

(S. Ramaiah)  
Member

Sd/=

(P.S.A. Sundaram)  
Member-Convener

## SUMMARY OF RECOMMENDATIONS

1. The Commission has proceeded on the assumption that the term "administrative laws" needs to be construed, in the light of requirements spelt out in the Terms of Reference, to comprise the laws, as distinct from the constitutional laws, which are administered by different Ministries/Departments but subject to periodical review. The Commission has focussed attention on those laws and regulations and procedures which affect the people most, and where alterations and amendments are required in the interest particularly of economic and social areas, keeping in view the requirements specifically in relation to certain areas including industry, commerce, environment, housing and real estate.

### 2. *General Recommendations:*

#### 2.1. **Need for the documentation of complete set of subordinate legislations:**

It is desirable that all information about laws, regulations, procedures, circulars and activities of different departments are made available through the electronic media as well as documented compilations to keep the public and various users fully informed of the latest instructions on the various subjects.

[Para 10]

#### 2.2. **Need for compilation of rules/regulations issued by State Governments by virtue of the authority vested under Central Laws:**

Most of the Ministries did not have any information about the rules and regulations issued by State Governments by virtue of the authority vested under Central laws such as various legislations on labour, Prevention of Food Adulteration Act, Drugs and Cosmetics Act, etc. It is recommended that the Ministries/Departments centrally compile information about all the rules and regulations issued by them and State Governments by virtue of the authority vested under Central laws.

[Para 10]

#### 2.3. **Need for a Sectoral Approach:**

There has been no effort to converge laws administered by different departments including the legislative Department around sectors of economic and social activity in order to address the problems of industry and users in a focussed manner, but there is a flurry of fragmented individual activities, often at cross purposes. It is recommended that a **sector-based approach** to laws is taken to address the problems of industry and users in a focussed manner.

[Para 10]

## **2.4. Need for addressing the Centre-State interface on administration of Laws:**

The entire question of Centre – State interface on the administration of laws and regulations has so far not been comprehensively addressed either by any of the law commissions, or expert groups on individual sectors. It would be useful for such an exercise to be taken up by the Inter-State Council with the help of an Expert Committee involving Central and State Officials.

[Para 11]

## **2.5. Need for study of laws affecting the poor/disadvantaged sections of population:**

There is a need of deeper study by the Government on the entire complex of laws, regulations and procedures which affect the quality of life of poor people and disadvantaged sections of the population, their access to basic services, education, healthcare and nutrition, and their inability to take advantage of the opportunities and benefits provided under various schemes administered by the Central and State Governments and financial institutions, etc.

[Para 13]

## **2.6. Simplicity of language:**

In the course of amendment to various laws on the basis of exercises by different Ministries/ Departments, it is necessary also to look at simplifying the language used in the legislation, Government rules and orders.

[Para 16.4.11]

## **2.7. Repeal and modernisation of laws:**

The Commission is of the view that each of the statutes which was enacted prior to the Constitution and which is proposed to be retained on the statute book should be reviewed in order to bring its provisions in line with present day requirements. All the dysfunctional and irrelevant laws should be repealed. In this context, the introduction of 'sunset provisions' similar to the U.S.A. statutes may be considered wherever possible.

[Para 16.1.9 & 16.1.11]

## **3. *The recommendations of the Commission with reference to the four terms of reference:***

### **3.1. Overview of steps taken by different Ministries/Departments.**

3.1.1 The Commission was provided a statement containing an overview of efforts made by 45 Ministries/Departments, views of expert Committees, and this Commission's observations. It is recommended that a definite time frame be indicated by the Ministries/Departments for taking up these amendments or for enacting new laws.

[Para 16.1.3]

3.1.2 In some cases, the Commission had the benefit of only the views of Expert Groups constituted by the Ministries/Departments, but, it was not clear as to whether the Department had taken a decision and if so what on the report of the Expert Groups. The Ministries/Departments need to take follow up action on the recommendations of the Expert Groups in a definite time frame.

[Para 16.1.3]

### **3.2. Unification & harmonisation of statutes & regulations.**

3.2.1. The Commission recommends that the laws should be looked at harmoniously from the point of view of groups like domestic and foreign investors, trade, industry, consumer protection, builders, exporters and importers, etc. This is as much an issue of unification and harmonisation of laws, as of assessing the impact of individual provisions of different Acts with reference to the objectives of specific sectoral policies and the need matrix of the stakeholders. The lack of harmonious approach has a number of facets such as not looking at statutes enacted at different points of time in the same subject area or having impact on other sectors; varying definitions in the statutes; proliferation of orders under one Act by different Ministries, and transactions on different States being subject to different treatments.

[Para 16.2.1]

3.2.2. The functioning of the economic and social sector is affected by State Laws like Rent Control Act, Parallel laws for acquisition of land and property, land revenue and land reform laws, legislation governing different utilities in the field of health, industry, housing, transport, etc., laws for town planning, municipality, building bye-laws, and regulations, State and local taxation of land and property, etc. They affect the implementation of national policies and the success of economic reform. It is necessary to take a harmonious view of all these statutes and regulations for improving the functioning of the economic and social sectors, and take up this issue in the Inter-state Council and conferences of State Ministers.

[Para 16.2.3]

### **3.3. Changes in laws, rules, regulations and procedures.**

These are indicated sectorwise in Statements appended to the report. Specific recommendations for key areas include :

#### **3.3.1. Administration of Justice:**

The Commission feels particularly concerned with the accumulation of vast backlog of cases in courts, inadequate functioning and malfunctioning of subordinate courts, and generally the administration of justice. The backlog of cases is estimated to be about 28 million which gives a poor impression about the functioning of the legal system. To rectify the situation, the Commission recommends as follows :

- (a) Government should take initiative to expand the system of Alternative Disputes Resolution.
- (b) More effective utilisation of the Arbitration and Conciliation Act, and greater use of mediation procedures.
- (c) Entrustment of pending cases of subordinate courts to the "Lok Adalats".
- (d) Expansion of the concept of establishment of Legal Authorities to the remaining states and all the districts.
- (e) Encouragement of initiatives like "Samadhan" (to settle Excise & Income Tax arrears).
- (f) Expansion of the concept of appointment of Ombudsmen (as done in Banking Sector).

[Para 16.3.19]

### 3.3.2. Housing and Urban Development:

Laws and regulations affecting housing activities are implemented by a number of departments and agencies at the Central, State and local level. This is overlaid by procedures for sanction and approval, utility connections and the levy of fees. All these may not have the same objectives, but the net result has been a freeze on land and housing supply, steady increase in the growth of slums and unauthorised colonies, and placing decent housing beyond the reach of bulk of the population.

[Para 16.3.7(1)]

### 3.3.3 Land Acquisition:

The Commission commends various proposals drafted by the Department of Rural Development for amending the Land Acquisition Act, 1894. These should be revised in the light of suggestions received and then quickly enacted. At the same time, there is a need to fundamentally alter the present cycle of land acquisition in order to delink the process of vesting possession of land in Government free from encumbrance, from the process of determining compensation. In order to prevent the tendency for unnecessary acquisition of land, the Commission recommends that, in case the acquired land is not utilised for public purpose in demonstrable terms in five years of taking possession, the land should be reverted to the original land owner on terms to be prescribed by Government. Alternate forms of land assembly and innovative use of development control rules as in Maharashtra for city utilities and services should be widely adopted.

[Para 16.3.7(3)]

### 3.3.4. Building Regulations and unauthorised construction :

We recommend the wide adoption of innovative efforts in a few cities of single window systems, planning approvals, automatic approval for construction by poor families, delegation to architects, simplified procedures for repairs, lesser documentation, computerisation, updating rules, etc. Regularisation of unauthorised construction should be only on the basis of cost covering payments.

[Para 16.3.7(5)]

3.3.5. Duties on holding and conveyance of property:

Commission recommends revamping the structure of registration of property and land and their conveyance, along with comprehensive amendments to Indian Stamp Act and Registration Act. Power of Attorney transactions should be curbed. Stamp duties and other levies on property should be rationalised and reduced. Department of Urban Development should ensure the adoption of model chapter on property tax based on the set of principles mentioned by the Commission.

[Para 16.3.7(6)]

3.3.6. Sick Industrial Companies:

The Commission has suggested certain modifications in the draft Bill as listed in the statement. It is recommended that Government should take up enactment of the new Bill incorporating these suggestions, since the present legal regime perpetuates industrial sickness and suffers from delays at every stage.

[Para 16.3.9(1) & Para 16.3.9(3)]

3.3.7. Company Law:

The Commission noted the considerable problems faced by the Industry, and even Foreign investors, on account of the Complex provisions of Company Law. The Commission would urge that the Government refer the Draft Companies Bill to a Select Committee for taking note of all suggested improvements from Government Agencies, industry, consumer groups and then enact the Bill in the next six months. This is a much needed legal measure. The present procedures for winding up companies should be comprehensively revised, as suggested by user groups, and fast-track tribunals set up. The Company Law Board needs to be streamlined in terms of procedures and infrastructure to handle the new responsibilities. Along with this, all the rules should be revised and consolidated, and company law administration revamped. The confusion over the roles of RBI, SEBI and Department of Company Affairs should be removed.

[Para 16.3.8(1)]

3.3.8. Investor protection and Non-Banking Finance Companies:

The Commission noted with great concern that the regulatory framework in regard to the NBFCs has come into existence only very recently i.e. in Jan., 1997 through an Ordinance issued by the Government, but the actual implementation of this mechanism by the Reserve Bank of India started after one year. However, judging from representations received by the Commission and seen from frequent reports in the newspapers, even present regulatory machinery devised by the RBI cannot be said to be either adequate or effective.

The Commission urges that the Government clearly vest the responsibility in the RBI for strictly and effectively enforcing the regulatory mechanism, and give wide publicity to various measures which are proposed to be undertaken by the Central and State Governments for registration and regulation of NBFCs; protection of depositors, action against erring companies, and easily accessible and effective avenues for grievance redressal. The mechanism should be to aim at not only on prosecuting offenders but also in arranging for the early payment of deposits. The immediate introduction of the proposed insurance scheme would be helpful in this regard.

[Para 16.3.10(1)]



### 3.3.9 Problems of Foreign Investors:

The Commission noted the low level of actual inflows in relation to the approved foreign investment in different sectors. Foreign direct investment (FDI) is related to perceptions of stability of policy environment and global developments. The sectoral inflow is also governed by sectoral policy issues like fuel linkage, counter guarantees, etc. FDI is equally influenced by State Level delays in approvals, confusion over the role of regulatory authorities in Power, Telecom and other sectors, red tape, inconsistent guidelines, cumbersome documentation, apprehensions over the delays in dispute resolution and contract enforcement, etc. These apprehensions and impressions need to be detailed and reduced to actionable issues at the level of different authorities, and harmoniously resolved by inter-Ministerial groups. A comprehensive study of conception to commencement in successful Asian countries and India will facilitate this exercise.

[Para 16.3.10(7)]

### 3.3.10 Essential Commodities Act:

The Commission noted that a Bill was introduced in the Budget Session 1998 to amend the Essential Commodities Act in order to implement most suggestions of the Expert Committee constituted by the Department of Consumer Affairs. The Commission considers that further improvements in the Bill be made and the Bill then enacted soon, such as provisions to enable Government to review the list of essential commodities periodically and reduce the number gradually, to raise the period of imprisonment for grave offences to more than two years, and to enable the removal of confusion on account of varying specifications in the orders issued by different Ministries under the Essential Commodities Act. It is necessary to balance the interests of trade and consumers..

[Para 16.3.12(2&3)]

### 3.3.11 Health Sector:

The Commission agrees with many observations of Justice Venkatramiah Task Force (set up by the Confederation of Indian Industry) on the rationalisation of food laws, specially, the reorganisation and strengthening of the present administrative set up in the Centre under the Prevention of Food Adulteration Act for laying down standards, and proposing periodic improvements and legal amendments for better administration of the Act. The Prevention of Food Adulteration Act and the Rules at the Centre and in the States are so riddled with technicalities and the staff so insufficient, that they are powerless to prevent or move against adulteration as seen from the recent mustard oil cases in Delhi. The approach has to be one of action to amend the Act and the Rules, restructuring the Central Committee for Food Standards, and streamlining its procedures, strengthening its staff support, and revamping field machinery. It is necessary to control the practice by quacks and unauthorised practitioners. State governments should start accrediting nursing homes with the help of medical practitioners' associations.

[Para 16.3.13(2)]

### 3.3.12 Drug Policy:

The Commission favours a unified administrative set up in the Central Government for implementing the Drug Policy covering manufacture, quality control and pricing, instead of the present division between the Ministry of Health and Family Welfare, and the Ministry of Chemicals and Fertilizers. This is, however, no substitute for strengthening the enforcement staff in the States, rationalising the cadre and career prospects for inspectors, improving inspection procedures without harassment, etc.

[Para 16.3.13(3)]

### 3.3.13. Environment:

The regulations in the environmental sector at central and state level affect both economic and social sectors, and are alleged to cause delays in approvals. The Commission urges the Ministry of Environment and Forests to proceed expeditiously with various important moves for liberalisation and simplification undertaken by them, enforcement of common consent forms, hot spots, etc. and take steps for consolidating different laws and regulations. In respect of forest areas, it is possible to streamline and simplify the existing procedures on the lines indicated in para 16.3.14(2). At the same time, the Commission recommends effective action on the part of Central and State Pollution Control agencies and local authorities for action against those responsible for improper and dangerous disposal of hospital and hazardous wastes, indiscriminate discharge of harmful effluents into water by tanneries and other polluting industries and indiscriminate burning of materials harmful to the population.

[Para 16.3.14(3)]

### 3.3.14 Industry:

The Commission is of the view that the persistence of the *inspector raj* calls for urgent review of the rationale for inspections and documentation under different Central and State Departments, the laws and practices governing inspections, and the need for the adoption of more efficient and transparent surveillance and audit mechanisms. The Commission noted the efforts made by a number of States to rationalise, consolidate, simplify and reduce forms and returns, to introduce single forms with multiple columns for different agencies, and reduce the requirements for the submission of documentation. These need to be sustained and enlarged. The Commission further urges the Central Ministries in charge of Industry, Labour, Environment, Power and other Departments to interact with State Governments for widespread adoption of various good practices.

[Para 16.3.11(4)]

### 3.3.15 Labour Laws:

The Commission noted that the Mitra Committee set up by the Ministry of Labour in October 1997 has made a number of concrete suggestions for amendments to the Industrial Disputes Act, 1947. The Commission broadly endorses legislative action on recommendations made by this Committee. It is of the view that the title of the Act should be amended as the Employment Relations Act in order to shift the focus from disputes to measures for harmonious relations.

The Commission urges the Labour Ministry to introduce amendments to the Contract Labour (Regulation and Abolition) Act 1970 on the lines of the Report of the committee of officials and after study of Supreme Court Judgements. This will enable engagement of contract labour in all peripheral and seasonal activities.

[Para 16.3.15(1)]

#### 3.3.16. Direct Taxation:

The Commission was informed that the CBDT has already implemented a number of suggestions submitted by the Working Group set up by Government for comprehensive revisions for income tax. It is hoped that the remaining recommendations will also be processed for a decision. The steps for simplification of forms and procedures, shortening dispute settlement period, compounding of offences, etc. should be carried forward vigorously.

[Para 16.3.16(2)]

#### 3.3.17 Indirect Tax:

The Commission urges Government to ensure that the revised comprehensive legislation for Excise as well as Customs is finalised for introduction at the time of the next Budget. Meanwhile, the Commission would urge that the Department of Revenue consider the report submitted by a Working Group under the Chairmanship of Shri Chakraborty on amendments to excise rules and regulations, and introduce the amended rules, regulations, procedures and handbooks as soon as possible. Similar exercise should be undertaken for customs also. The improved procedures should be known as much to employees as to the public, and should be predictably and uniformly adopted by citizen friendly staff. The trade and industry should pay its legitimate dues and comply with legal requirements.

[Para 16.3.16(2)]

#### 3.3.18 Consumer Protection:

The operation of Consumer Protection Act over the years has shown certain inadequacies and shortcomings which need to be expeditiously overcome. The Commission understands that certain specific and important recommendations in this regard were made by an Expert Group set up by the Centre, but it is a matter of concern that despite the lapse of 3 years, these recommendations have not yet been incorporated in the Act by effecting requisite amendment. The Commission also recommends that a provision on the lines of Section 86(A) proposed to be included in the Civil Procedure Code by the CPC (Amendment) Bill now pending in Parliament may be included in the Consumer Protection Act. The Consumer Court should be empowered to refer cases before them to arbitration, conciliation or to lok adalats for the purpose of expeditious disposal.

[Para 16.3.17(2)]

### 3.3.19 Import and Export Procedure:

Both in the case of imports and exports, Commission feels that the problems arise also from the continuous changes in the Handbook of Procedures, circulars and notifications issued in the period between successive budgets. This makes it difficult for exporters and importers to enter into long term commitments on the basis of predictable costs, and the changes often erode their profit margin. Greater long term predictability and coordinated application of export policy and procedures are necessary for promoting exports. The proposed restructuring of tariff rates into three groups viz., mean rate, merit rate and demerit rate, and reduction in the number of groups for custom duty is a welcome development and should be made fully operable. The Commission feels that since excise and customs are indirect taxes, simplicity, certainty and early finalisation of the taxes are more important than a rule-based attitude. The changes in rules and inter agency coordination and procedures should be directed towards this objective. Equally important are areas of infrastructure, access to low cost credit and the imaginative handling of issues in WTO. Dispute resolution systems should be made expeditious. Advance rulings should be encouraged. Suggestions made in para 16.3.18(4) may be considered.

[Para 16.3.18(2) & (3)]

### 3.3.17. Alternate Dispute Resolution:

While emphasising the need of expansion of the system of alternate disputes resolution, the Commission recommends more effective utilisation of the arbitration and conciliation Act and the greater use of mediation procedure. The Commission also recommends that the State Governments should give special attention to the strengthening of legal authorities and to promote and encourage the establishment of Lok Adalats in the Districts and Talukas. There is also scope for encouraging and facilitating voluntary arbitration and settlement of disputes particularly relating to areas such as relating with employees, contractors, builders, consumers, businessmen, discrimination against women and weaker sections etc. with the involvement of retired Judges and lawyers. Industry and business should be made to set up at their own cost 'Better Business Forums' similar to the U.S.A. for self regulation by them, and to bring unfair practices and sub-standard products to the notice of consumers. The Commission is of the view that in the course of reforming the existing system of administration of justice in civil courts and the tribunals, Government should not under estimate the potential of the alternate disputes resolution machinery available through the Arbitration and Conciliation Act, Lok Adalats and systems of local justice such as *Nyaya Panchayats*. Despite its shortcomings, the Lok Adalats have in fact resulted in the resolution of about two lakh cases and have particularly proved useful in cases under the Motor Vehicles Act and Divorce law. The Commission urges government to consider extending the provisions of this legislation to all other legislations involving adjudication by introducing a suitable enabling law.

[Para 16.3.19(6)]

#### **4. Recommendations for repeal /amendments of laws and regulations**

##### **4.1. Repeal:**

Of about 2500 Central Laws in force, the Commission recommends repeal of over 1300 Central Laws of different categories as listed below:

- (i) 166 Central Acts (including 11 Pre-Nationalisation Acts and 20 Validation Acts).
- (ii) 315 Amendment Acts.
- (iii) 11 British Statutes still in force.
- (iv) 17 War-time permanent Ordinances.
- (v) 114 Central Acts relating to state subjects.
- (vi) 700 Appropriation Acts (approximately) passed by Parliament.

The Commission recommends their repeal on the ground that these laws have become either irrelevant or dysfunctional.

[Para 16.4.6]

##### **4.2. Repeal Procedure:**

It is recommended that the Legislative Department should circulate the Acts identified for repeal to the concerned Ministries and the State Governments for their concurrence, and pursue the legislative process for repeal/amendment as recommended.

[Para 16.4.7.]

#### **5.0 Laws of critical importance:**

The Commission has also prepared a list of 109 Acts which are of critical importance in relation to the terms of reference of this Commission. The list is placed at Appendix-E. Those now so far reviewed may now be taken up for review immediately.

[Para 16.4.6]

#### **6.0 Implementing Machinery:**

An important administrative step mentioned by a number of Ministries/Departments is the need for equipping Departments requiring constant and up-to-date legal advice for the implementation of domestic and international laws, drafting of agreements and regulations etc., with their own legal cells. These cells could be staffed by competent persons with legal knowledge and skills essential to the work of the Department, who could be selected by the Law Ministry and placed at the disposal of the Ministries. The Law Ministry should take a proactive stance not only in implementing the recommendations of the Law Commission, but also in responding to suggestions for legal reform received from different expert bodies, Chambers of Commerce, National Law Schools, etc.

[Para 16.4.12]

No. K-11022/19/98-P  
Department of Administrative Reforms  
and Public Grievances

Sardar Patel Bhavan, Sansad Marg,  
New Delhi, the May 08, 1998

**OFFICE MEMORANDUM**

Subject : **Constitution of a Commission on Review of Administrative Laws.**

Government have decided to constitute a Commission on Review of Administrative Laws with the following composition :

- |     |  |                 |
|-----|--|-----------------|
| (1) | Shri P.C. Jain, retired Secretary to Government of India                                       | Chairman        |
| (2) | Shri H.D. Shourie, Chairman, Common Cause, A-31, West End, New Delhi-21                        | Member          |
| (3) | Shri S. Ramaiah, retired Legislative Secretary, Government of India                            | Member          |
| (4) | Dr. P.S.A Sundaram, Addl. Secretary Department of Administrative Reforms and Public Grievances | Member-Convenor |

2. The Terms of Reference for the Commission are as follows :-

- (A) To undertake an overview of steps taken by different Ministries Department for the review of administrative laws, regulations and procedures administered by them, and the follow-up steps thereafter, for repeal and amendment.
- (B) To identify, in consultation with Ministries/Departments and client groups, proposals for amendments to existing laws, regulations and procedures, where these are in the nature of law common to more than one Department, or where they have a bearing on the effective working of more than one Ministry/Department and State Governments, or where a collectivity of laws impact on the performance of an economic or social sector, or where they have a bearing on industry and trade.

- (C) To examine, in the case of selected areas like environment, industry, trade and commerce, housing and real estate, specific changes in existing rules and procedures so as to make them objective, transparent and predictable.
- (D) To make, on the basis of this exercise, recommendations for repeal/ amendments of laws, regulations and procedures, legislative process etc.
3. The Commission shall submit its report within three months.
4. The Commission shall be given the fullest possible cooperation and assistance by all Central Government Ministries/Departments/agencies in conducting its work.
5. The members of the Commission (excluding the Member-Comvenor) will be entitled to a sitting fee of Rs. 1,000/- per sitting and reimbursement of transportation expenses for attending the sittings, as admissible to Secretaries to Government of India. All expenditures relating to the Commission will be borne on the budget of the Department of Administrative Reforms and Public Grievances, Ministry of Personnel, Public Grievances and Pensions, which will also provide secretarial assistance to the Commission.
6. This order issues with the approval of the Prime Minister.

Sd/=   
(Nikhilesh Jha)   
Deputy Secretary   
Tele. : 3733030

To

1. Secretaries to all Ministries/Departments.

Copy for information to :

1. Shri P.C. Jain, retired Secretary to the Government of India.
2. Shri H.D. Shourie, Chairman, Common Cause, A-31, West End. New Delhi-21.
3. Shri S. Ramaiah, retired Legislative Secretary, Government of India
4. Shri Brajesh Mishra, Principal Secretary to Prime Minister.
5. Shri R. Bhattacharya, Joint Secretary, Cabinet Secretariat.
6. Shri Harinder Singh, Joint Secretary (Estt.), DOPT.
7. Shri S. Narendra, PIO.
8. Shri A.N. Sharma, Director Public Relations (Home & Personnel), PIB.
9. PPS to Secretary (P).

Sd/=   
(Nikhilesh Jha)   
Deputy Secretary   
Tele. : 3733030



No. K-11022/19/98-P  
Department of Administrative  
Reforms and Public Grievances

Sardar Patel Bhavan, Sansad Marg,  
New Delhi, Dated 19.8.1998

**OFFICE MEMORANDUM**

Subject : ***Commission on Review of Administrative Laws-Extension of the term of the Commission.***

In partial modification of this Department's O.M. of even number dated 8th May, 1998, it has been decided by the Government to extend the term of the Commission on Review of Administrative Laws upto 30th September, 1998.

Sd/=  
(Nikhilesh Jha)  
Deputy Secretary  
Tele. : 3733030

To

Secretaries to all Ministries/Departments.

Copy for information to :

1. All Members of the Commission.
2. Shri Brajesh Mishra, Principal Secretary to P.M.
3. Shri R. Bhattacharya, Joint Secretary, Cabinet Secretariat.
4. Shri Harinder Singh, Joint Secretary (Estt.), DOPT.
5. Shri S. Narendra, PIO
6. Shri A.N. Sharma, Director Public Relations (Home & Personnel), PIB.
7. PPS to Secretary (P).

Sd/=  
(Nikhilesh Jha)  
Deputy Secretary  
Tele. : 3733030

## REGULATORY REFORM FOR RESPONSIVE ADMINISTRATION IN INDIA

*Pachampet Sundaram*

### The Context

The Central and State Governments in India have been concerned about the need to ensure a responsive, accountable, transparent, clean, decentralized and people-friendly administration at all levels. This rests on the recognition of the growing frustration and dissatisfaction amongst the people and government's customers about the apathy, lack of responsiveness, and lack of accountability of public agencies. The Conference of Chief Ministers, convened by the Prime Minister in May 1997 endorsed an Action Plan for Effective and Responsive Administration which addressed the issues of **making administration more accountable and citizen-friendly, ensuring transparency and right to information, and taking measures to cleanse and motivate the civil services**. The ongoing initiatives for legal and regulatory reform in Centre and states were sought to be placed within the framework of this Action Plan.

Interactive reviews of the experience with the implementation of various policy changes announced by successive governments to promote economic reform and liberalisation of procedures for the inflow of foreign investment revealed that administrative red tape, requirement of multiple approvals, cumbersome rules and regulations and unresponsive official attitudes are often cited by foreign investors, small and big industrialists as roadblocks. Laws operated by one or more Departments in the central government, or by governments and agencies at different levels, often overlap and conflict with each other, leading to fruitless parallel proceedings and expense for the clients. These lead to delays or non-realisation of investments, cost escalation, denial of the benefits of investment and improved technology to the public, and the economy, and reduced credibility of the reform process itself in domestic and international perception. These are aggravated by long delays in the settlement of cases by the authorities in charge of civil and administrative law. At the same time, the effective delivery of services and benefits to the public under different development and welfare schemes are being seen as often frustrated by archaic laws, rigid regulations and procedures, centralized systems, the insensitive attitude of the officials, and characterized by unwarranted transaction costs. It is important to note here that the problem arises as much from the legal provisions as from the administrative structure for their implementation, the transparency of the system, and the arrangements for dispute resolution.

More insidiously, the complexity and secrecy surrounding rules and regulations account for the instances of rampant corruption in various Departments in granting approvals and permits, or in the process of procurement of goods, or sanction of public works, or in the operation of public utility services. Such corruption could take the form of big scams and payoffs, or speed money and extortion payments at the cutting edge levels for expediting approvals, or for bending rules, or for discretionary decisions. The same regulations, which increase the cost of transactions and lead to deprivation of benefits for the ordinary citizen, allow the unscrupulous middlemen to manipulate the rules for their benefit, or to extract speed money from the clients, often in collusion with officials.

Exercises for legal and regulatory reform had been undertaken from time to time for the purpose of facilitating the process of economic liberalization, speedy approvals, and promoting electoral policies. This was seen as part of the thrust for deregulation and debureaucratization that was sweeping many developing countries. However recent exercises for responsive and open administration, in the mould of the good governance formulations of UNDP, Asian Development Bank etc., look at the legal reform process from the perspective of the citizen and the client groups, the formulation of Citizen's Charters, and the context of administrative and civil service reform and capacity building. Administrative law, in this sense, is not merely subordinate legislation and the context of rules and regulations and procedures administered by a multitude of government agencies and local authorities, but it comprehends all the measures for minimizing unnecessary direct regulatory involvement of public agencies, helping to reduce unnecessary litigation and disputes by government and the public, reducing costs and delays in regulatory administration, procedure audit, interdepartmental coordination, and capacity building of agencies and staff. This would help to identify the scope for essential regulations in the interest of larger public objectives, and the means of better implementation of regulations that need to be continued.

### **A Status Card**

In addition to the laws passed by Parliament and State Legislatures, a huge body of rules, regulations and other forms of subordinate legislation have grown around and beyond the original laws. Under the same law such as Essential Commodities Act, rules and orders are issued by a number of Central Ministries and Departments. Rules are issued by the State Governments under Central laws relating to Labour, Prevention of Food Adulteration etc. These are further complicated by the circulars issued by revenue authorities such as the Central Board of Direct Taxes and the Central Board of Excise and Customs, further amended by clarifications and internal instructions. While the rules and regulations are at least required to be placed before the Parliament/Legislature, the circulars and orders are in the nature of executive instructions to departmental officials, and are often not accessible to the general public. Changes in procedures for approvals or for tax assessment are often not given wide publicity and create considerable confusion and problems for the public and business. Different bases for valuation are applied by the authorities administering Central and State taxes, local bodies. The rules governing the exercise of discretionary powers in administrative law are often not laid down with sufficient objectivity, uniformity and openness. (This has to some extent been remedied in some cases by orders of the Supreme Court in the case of allotment of houses, petrol pumps.) The limited accessibility of the poor to lawyers and accountants, and exploitation by middlemen capitalising on proximity to lower officials, increases the profit from discretionary decisions and the lack of transparency surrounding public transactions.

The employees suffer from these deficiencies as much as the general public, since a significant body of administrative law relates to service conditions and determination of emoluments, various forms of entitlements etc., and this leads to needless litigation on service matters, disputes with employee unions, arbitration cases etc. They suffer much more as pensioners for pension calculation, regular payment, health benefits etc. The individual official is not inclined to implement regulations flexibly because of the overarching emphasis on adherence to rules, the fear of audit and vigilance, and examination by legislative committees. Nor is the peer system in civil service very supportive of the maverick reformers. The intricate system of checks and balances to ward off individual malfeasance leads to a behavior pattern of buck-passing and passive acceptance of advice from the Finance or Law Ministry. This is again the reason why the government is the largest litigant, and no one is willing to be accused of refraining from appeal against an order which is patently not appealable. These patterns of administrative behavior must be recognised when reforms are thought of.

It is worth noting that successive Expert Committees and Commissions have been concerned about the complex and unworkable legal provisions, multiple responsibility for their implementation, growing volume of administrative law and circulars issued by different Departments, especially in the economic and fiscal sphere, centralisation of decisions, dilatory procedures for dispute resolution, and the implications of this for incentives to evasion of law, recourse to unauthorized practices, and the consequent potential for corruption. This was discussed in the 1964 report of the Santhanam Committee on Prevention of Corruption, the 1971 Wanchoo Committee on Direct Taxes and the 1983 Economic Reforms Commission. The cynics bless the ineffective enforcement of unworkable laws for whatever development has taken place by default, or the loopholes in laws like Urban Land (Ceiling and Regulation) Act for permissive development.

One of the reasons for the general perception of the unsatisfactory outcome of major policy changes in the industrial sector since 1991 is that the range of legislation and that of ministerial responsibility extends far beyond the Departments in charge of industry and investments in the central and state governments. These agencies implement the legislative and regulatory provisions from their own perspectives, and are not necessarily informed by, nor have incentives to pursue, the common goals of industrial promotion. This is seen even in the limited exercises of even the Expert Committees set up recently. A sample list of various Acts under which locational restrictions or approvals may be required for locating a unit could include :

Legislation	Agency
• Gram Panchayat and District Acts	..... Department of Revenue or Rural Development
• Town and Country Planning Act	..... Municipal Government, Town Planning agencies
• Municipal Laws	..... Municipal bodies, State Government
• Urban Land Ceiling and Regulation Act	..... Competent Authority of State Government
• Notified Areas/Industrial Areas	..... Industrial Development Corporations/Notified Authorities
• Acts regarding utilities	..... Authorities for Water Supply and Sewerage/ ..... Housing/Electricity
• Health and Environment Acts	..... Pollution Control Boards/Health Directorates/ ..... Local Bodies
• Labour and Employment Acts	..... State Labour Authorities
• Other legislations such as Factories Act, Boilers Act, Forest Act, Wild Life protection Act, Ancient Monuments Act, etc.	
• Rules, Regulations and local procedures for approvals.	

Indeed, for the private sector, conventional industrial licensing may not be their main concern they have learned how to cope with it, and the various Central Ministries are responsive to overcoming legal hurdles. The real problems appear to be the lack of infrastructure like ports and transport, non-functioning services and the problems of securing access to it, red tape associated with land use and services, cumbersome procedures and interference from the plethora of inspectorates functioning under environment, labour, health, safety and the local bodies, the procedures of the financial institutions (especially for the small units), notwithstanding the single window set up by industrial agencies for investment and operational approval, about the opaqueness and inconsistency of procedures, and the arbitrary use of discretionary powers. The user organisations and the general public are concerned about the lack of predictable, swift and consistent framework for dispute settlement. The solution lies in redesigning the flow of procedures to ensure that there is a single point of clearance, assistance and supervision, steps to see that associated accountability can be identified and enforced, and the employees develop ownership of responsive systems.

### **Past Efforts for Reform**

An exercise was undertaken by different Central Departments at the instance of the Finance Minister in 1995 in order to look into the scope for administrative reform to support the process of economic liberalization. Apart from the various steps taken by various Ministries for delicensing and removal of controls (which is well documented in the Annual Economic Surveys brought out by the Ministry of Finance), the steps taken pursuant to the reports of these task forces in different Departments have been :

- Accent on transparency and the free flow of information to the public, often through home pages on the Internet;

- Simplification of Registration procedure, streamlining of application receipt, acknowledgment and monitoring system, computerised counters in field offices with easy access to information on the status of applications, delegation of powers to local officials etc. , in respect of Departments like Industrial Policy and Promotion, Company Affairs, Small Scale industries, Supply and Urban Development;
- Simplification/elimination/consolidation of forms, facility of submitting forms through computers in some cases, computerised counters for receiving and acknowledging applications and forms, specification of the list of documents to be furnished, issue of information booklets, devising standard formats in the office for dealing with repetitive cases as well as for submission to Committee members, use of printed or computerised receipts, recasting forms to enable computerised processing, annual exercise for the review of forms etc., introduction of a composite form for foreign direct investment/foreign technology collaboration and industrial license has been devised for all applicants;
- Simplification of procedures and single-window systems for all clearances and approvals, adoption of a common format for multi-agency approvals, layering and delegation of authority, publicity to procedures through booklets and internet home page, etc.;
- Delegation to state agencies and central agencies of powers under laws administered by different Central Ministries, as well as powers for technical scrutiny for power projects, environmental clearances for small projects, etc.;
- Permitting alternate agencies for the issue of certificates and valuation required for approvals, decentralising payment procedures;
- Actions under Industrial Policy such as the abolition of unnecessary committees such as the MRTPLicensing Committee, and the conversion of erstwhile mandatory forms into inforatory submissions e.g., the step taken by the Industry Ministry for composite form for foreign investment, to abolish the need for Industries Registration, elimination need for registration of foreign investors with Reserve Bank, Delicensed Registration and DGTD Registration for delicensed units, and replacing them by the IEM; simplification of the procedure for granting approvals under Electronic Hardware Technology Park and Software Technology Park schemes, by providing for automatic approval within 15 days of the application conforming to listed criteria; automatic approval for private bonded warehouses in export processing zones; exemption of certain power projects from competitive bidding;
- Various steps taken by Railways for simplifying the procedure for refunds to passengers, for reservation to any station on the computerised network, for processing claims relating to goods traffic, dealing with public complaints at the operational level, enforcing time limits etc.;

- Steps taken by the Ministry of Environment to streamline and decentralise examination of proposals under the Forest Conservation Act, delegate powers to the state governments under different provisions of environmental laws rationalize the consent procedure for small-scale units, consolidating the standards for effluent treatment etc., and delegating powers to the State Pollution Control Boards;
- Steps taken by SEBI to improve the transparent operation of the capital market, paperless trading in securities, regulate unethical practices, and to protect the investors;
- Circulars issued by Reserve Bank of India to promote customer friendly practices of nationalised banks, reduce delays in transactions and simplify procedures;
- Procedures have been simplified by the Central Board of Customs and Excise for a number of transactions such as the fast track procedure, computerisation, processing of import documents in advance and assessing duty 30 days before the consignment, so that the goods can be released immediately on arrival; changing the rules relating to MODVAT; release of goods on sample check etc.;
- Deletion of 696 guidelines relating to the Public Sector Undertakings, as recommended by the Vittal Committee; strategy for progressive transformation of PSU's into autonomous Board-managed companies, with a minimum requirement for approaching the government for approvals;
- Increasing use of information technology for reducing manual systems for file movement, data storage and retrieval, creating intranet backbone for data-sharing and access to the public, instant processing of applications (as in the case of the air cargo processing by Delhi Customs), issue of land record copies and other certificates in rural and urban areas, reducing delays, and minimising the need for person-to-person transactions; EDI Service Centres opened by the Federation of Indian Exporters Organisation at its premises, and by a number of Ministries and their agencies in their main offices;
- Strengthening the public grievance redressal system in different Ministries and Central agencies, in order to secure prompt remedial action in cases of maladministration, neglect, harassment, delays etc., and to address systemic causes for grievances; the installation of **Banking Ombudsmen** in the nationalised banks (and soon in Insurance) for the resolution of complaints relating to deficiency in banking services, the complaints adalat systems in respect of the Telephone services and the Postal Department, the Social Audit Panels of these Departments for public hearing, the public hearings of the Protector General of Emigrants in different cities to redress grievances of intending or returned emigrants and agents on various aspects of emigration, the establishment of the Public Grievances Commission in Delhi are concrete examples of this endeavour;
- Growing impact of Consumer Grievance Redressal Forum at district, state and national level which award damages to consumers against negligent and insensitive providers of service in public and private sector.



The effort is not confined to the Central agencies alone. Similar initiatives have been reported by state governments also, and the thrust is as much for deregulation as for citizen-friendly administration, as the state and local agencies deal more directly with the public for various services.

### **Approach**

Following the resolution of Conference of Chief Ministers in 1997 referred to earlier, a number of state governments have set up Law Commissions in order to review the entire framework of laws and regulations and have introduced amendments in the regulatory set up. The Central Government asked different Ministries/Departments to set up Expert Groups whose terms of references were :

- (a) Identification of laws which are no longer needed or relevant or can be immediately repealed.
- (b) Identification of laws which are in harmony with the existing climate of economic liberalisation and which need no change.
- (c) Identification of laws which require changes or amendments and suggestions for amendments.
- (d) Revision of rules, regulations, orders and notifications, especially those affecting interests of weaker sections and business.

The review exercise would consider whether the objectives are properly defined after consultation with the affected groups, whether these objectives could be better achieved in any other manner or made more citizen friendly, whether it is necessary to continue with the existing regulations at all, whether the machinery for their implementation is adequate and cost effective, and whether the presumed social and economic benefits of the regulation warrant their continuance. Simultaneously with the commencement of work of these Expert Groups, the government also set up the Law Commission under the Chairmanship of Justice B.P. Jeevan Reddy with a mandate to look at proposals emanating from different Ministries/Departments on the basis of these terms of reference, and with particular reference to laws and regulations having an impact on more than one department. The Law Commission has submitted an interim report on some Ministri's proposals, and on some specific legislation.

Substantial progress has been made by 43 Ministries/Departments whose reports were reviewed by us. The review exercise has covered mostly amendments to legislation administered by them, and repeal/amendments to rules, regulations and procedures only by few Ministries. The Commission was required to overview the reports prepared by Ministries/Departments with or without the help of Expert Groups. In addition, a number of Ministries set up Inter-Ministerial Groups or Expert Groups to revise existing laws and regulations or to frame new laws, as for example, the drafting of comprehensive changes in Income Tax law, excise regulations, company law, Build-operate-Transfer law, cyber law, SEBI Act, electronic funds transfer in banks, patent laws, Criminal Procedure code, crimes against women, labour laws etc.

While serious efforts are being made to take note of the problems put forward by associations of business, commerce, citizen groups, and to evolve proposals for reform with due regard to the suggestions made by them and the findings of field evaluation, it is important to note that reforms in administrative law represent only one aspect of effective, transparent and accountable administration, as indicated at the beginning of this paper. Emphasis should be on proactive policies for decentralised and participatory administration and the voluntary dissemination to all Central, state and local agencies of all information relating to regulatory and development procedures, activities of government and the functioning of different agencies with progressive use of information technology. Since bulk of the procedures today cause delay on account of manual and paper waste systems, the very process of changing the systems of networking of information within and across Departments, and enabling citizens to deal with public agencies through the electronic media or through counter staff with delegated powers, would help to minimise delays, harassment and the scope for speed money. A number of Departments have started changing their style of function but much more needs to be done, given the culture of secrecy, adherence to rules, insensitivity to problems of the public and other deficiencies that characterise the bureaucracy. As important as recognising and rewarding honesty and people friendliness is the swift punishment of the inefficient, insensitive and dishonest. Along with reform of the systems of working, another fruitful area of reform has been the amendment to procedures to facilitate self-assessment in the case of fiscal laws and self-regulation in the case of approvals and permits. This will of course be facilitated to the extent that professional bodies of real estate operators, architects, engineers, accountants etc. come forward to administer with honesty the system of credible certification and acceptable valuation.

The present legal reform has not specifically addressed anti-poor laws and procedures. As regards the large numbers of people living in rural areas and unable to access the electronic media, the reform has been in the direction of taking the administration to the people such as the Janmabhoomi Experiment in Andhra Pradesh, involving instant redressal of grievances, removing disabilities of poor women and other disadvantaged groups, issue of certificates and approvals on the spot by a team of empowered officials, enabling the applicant to secure copies of records from computerised counters, and providing for administration of welfare schemes by citizen groups and voluntary agencies on the basis of objective and transparent norms. This process will, of course, be facilitated to the extent that elected local bodies down to the level of panchayats and gram sabhas are enabled to implement all local schemes and provide basic services to the population on the basis of widespread participation and consultation. Participatory process will itself remove the type of constraints posed by rules and regulations at the Central and State level and create pressure for amending these rules in ways which will make people centrad development possible. This will also help to address the variety of constraints facing the economic and social activity of the poor and disadvantaged sections which has been very well documented by Dr. N.C Saxena.

## APPENDIX-A

### **Central Laws Recommended for Repeal**

- A-1 : 166 Central Acts (including 11 Pre-Nationalisation Acts and 20 Validation Acts) \*
- A-2 : 315 Amendment Acts +
- A-3 : 11 British Statutes Still in force \*
- A-4 : 17 Wartime permanent Ordinances \*
- A-5 : 114 Central Acts relating to State subjects for repeal by State Governments \*
- A-6 : 700 (approximately) Appropriation Acts Passed by Parliament for repeal by Central Government +

\* List of Acts recommended for repeal are enclosed.

+ List not enclosed

166 CENTRAL ACTS (INCLUDING 11 PRE-NATIONALISATION ACTS, AND 20 VALIDATION ACTS)

1. The Livestock Importation Act, 1898.
2. The Glanders and Fancy Act, 1899.
3. The Dourine Act, 1910.
4. The Indian Power Alcohol Act, 1948.
5. The Essential Commodities (Special Provisions) Act, 1981.
6. The Spirituous Preparations (Inter-State Trade & Commerce) Act, 1955.
7. The Tobacco Board Act, 1975.
8. The Finance Commission (Miscellaneous Provisions) Act, 1951.
9. The compulsory Deposit Scheme Act, 1963.
10. The Additional Emoluments (Compulsory Deposit) Act, 1974.
11. The Banking Service Commission Act, 1984.
12. The Shipping Development Fund Committee (Abolition) Act, 1986.
13. The Gift-tax Act, 1958.
14. The Central Excise Laws (Amendment and Validation) Act, 1982.
15. The Sugar (Special Excise Duty) Act, 1959.
16. The Mineral Products (Additional Duties of Excise and Customs) Act, 1958.
17. The Central Duties of Excise (Retrospective Exemption) Act, 1986.
18. The Customs and Excise Revenue Appellate Tribunal Act, 1986.
19. The Young Persons (Harmful Publications) Act, 1956.
20. The Federal Court Act, 1937.
21. The Federal Court (Enlargement of Appellate Jurisdiction) Act, 1947.
22. The Goa, Daman and Diu (Opinion Poll) Act, 1966.
23. The Indian Law Reports Act, 1875.
24. The Indian Rifles Act, 1920.
25. The Abolition of Privy Council Jurisdiction Act, 1949.
26. The Continuance of Legal Proceedings Act, 1948.

27. The Industrial Disputes (Banking Companies) Decision Act, 1955.
28. The Oriental Gas Company (Act 5 of 1857).
29. The Oriental Gas Company Act, 1867.
30. The Payment of Taxes (Transfer of Property) Act, 1949.
31. The Special Tribunals (Supplementary Provisions) Act, 1946.
32. The Special Courts (Repeal) Act, 1982.
33. The Forfeiture Act, 1859.
34. The Ganges Tolls Act, 1857.
35. The Acting Judges Act, 1867.
36. The Companies (Foreign Interests) Act, 1918.
37. The Promissory Notes (Stamp) Act, 1926.
38. The Allianz Und Stuttgarter Life Insurance Bank (Transfer) Act, 1959.
39. Amending Act, 1897.
40. The Amending Act, 1901.
41. The Amending Act, 1903.
42. The Banking Companies (Legal Practitioner's Clients Accounts) Act, 1949.
43. Boundaries, 1847.
44. The Central Sales Tax (Amendment) Act, 1969.
45. The Coasting Vessels Act, 1838.
46. The Companies (Surcharge on Income-tax) Act, 1971.
47. The Companies (Temporary Restrictions on Dividends) Act, 1974.
48. The Cotton Cloth Act, 1918.
49. The Cotton Textiles Cess Act, 1948.
50. The Cotton Ginning and Pressing Factories Act, 1925 (12 of 1925).
51. The Countess of Dufferin's fund Act, 1957.
52. The Delimitation Act, 1972.
53. The Deposit Insurance Corporation (Amendment and Misc. Provisions) Act, 1978.
54. The Estate Duty Act, 1953.
55. The Estate Duty (Distribution) Act, 1962.
56. The Lepers Act, 1894 (3 of 1898).

57. The Excise (Malt Liquors) Act, 1890.
58. The Government Trading Taxation Act, 1926.
59. The Imperial Library (Indentures Validation) Act, 1902.
60. The Income-tax (Amendment) Act, 1965.
61. The Indian Bar Councils Act, 1926.
62. The Indian Short Titles Act, 1897.
63. The Indian Universities Act, 1904.
64. The Industrial Disputes (Amendment and Miscellaneous provisions) Act, 1956.
65. The Influx From Pakistan (Control) Repealing Act, 1952.
66. The Land Acquisition (Amendment) Act, 1962.
67. The Land Acquisition (Amendment and Validation) Act, 1967.
68. The Laws Local Extent Act, 1874.
69. The Legal Practitioner's Act, 1879.
70. The Parliamentary Proceedings (Protection of Publication) Repeal Act, 1976.
71. The Railway Companies (Emergency Provisions) Act, 1951.
72. The Railway Companies (Substitution of Parties in Civil Proceedings) Act, 1946.
73. The Refugee Relief Taxes (Abolition) Act, 1973.
74. The Rent Recovery Act, 1853.
75. The Reserve Bank of India (Amendment and Miscellaneous Provisions) Act, 1953.
76. The Special Bearer Bonds (Immunities and Exemptions) Act, 1981.
77. St. John Ambulance Association (India) Transfer of Funds Act, 1956.
78. The Sugarcane Control (Additional Powers) Act, 1962.
79. The Taxation on Income (Investigation Commission) Act, 1947.
80. The Tea Districts Emigrant Labour (Repeal) Act, 1970.
81. The Tobacco Cess Act, 1975.
82. The Voluntary Disclosure of Income and Wealth Act, 1976.
83. The Voluntary Deposits (Immunities and Exemptions) Act, 1991.
84. The Easements (Extending) Act, 1891. (8 of 1891).
85. The Foreign Recruitment Act, 1874. (4 of 1874).

86. The Government Trading Taxation Act, 1926. (3 of 1926).
87. The Indian Railway Companies Act, 1895. (10 of 1895).
88. The Indian Railway Board Act, 1905. (4 of 1905).
89. The Iron and Steel Companies (Amalgamation) Act, 1952. (79 of 1952).
90. The Promissory Notes (Stamp) Act, 1926. (11 of 1926).
91. The Refugee Relief Taxes (Abolition) Act, 1973. (13 of 1973).
92. The Trading with the Enemy (Continuance of Emergency Provisions) Act, 1947. (16 of 1947).
93. The Pondicherry (Extension of Laws) Act, 1968. (26 of 1968).
94. The Prevention of Food Adulteration (Extension to Kohima and Mokokchung Districts) Act, 1972. (24 of 1972).
95. The Central Laws (Extension to Jammu and Kashmir) Act, 1968.
96. The Central Labour Laws (Extension to Jammu and Kashmir) Act, 1970.
97. The Central Laws (Extension to Arunachal Pradesh) Act, 1993. (44 of 1993).
98. The Diplomatic and Consular Officers (Oaths and Fees) (Extension to Jammu and Kashmir) Act, 1973. (2 of 1973).
99. The Goa, Daman and Diu (Extension of the Code of Civil Procedure and the Arbitration) Act, 1965. (30 of 1965).
100. The Miscellaneous Personal Laws (Extension) Act, 1959. (48 of 1959).
101. The Taxation Laws (Extension to Jammu and Kashmir) Act, 1954. (4 of 1954).
102. The Taxation Laws (Extension to Jammu and Kashmir) Act, 1972. (25 of 1972).
103. The Taxation Laws (Extension to Merged States and Amendment) Act, 1949. (47 of 1949).
104. The Taxation Laws (Continuation and Validation of Pending Proceedings) Act, 1964. (11 of 1964).
105. The Scheduled Areas (Assimilation of Laws) Act, 1951. (37 of 1951).
106. The Scheduled Areas Act, 1953. (16 of 1953).
107. The Shillong (Rifle Range and Umlong) Cantonments Assimilation of Laws Act, 1954. (31 of 1954).
108. The West Godavari District (Assimilation of Laws on Federal Subjects) Act, 1949. (20 of 1949).
109. The Union Territories (Laws) Act, 1950.



110. The Absorbed Areas (Laws) Act, 1954. (20 of 1945).
111. The Central Provinces (Laws) Act, 1875. (20 of 1875).
112. The Cooch-Bihar Assimilation of Laws Act, 1950. (67 of 1950).
113. The Jammu and Kashmir (Extension of Laws) Act, 1956. (62 of 1956).
114. The Manipur and Tripura (Repeal of Laws) Act, 1958. (36 of 1958).
115. The Married Women's Property (Extension) Act, 1959. (61 of 1959).
116. The Opium and Revenue laws (Extension of Application) Act, 1950. (33 of 1950).
117. The Merged States (Laws) Act, 1949. (59 of 1949).
118. The Petroleum (Berar Extension) Act, 1937. (23 of 1937).
119. The Vaccination Act, 1880 (13 of 1880).
120. The Union Duties of Excise (Distribution) Act, 1979. (24 of 1979).
121. The Union Duties of Excise (Electricity Distribution) Act, 1980. (14 of 1989).
122. The Himachal Pradesh State Legislature (Delegation. of Powers) Act, 1993. (5 of 1993).
123. The Jammu and Kashmir State Legislature (Delegation of Powers) Act, 1992. (21 of 1992).
124. The Mysore State Legislature (Delegation of Powers) Act, 1971. (23 of 1971).
125. The Punjab State Legislature (Delegation of Powers) Act, 1987. (24 of 1987).
126. The Tamil Nadu State Legislature (Delegation of Powers) Act, 1988. (21 of 1988).
127. The Uttar Pradesh State Legislature (Delegation of Powers) Act, 1993. (8 of 1993).
128. The Uttar Pradesh State Legislature (Delegation of Powers) Act, 1996. (2 of 1996).
129. The Business Profits Tax Act, 1947. (21 of 1947).
130. The Company (Profits) Surtax Act, 1964. (7 of 1964).
131. The Business (Surcharge on Income Tax) Act, 1971. (62 of 1971).
132. The Excess Profits Tax Act, 1940. (15 of 1940).
133. The Epidemic Diseases Act, 1897 (3 of 1897).
134. The Hotel Receipts Tax Act, 1980. (54 of 1980).
135. The Delhi and Ajmer Rent Control (Nasirabad Cantonment Repeal) Act, 1968. (49 of 1968).

### PRE-NATIONALISATION ACTS

136. The Coking Coal Mines (Taking Over of Management) Act, 1973. (15 of 1973).
137. The Coal Mines (Emergency Provisions) Act, 1971. (64 of 1971).
138. The General Insurance (Emergency Provisions) Act, 1971. (17 of 1971).
139. The Auroville (Emergency Provisions) Act, 1980. (59 of 1980).
140. The Iron and Steel Company (Taking over of Management) Act, 1972. (51 of 1972).
141. The Laxmi Rattan and Atherton West Cotton Mills (Taking over of Management) Act, 1976. (98 of 1976).
142. The Life Insurance (Emergency Provisions) Act, 1956. (9 of 1956).
143. The Parel Investment and Trading Pvt. Ltd. and Domestic works Pvt. Ltd. (Taking over of Management) Act, 1979. (29 of 1979).
144. The Sick Textile Undertakings (Taking over of Management) Act, 1972. (72 of 1972).
145. The Sugar Undertakings (Taking over of management) Act, 1978. (49 of 1978).
146. The Textile Undertakings (Taking over of Management) Act, 1983. (40 of 1983).

### VALIDATION ACTS

147. The Bangalore Marriage Validation Act, 1936. (36 of 1936).
148. The Bar Councils (Validation of State Laws) Act, 1956. (4 of 1956).
149. The Bengal Finance (Sales Tax) Delhi Validation of Appointments and Proceedings) Act, 1971. (20 of 1971).
150. The Central Board of Direct Taxes (Validation of Proceedings) Act, 1971.
151. The Decrees and orders Validating Act, 1936. (5 of 1936).
152. The Delhi Municipal Corporation (Validation of Electricity Tax) Act, 1966 (35 of 1966).
153. The Destructive Insects and Pests (Amendment and Validation) Act, 1992. (12 of 1992).
154. The Himachal Pradesh Legislative Assembly (Constitution and Proceedings) Validation Act, 1958. (56 of 1958).
155. The Hindu Marriage (Validation of Proceedings) Act, 1960. (19 of 1960).

156. The Hyderabad Export Duties (Validation) Act, 1955. (20 of 1955).
157. The Jubbalpore and Chhattisgarh Divisions (Divorce Proceedings Validation) Act, 1935. (13 of 1935).
158. The Madhya Bharat Taxes on Income (Validation) Act, 1954. (38 of 1954).
159. The Marriages Validation Act, 1892. (2 of 1892).
160. The Mussalman Wakf Validating Act, 1913. (6 of 1913).
161. The Mussalman Wakf Validating Act, 1930. (32 of 1930).
162. The Part B State Marriages Validating Act, 1952. (1 of 1952).
163. The Professions Tax Limitation (Amendment and Validation) Act, 1949. (61 of 1949).
164. The Sugar-cane Cess (Validation) Act, 1961. (38 of 1961).
165. The Travancore-Cochin Vehicles Taxation (Amendment and Validation) Act, 1959. (42 of 1959).
166. The Uttar Pradesh Sugar Cane Cess (Validation) Act, 1961. (4 of 1961).

**11 BRITISH STATUTES STILL IN FORCE**

1. Admiralty Jurisdiction (India) Act, 1860 (23 & 24 Vict. C. 88)
2. Admiralty Offences (Colonial) Act, 1849 (12 & 13 Vict. C. 96)
3. British Law Ascertainment Act, 1859 (22 & 23 Vict. C. 63)
4. Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. C. 27)
5. Colonial Prisoners Removal Act, 1884 (47 & 48 Vict. C. 31)
6. Colonial Probates Act, 1892 (55 & 56 Vict. C. 6)
7. Foreign Law Ascertainment Act, 1861 (24 & 25 Vict. C. 11)
8. India (Consequential Provisions) Act, 1949 (12, 13 & 14 Geor. VI C. 92)
9. Indian and Colonial Divorce Jurisdiction Act, 1926 (16 & 17. Geor V.C. 40)
10. India and Colonial Divorce Jurisdiction Act, 1940 (3 & 4. Geo. IV C. 35)
11. Indian Divorce Act, 1945 (9. Geo. VI. C. 51)

17 WAR-TIME PERMANENT ORDINANCES

Name of Ordinance

1. Armed Forces (Special Powers) Ordinance, 1942 (41 of 1942)
2. Bank Notes (Declaration of Holdings) Ordinance, 1946 (2 of 1946)
3. Collective Fines Ordinance, 1942 (20 of 1942)
4. Criminal Law Amendment Ordinance, 1944 (388 of 1944)
5. Criminal Law Amendment Ordinance, 1946 (6 of 1946)
6. Currency Ordinance, 1940 (4 of 1940)
7. Essential Service (Maintenance) Ordinance, 1941 (11 of 1941)
8. Excess Profits Tax Ordinance, 1943 (16 of 1943)
9. Income-Tax and Excess Profits Tax (Emergency) Ordinance, 1942  
(60 of 1942)
10. Income-Tax Proceedings Validity Ordinance, 1943 (4 of 1943)
11. Military Nursing Service Ordinance, 1943 (30 of 1943)
12. Public Health (Emergency Provisions) Ordinance, 1944 (21 of 1944)
13. Rajasthan High Court Ordinance, 1949 (15 of 1949)
14. Secunderabad Marriage Validating Ordinance, 1945 (30 of 1945)
15. Termination of War (Definition) Ordinance, 1946 (10 of 1946)
16. War Gratuities (Income-Tax Exemption) Ordinance, 1945 (24 of 1945)
17. War Injuries Ordinance, 1941 (7 of 1941)

**114 CENTRAL ACTS RELATING TO STATE SUBJECTS FOR REPEAL  
BY STATE GOVERNMENTS**

1. The Agriculturist Loans Act, 1884 (12 of 1884)
2. The Ajmer Tenancy and Land Records Act, 1950 (42 of 1950).
3. The Assam Municipal (Manipur Amendment) Act, 1961 (64 of 1961).
4. The Bengal, Agra and Assam Civil Courts Act, 1887 (12 of 1887).
5. The Bengal Alluvion and diluvion Act, 1847 (9 of 1847).
6. The Bengal, Bihar and Orissa and Assam Laws Act, 1912 (7 of 1912).
7. The Bengal Warehouse Association Act, 1838 (5 of 1838).
8. The Bengal Bonded Warehouse Association Act, 1854 (5 of 1854).
9. The Bengal Choukidari Act, 1856 (20 of 1856).
10. The Bengal Districts Act, 1836 (21 of 1836).
11. The Bengal Embankment Act, 1855 (32 of 1855).
12. The Bengal Ghatwali Laws Act, 1859 (5 of 1859).
13. The Bengal Indigo Contract Act, 1836 (16 of 1836).
14. The Bengal Land Holder's Attendance Act, 1848 (20 of 1848).
15. The Bengal Land Revenue Sales Act, 1841 (12 of 1841).
16. The Bengal Land Revenue Sales Act, 1859 (11 of 1859).
17. The Bengal Military Police Act, 1892 (5 of 1892)
18. The Bengal Rent Act, 1859 (10 of 1859).
19. The Bengal Suppression of Terrorist Outrages (Supplementary) Act, 1932 (24 of 1932).
20. The Bengal Tenancy Act, 1885 (8 of 1885).
21. The Bhopal and Vindhya Pradesh (Courts) Act, 1950 (40 of 1950).
22. The Bihar Land Reforms Laws (Regulating Mines and Minerals) Validation Act, 1969 (42 of 1969).
23. The Births, Deaths and Marriages Registration Act, 1886 (6 of 1886).
24. The Bombay Civil Courts Act, 1869 (14 of 1869).
25. The Bombay Municipal Debentures Act, 1876 (15 of 1876).

26. The Bombay Rent-free Estates Act, 1852 (11 of 1852).
27. The Bombay Revenue Jurisdiction Act, 1876 (10 of 1876).
28. The Boundary-marks, Bombay (3 of 1846).
29. The Broach and Kaira Incumbered Estates Act, 1877 (14 of 1877).
30. The Calcutta Land Revenue Act, 1850 (23 of 1850).
31. The Calcutta Land Revenue Act, 1856 (18 of 1856).
32. The Central Provinces (Courts of Wards) Act, 1899 (24 of 1899).
33. The Central Provinces Financial Commissioner's Act, 1908 (13 of 1908).
34. The Central Provinces Land Revenue Act, 1881 (18 of 1881).
35. The Central Provinces Tenancy Act, 1898 (11 of 1898).
36. The Chota Nagpur Encumbered Estates Act, 1876 (6 of 1876).
37. The City of Bombay Municipal (Supplementary) Act, 1888 (12 of 1888).
38. The Civil Courts Amins Act, 1856 (12 of 1856).
39. The Coroners Act, 1871 (4 of 1871).
40. The Dekkhan Agriculturists Relief Act, 1879 (17 of 1879).
41. The Disturbed Areas (Special Courts) Act, 1976 (77 of 1976).
42. The Essential Services Maintenance (Assam) Act, 1980 (41 of 1980).
43. The Fort William Act, 1881 (13 of 1881).
44. The Goa, Daman and Diu (Absorbed Employees) Act, 1956 (50 of 1956).
45. The Government Grants Act, 1895 (15 of 1895).
46. The Government Management of Private Estates Act, 1892 (10 of 1892).
47. The Hackney Carriage Act, 1879 (14 of 1879).
48. The Howrah offences Act, 1857 (21 of 1857).
49. The Improvement in Towns (26 of 1850).
50. The Indian Tramways Act, 1886 (11 of 1886).
51. The Indian Tramways Act, 1902 (4 of 1902).
52. The Junagarh Administration (Property) Act, 1948 (26 of 1948).
53. The Local Authorities (Loans) Act, 1948 (26 of 1948).
54. The Local Authorities Pensions and Gratuities Act, 1919 (1 of 1919).
55. The Madras, Bengal and Bombay Children (Supplementary) Act, 1925 (35 of 1925).



56. The Madras City Civil Court Act, 1892 (7 of 1892).
57. The Madras City Land Revenue Act, 1851 (12 of 1851).
58. The Madras Civil Courts Act, 1872 (3 of 1872).
59. The Madras Compulsory Labour Act, 1858 (1 of 1858).
60. The Madras District Police Act, 1859 (24 of 1859).
61. The Madras Forest (Validation) Act, 1882 (21 of 1882).
62. The Madras Public Property (Malversation) Act, 1837 (36 of 1837).
63. The Madras Rent and Revenue Sales Act, 1839 (7 of 1839).
64. The Madras Revenue Commission Act, 1849 (10 of 1849).
65. The Madras Uncovenanted Officers Act, 1857 (7 of 1857).
66. The Mangrol and Manavadar (Administration of Property) Act, 1949 (2 of 1949).
67. The Manipur and Tripura (Repeal of Laws) Act, 1958 (75 of 1958).
68. The Manipur Court-fees (Amendment and Validation) Act, 1953 (44 of 1953).
69. The Municipal Taxation Act, 1881 (11 of 1881).
70. The Murshidabad Act, 1891 (15 of 1891).
71. The Murshidabad Estates Administration Act, 1933 (13 of 1933).
72. The North-Eastern Provinces Village and Road Police Act, 1873 (16 of 1873).
73. The Orissa Weights and Measures (Delhi Repeal) Act, 1958 (57 of 1958).
74. The Partition Act, 1893 (4 of 1893).
75. The Partition of Revenue-paying Estates Act, 1863 (19 of 1863).
76. The Police Act, 1861 (5 of 1861).
77. The Police Act, 1888 (3 of 1888).
78. The Police Act, 1949 (64 of 1949).
79. The Police Agra Act, 1854 (16 of 1854).
80. The Presidency Magistrate (Court Fees) Act, 1877 (4 of 1877).
81. The Public Gambling Act, 1867 (3 of 1867).
82. The Public Suits Validation Act, 1932 (11 of 1932).
83. The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996).
84. The Punjab Courts (Supplementing) Act, 1919 (9 of 1919).

85. The Punjab District Boards Act, 1883 (20 of 1883)
86. The Revenue Commissioners Bombay Act, 1842 (17 of 1842).
87. The Sales of Land for Revenue Arrears, 1845 (1 of 1845).
88. The Sarais Act, 1867 (22 of 1867).
89. The Scheduled Securities (Hyderabad) Act, 1949 (7 of 1949).
90. The Sheriff of Calcutta (Power of Custody) Act, 1931 (20 of 1931).
91. The Shore Nuisances (Bombay and Kolaba) Act, 1853 (11 of 1853).
92. Sir Dinshaw Maneekjee Petit Act, 1893 (6 of 1893).
93. Sir Jamsetjee Jejeebhoy Baronetcy Act, 1915 (10 of 1915).
94. The Sonthal Paraganas Act, 1855 (37 of 1855).
95. The Sonthal Paraganas Act, 1857 (10 of 1857).
96. The Stage Carriages Act, 1861 (16 of 1861).
97. The Tamil Nadu Agricultural Service Cooperatives Societies (Appointment of Special officers) Amendment Act, 1988 (22 of 1988).
98. The Tobacco Duty (Town of Bombay) Act, 1857 (4 of 1857).
99. The usurious Loans Act, 1918 (10 of 1918).
100. The Usury Laws Repeal Act, 1855 (20 of 1855).
101. The Waste Lands (Claims) Act, 1863 (23 of 1863).
102. The Eikrama Singh's Estates Act, 1883.
103. The King of Oudh's Estate Act, 1887.
104. The King of Oudh's Estate Act, 1888.
105. The King of Oudh's Estate Validation Act, 1917.
106. The Mahendra Pradap Singh (Repeal) Act, 1960.
107. The Mirzapur Stone Mahal Act, 1886 (5 of 1886).
108. The Punjab Disturbed Areas Act, 1983 (32 of 1983).
109. The Punjab Gram Panchayat Samthi and Zilla Parishad (Chandigarh) Repeal Act, 1994 (27 of 1994).
110. The Punjab Land Revenue Act. 1887 (17 of 1887).
111. The Punjab Laws Act, 1872 (4 of 1872).
112. Punjab pre-emption (Chandigarh and Delhi) Repeal Act, 1989 (22 of 1989).
113. The Punjab Tenancy Act, 1887 (16 of 1887).
114. The Government Buildings Act, 1899 (4 of 1899)

REORGANISATION ACTS

1. The Acquired Territories (Merger) Act, 1954 (20 of 1954).
2. The Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959 (56 of 1959).
3. The Andhra Pradesh and Mysore (Transfer of Territory) Act, 1968 (36 of 1968).
4. The Andhra Pradesh Legislative Council (Abolition) Act, 1985 (34 of 1985).
5. The Andhra State Act, 1953 (30 of 1953).
6. The Assam (Alteration of Boundaries) Act, 1951 (47 of 1951).
7. The Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969).
8. The Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968 (24 of 1968).
9. The Bihar and West Bengal (Transfer of Territories) Act, 1956 (40 of 1956).
10. The Bombay Reorganisation Act, 1960 (11 of 1960)
11. The Chandernagore (Merger) Act, 1954 (36 of 1954).
12. The Dadra and Nagar Haveli Act, 1961 (35 of 1961).
13. The Goa, Daman and Diu (Administration) Act, 1962 (1 of 1962).
14. The Goa, Daman and Diu Reorganisation Act, 1987 (18 of 1987).
15. The Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1978 (31 of 1978).
16. The Himachal Pradesh and Bilaspur (New State) Act, 1954 (32 of 1954).
17. The Laccadive, Minicoy and Amindivi Islands (Alteration of Name) Act, 1973 (34 of 1973).
18. The Legislative Assembly of Nagaland (Change in Representation) Act, 1968 (61 of 1968).
19. The Lushai Hills District (Change of Name) Act, 1954 (18 of 1954).
20. The Madras State (Alteration of Name) Act, 1968 (53 of 1968).
21. The Mysore State (Alteration of Name) Act, 1973 (31 of 1973).
22. The Naga Hills-Tuensang Areas Act, 1957 (42 of 1957).
23. The North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971).

24. The Part B States (Laws) Act, 1951 (3 of 1951).
25. The Pondicherry (Extension) Act, 1962 (49 of 1962).
26. The Punjab Reorganisation Act, 1966 (31 of 1966).
27. The Rajasthan and Madhya Pradesh (Transfer of Territories) Act, 1959 (47 of 1959).
28. The State of Arunachal Pradesh Act, 1986 (69 of 1986).
29. The State of Himachal Pradesh Act, 1970 (53 of 1970).
30. The State of Mizoram Act, 1986 (34 of 1986).
31. The State of Nagaland Act, 1962 (27 of 1962)
32. The States Reorganisation Act, 1956 (37 of 1956).
33. The Tamil Nadu Legislative Council (Abolition) Act, 1986 (40 of 1986).
34. The Two-Member Constituencies (Abolition) Act, 1961 (1 of 1961).
35. The West Bengal Legislative Council (Abolition) Act, 1969 (20 of 1969).

LAWS APPLICABLE TO HIGH COURTS

1. The Bombay High Court (Letter Patent) Act, 1866 (23 of 1866).
2. The Calcutta High Court (Extension of Jurisdiction) Act, 1953 (41 of 1953).
3. The Calcutta High Court (Jurisdiction Limits) Act, 1919 (15 of 1919).
4. The Goa, Daman and Diu Judicial Commissioner's Court (Declaration as High Court) Act, 1964 (16 of 1964).
5. The High Court of Bombay (Extension to Goa, Daman and Diu) Act, 1981 (26 of 1981).
6. The High Court at Patna (Establishment of a Permanent Bench at Ranchi) Act, 1976 (57 of 1976).
7. The High Courts (Seals) Act, 1950 (7 of 1950).
8. The Judicial Commissioners' Courts (Declaration as High Courts) Act, 1950 (15 of 1950).
9. The Mysore High Court (Extension of Jurisdiction to Coorg) Act, 1952 (72 of 1952).
10. The Procedure of High Court, Uttar Pradesh (13 of 1869).
11. The Unclaimed Deposits Act, 1866 (25 of 1866).
12. The Unclaimed Deposits Act, 1870 (5 of 1870).

**PERSONAL LAWS**

1. The Arya Marriages Validation Act, 1937 (19 of 1937).
2. The Caste Disabilities Removal Act, 1850 (21 of 1850).
3. The Cutchi Memons Act, 1938 (10 of 1938).
4. The Dissolution of Muslim Mariages Act, 1939 (8 of 1939).
5. The Hindu Disposition of Property Act, 1956 (15 of 1956).
6. The India Christian Marriage Act, 1872 (15 of 1872).
7. The Indian Divorce Act, 1869 (4 of 1869).
8. The Indian Matrimonial Causes (War Marriages) Act, 1948 (40 of 1948).
9. The Kazis Act, 1880 (12 of 1880)
10. The Married Women's Rights to Property Act, 1874 (3 of 1874).
11. The Muslim Law (Shariat) Application Act, 1937 (26 of 1937).
12. The Converts' Marriage Dissolution Act, 1866 (21 of 1866).

APPENDIX - E

LIST OF CENTRAL ACTS CONSIDERED OF PARTICULAR RELEVANCE TO  
THE TERMS OF REFERENCE OF THE COMMISSION

1. The Agricultural Produce Cess Act, 1940 (27 of 1940)
2. The Agricultural Produce (Grading and Marking) Act, 1937 (1 of 1937)
3. The Air (Prevention and Pollution) Act, 1981 (14 of 1981)
4. The Arms Act, 1959 (54 of 1959)
5. The Arbitration and Conciliation Act, 1996 (26 of 1996)
6. The Atomic Energy Act, 1962 (33 of 1962)
7. The Banking Regulation Act, 1949 (10 of 1949)
8. The Bankers' Books Evidence Act, 1891 (19 of 1891)
9. The Benami Transactions (Prohibition) Act, 1988 (45 of 1988)
10. The Bonded Labour System (Abolition) Act, 1976 (19 of 1976)
11. The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 (27 of 1996)
12. The Carriage By Air Act, 1972 (69 of 1972)
13. The Carriers Act, 1865 (3 of 1865)
14. The Central Excise Act, 1944 (1 of 1944)
15. The Central Excise Tariff Act, 1985 (5 of 1985)
16. The Central Sales Act, 1956 (74 of 1956)
17. The Charitable Endowments Act, 1890 (6 of 1890)
18. The Charitable and Religious Trusts Act, 1920 (14 of 1920)
19. The Chit Funds Act, 1982 (40 of 1982)



20. The Citizenship Act, 1955 (57 of 1955)
21. The Code of Civil Procedure, 1908 (5 of 1908)
22. The Code of Criminal Procedure, 1973 (2 of 1973)
23. The Collection of Statistics Act, 1953 (32 of 1953)
24. The Companies Act, 1956 (1 of 1953)
25. The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974)
26. The Contempt of Courts Act, 1971 (70 of 1971)
27. The Contract Act, 1872 (1 of 1872)
28. The Copyright Act, 1957 (14 of 1957)
29. The Court-fees Act, 1870 (7 of 1870)
30. The Customs Act, 1962 (53 of 1962)
31. The Customs Tariff Act, 1975 (51 of 1975)
32. The Delhi Apartment Ownership Act, 1986 (58 of 1986)
33. The Deposit Insurance and Credit Gurantee Corporation Act, 1961 (47 of 1961)
34. The Depositories Act, 1966 (22 of 1966)
35. The Dowry Prohibition Act, 1961 (28 of 1961)
36. The Drugs and Cosmetics Act, 1940 (23 of 1940)
37. The Drugs (Control) Act, 1950 (26 of 1950)
38. The Emigration Act, 1983 (31 of 1983)
39. The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952)

40. The Employees' State Insurance Act, 1948 (34 of 1948)
41. The Environment (Protection) Act, 1986 (29 of 1986)
42. The Equal Remuneration Act, 1976 (25 of 1976)
43. The Essential Commodities Act, 1955 (10 of 1955)
44. The Export (Quality Control and Inspection) Act, 1963 (22 of 1963)
45. The Factories Act, 1948 (63 of 1948)
46. The Foreign Exchange Regulation Act, 1973 (46 of 1973)
47. The Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992)
48. The Forward Contracts (Regulation) Act, 1952 (74 of 1952)
49. The General Clauses Act, 1897 (10 of 1897)
50. The Hire-Purchase Act, 1972 (26 of 1972)
51. The Income-Tax Act, 1961 (43 of 1961)
52. The Indian Evidence Act, 1872 (1 of 1872)
53. The Indian Forest Act, 1927 (16 of 1927)
54. The Indian Stamp Act, 1899, (2 of 1899)
55. The Indian Telegraph Act, 1885 (13 of 1885)
56. The Indian Trusts Act, 1882 (2 of 1882)
57. The Industrial Disputes Act, 1947 (14 of 1947)
58. The Industries (Development and Regulation) Act, 1951 (65 of 1951)
59. The Land Acquisition Act, 1894 (1 of 1894)
60. The Limitation Act, 1963 (36 of 1963)
61. The Major Port Trusts Act, 1963 (38 of 1963)
62. The Marine Insurance Act, 1963 (11 of 1963)

63. The Mines Act, 1952 (35 of 1952)
64. The Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969)
65. The Motor Vehicles Act, 1988 (59 of 1988)
66. The Multimodal Transportation of Goods Act, 1993 (28 of 1993)
67. The Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985)
68. The National Environment Appellate Authority Act, 1977 (22 of 1977)
69. The National Environment Tribunal Act, 1995 (27 of 1995)
70. The National Highways Act, 1956 (48 of 1956)
71. The National Housing Bank Act, 1987 (53 of 1987)
72. The Negotiable instruments Act, 1881 (26 of 1881)
73. The Passports Act, 1967 (15 of 1967)
74. The Patents Act, 1970 (39 of 1970)
75. The Payment of Bonus Act, 1965 (21 of 1965)
76. The Payment of Gratuity Act, 1972 (39 of 1972)
77. The Petroleum Act, 1934 (30 of 1934)
78. The Prevention of Food Adulteration Act, 1954 (37 of 1954)
79. The Prevention of Illicit Traffic In Narcotic Drugs and Psychotropic Substances Act, 1988 (46 of 1988)
80. The Protection of Civil Rights Act, 1955 (22 of 1955)
81. The Protection of Human Rights Act, 1944 (10 of 1944)
82. The Public Debt Act, 1944 (18 of 1944)
83. The Public Financial Institutions (Obligation as to Fidelity and Secrecy) Act, 1983 (48 of 1983)
84. The Public Liability Insurance Act, 1991 (6 of 1991)
85. The Public Records Act, 1993, (69 of 1993)
86. The Railways Act, 1989 (24 of 1989)
87. The Railway Claims Tribunal Act, 1987 (54 of 1987)

88. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993  
(51 of 1993)
89. The Registration Act, 1908 (16 of 1908)
90. The Religious Endowments Act, 1863 (20 of 1863)
91. The Religious Institutions (Prevention of Misuse) Act, 1991 (41 of 1991)
92. The Research and Development Act, 1986 (32 of 1986)
93. The Reserve Bank of India Act, 1934 (2 of 1934)
94. The Sale of Goods Act, 1930 (3 of 1930)
95. The Sales Promotion Employees (Conditions of Service) Act, 1976  
(11 of 1976)
96. The Securities and Exchange Board of India Act, 1992 (15 of 1992)
97. The Securities Contracts (Regulation) Act, 1956 (42 of 1956)
98. The Societies Registration Act, 1860 (21 of 1860)
99. The Special Court (Trial of Offences Relating to Transactions in Securities)  
Act, 1992 (27 of 1992)
100. The Specific Relief Act, 1963 (47 of 1963)
101. The Standards and Weights and Measures Act, 1976 (60 of 1976)
102. The State Agricultural Credit Corporation Act, 1968 (60 of 1968)
103. The State Bank of India Act, 1955 (23 of 1955)
104. The Trade and Merchandise Marks Act, 1958 (43 of 1958)
105. The Transfer of Property Act, 1882 (4 of 1882)
106. The Unit Trust of India Act, 1963 (53 of 1963)
107. The Water (prevention and Control of Pollution) Act, 1974 (6 of 1974)
108. The Wild Life (Protection) Act, 1972 (53 of 1972)
109. The Workmen's Compensation Act, 1923 (8 of 1923)